



*Principles of reference for the adoption of the Organization,  
Management, and Control Model pursuant to legislative decree no.  
231/2001*

*Special Sections and Appendix A*

Approved by the Board of Directors of Rai Cinema S.p.A.  
at its meeting of 13 December 2023

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## 1. Preface

This Rai Cinema Model is structured in a “General Section” – regarding the organization as a whole, the programme for developing the Model, the Supervisory Board, the disciplinary system, and the modes of training and communication – and the “Special Sections” which regard the detailed application of the principles addressed in the “General Section,” with reference to the criminal offenses discussed by Legislative Decree no. 231/01, which the Company has resolved to take into consideration given the features of its business.

The “Special Sections” respectively analyze:

- Special Section “A” – Offences against Public Administration and bribery among private individuals
- Special Section “B” – Forgery of money, public credit cards, stamp duties, and in identification instruments or marks, offences against industry and trade
- Special Section “C” – Corporate offences
- Special Section “D” – Offences of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering
- Special Section “E” – Offences committed in violation of occupational health and safety regulations
- Special Section “F” – Computer crimes and unlawful processing of data
- Special Section “G” – Copyright violations;
- Special Section “H” – Environmental crimes
- Special Section “I” - Offences of terrorism, offences against individuals, transnational crimes, organized crime, inducing someone not to testify or to make false statements to the judicial authority, crime involving the employment of illegal aliens
- Special Section “L” – Tax Offences
- Special Section “M” –Offences in the matter of non-cash payment instruments.

In consideration of the analysis of the corporate setting, of the Company’s business, and of the areas potentially subject to crime risk, the Model deemed relevant and thus specifically examined only the offences that are the object of the individual Special Sections, to be referred to for their exact identification.

With reference to the other “predicate offences” of entities’ administrative liability pursuant to the Decree (e.g.: crimes against the public trust pursuant to art. 25-*bis* of the Decree<sup>1</sup>, crimes against life and individual safety pursuant to art. 25-*quater* of the Decree<sup>2</sup>, crimes and administrative offences of market abuse pursuant to art. 25-*sexies* of the Decree<sup>3</sup>, offences of racism and xenophobia pursuant to art. 25-*terdecies* of the Decree, smuggling offences pursuant to art. 25-*sexiesdecies* of the Decree, Crimes against the cultural heritage pursuant to articles 25-*septiesdecies* and 25-*duodevicies* of the Decree), the Company held the risk to be merely abstract and not likely in practise, and that, at any rate, the control instruments set up to prevent the aforementioned offences, based on the analysis that was done, may, along with the Ethical Code and legislative provisions, provide assurance as to preventing these offences as well.

Each Special Section consists of the following paragraphs:

- the first paragraph, dedicated to describing the “relevant criminal offences”;
- a second paragraph aimed at “Identifying the sensitive areas and activities”: in light of the “risk analysis” carried out in compliance with the requirements established by art. 6, paragraph 2 letter a) of Legislative Decree no. 231/01, it was possible to highlight the corporate offices involved in processes exposed in the abstract to the risk of committing facts of relevance under the Decree. The Model also indicates the sensitive activities, for the purpose of clarifying in what areas of activity the risk of committing each group of crimes is highest. For a more analytical list of the individual organizational units at risk, see the “risk analysis” document;
- a third paragraph, containing indications concerning the “Principles of behaviour and of implementation of decision-making processes”: the former – the “Principles of behaviour” – are aimed at addressing compliance with the Ethical Code, and at specifying the rules of conduct that must inspire the behaviour of the Model’s recipients in order to prevent the commission of individual groups of offences. On the other hand, the part on “Principles of implementation of decision-making processes” is aimed at dictating the “specific protocols aimed at planning the formation and implementation of the entity’s decisions with regard to the crimes to be prevented,” in accordance with the lawmakers’ provisions under art. 6, paragraph 2, letter b) of the Decree.

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<sup>1</sup> Specifically, reference is made to the following crimes: crimes of counterfeiting of money, spending and introduction into the state of counterfeit money, acting in concert (art. 453 of the criminal code), alteration of money (art. 454 of the criminal code), spending and introduction into the state of counterfeit money, without acting in concert (art. 455 of the criminal code), spending of counterfeit money received in good faith (art. 457 of the criminal code), forgery of stamps, introduction into the State, purchase, possession or putting in circulation of forged stamps (art. 459 of the criminal code), counterfeiting of watermarked paper used for the production of legal tender or stamps (art. 460 of the criminal code), production or possession of thread marks or instruments used to counterfeit money, official stamps or watermarked paper (art. 461 of the criminal code), use of counterfeit or altered stamps (art. 464 of the criminal code).

<sup>2</sup> Specifically, reference is made to the crime of the practise of female genital mutilation (art. 583-*bis* of the criminal code).

<sup>3</sup> Specifically, reference is made to crimes of misuse of privileged information (art. 184 of the Consolidated Financial Law) and market manipulation (art. 185 TUF), and to the administrative offences of misuse of privileged information (art. 187-*bis* of the Consolidated Financial Law) and of market manipulation (art. 187-*ter* of the Consolidated Financial Law).

## 2. Purpose

The Model's structure with the provision of "Special Sections" makes it possible, within the setting of each of the macro-areas elaborated with reference to the groups of offences as provided for by Legislative Decree no. 231/01, to identify the sensitive activities with which the control instruments – adopted for prevention and for the prompt update of the Model by means of appropriate additions, where applicable, should Lawmakers intend to introduce further relevant criminal offences– are associated. The "Special Sections" are to be placed in relation to the behavioural principles contained in the corporate procedures and in the Ethical Code, which guide the recipients' behaviour in the various areas of operation, with the purpose of preventing behaviour that is improper or not in line with the Company's directives.

The control instruments identified below are binding on the Model's recipients and consist of obligations to do (compliance with procedures, reporting to control bodies) and of obligations not to do (respect for prohibitions), which are expressly taken into account.

Observance of said obligations, as already declared in the "General Section" and as restated here, has a precise juridical value; in fact, in the event of violation of these obligations, the Company will react by applying the disciplinary and sanctioning system described in the "General Section".

Specifically, the Model's Special Section aims to:

- indicate the procedures that the members of the Corporate Bodies, Employees, and Outside Collaborators are called upon to comply with for the purposes of the correct application of the Model;
- provide, to the Supervisory Board and the managers of all the corporate offices cooperating with it, the executive instruments to exercise the control, monitoring, and verification activities.

As a general rule, all corporate officers must adopt – each for the aspects under his or her own purview – behaviour in compliance with the following documents:

- Model;
- Ethical Code;
- Three-Year Corruption Prevention Plan;
- Guidelines/procedures/regulations;
- powers of attorney, delegations, and organizational communications;
- any other document that regulates activities in the Decree's sphere of application.



Moreover, adopting behaviour contrary to that provided for by regulations of law in force is expressly forbidden.

### 3. The control system

The control system put in place by the Company, based also on the indications provided by Confindustria's Guidelines, as well as on best practises, with reference to the identified Sensitive Activities and Areas, calls for:

- *“general” control standards*, applicable to all the Sensitive Activities;
- *“specific” control standards*, applicable to given Sensitive Activities and reported in the individual Special Sections.

#### 3.1 General control standards

The general control standards to be considered and applied with reference to all the Sensitive Activities are as follows:

- *separation of duties/activities*: the principle of separation of duties between those who authorize, those who execute, and those who control is required;
- *regulations/circulars*: formalized procedures and corporate provisions must exist within the company, aimed at providing principles of behaviour, modes of operation for carrying out all sensitive activities, as well as procedures for archiving the relevant documentation;
- *authorization and signature powers*: authorization and signature powers must: (a) be in line with the assigned organizational and management responsibilities, providing, where required, indication of the expenditure approval thresholds; (b) be clearly defined and known within the company;
- *traceability*: each operation related to the sensitive activity must, where possible, be appropriately recorded and archived also through the use of IT tools that guarantee the confidentiality of the documents and the tracking of the activities. The process of deciding, authorizing, and carrying out the sensitive activity must be verifiable *ex post*, also by means of appropriate document supports and, at any rate, deleting or destroying the records that have been made must be expressly forbidden or, as the case may be, the possibility of deleting or destroying said records must be regulated.

#### 3.2 Specific control standards

Based on the general control standards reported above, the specific control standards, which refer to the former, are developed so that:

- a) all the operations, formation, and implementation of the Company's decisions respond to the principles and requirements contained in the provisions of law, of the Articles of Association, of the Ethical Code, and of the corporate procedures;
- b) the corporate provisions designed to provide principles of behaviour, modes of operation for carrying out the sensitive activities, and the procedures for archiving the relevant documentation are defined and appropriately communicated;
- c) for all operations:
  - the management, coordination, and control responsibilities inside the company, as well as the reporting lines and the description of the corresponding responsibilities, are formalized;
  - the phases for drawing up the documents, and the levels of authorization for drawing up the documents, are at all times documentable and reconstructable, guaranteeing the transparency of the choices that are made;
  - the Company may adopt instruments to communicate the conferred signature powers and a system of delegations of power and powers of attorney;
  - the exercise of powers within the context of a decision-making process is in line with the positions of responsibility and with the importance and/or critical nature of the underlying economic operations;
  - there is no subjective identification between those taking or implementing the decisions, those who must give evidence of accounts of the operations decided upon, and those who are required to carry out thereon the controls provided for by law and by the procedures contemplated by the internal control system;
  - exclusively persons authorized in accordance with Regulation (EU) 679/2016, Legislative Decree no. 196/2003, also as amended and supplemented by regulatory provisions, are permitted to access and intervene on the Company's data;
  - confidentiality in transmitting the information is guaranteed;
  - the documents regarding the formation of decisions and the implementation thereof are archived and kept, by the competent office, with such procedures as not to allow them to be modified at a subsequent time unless with specific evidence.

With reference to the sensitive activities that have a high degree of complexity and specificity in developing the control measures, account was taken of the regulations of reference and of the international standards for implementing the certified management systems.

## 4. SPECIAL SECTION A- Public administration and bribery among private individuals

### 4.1 Relevant offences (articles. 24, 25, 25-ter of Legislative Decree no. 231/01)

This Special Section refers to possible offences in relations between Rai Cinema and Public Administration and between Rai Cinema and private individuals. The following is a brief description of the individual criminal offences contemplated in Legislative Decree no. 231/01, under articles 24, 25, 25-ter letter s) *bis*.

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

#### 4.1.1 Corruption

##### ***Bribery for the exercise of the function and sphere of application (Articles 318 and 320 of the criminal code)***

The offence pursuant to art. 318 of the criminal code is committed when a public official, in exercising his or her functions or powers, unduly receives, for him or herself or for a third party, money or another benefit, or accepts the promise thereof.

The above offence is punishable by one to six years' imprisonment.

Pursuant to art. 320 of the criminal code, the provisions pursuant to art. 318 of the criminal code also apply to persons tasked with a public service: in these cases, however, the penalties laid down by lawmakers are reduced by one third from the offences in which a public official is involved.

##### ***Bribery for an act contrary to official duties, aggravating circumstances and sphere of application (articles 319, 319-bis, and 320 of the criminal code)***

The offence pursuant to art. 319 of the criminal code is committed when a public official, in exchange for neglecting or delaying, or for having others neglect or delay, a function of his or her office, or for carrying out or for having others carry out an act contrary to official duties, receives, for him or herself or for a third party, money or another benefit, or accepts the promise thereof.

For the purposes of whether the offence may be charged for the performance of an act contrary to official duties, consideration is to be made both of illegitimate or unlawful acts (which is to say those forbidden by mandatory regulations or counter to the norms dictated for their validity and effectiveness), and of those acts that, although formally legitimate, have been implemented by the public official in breach of the duty of impartiality, or placing his or her office at the service of private interests or at any rate interests other than those of Public Administration.

The above offence is punishable by six to ten years' imprisonment.

For this criminal offence, the penalty may be increased pursuant to art. 319-*bis* of the criminal code if the act contrary to official duties involves the conferral of public-sector employment, wages, or pensions, or the execution of contracts in which the administration to which the public official belongs has an interest.

Pursuant to art. 320 of the criminal code, the provisions of art. 319 of the criminal code also apply to the person tasked with a public service: however, in these cases, the penalties laid down by lawmakers are reduced by one third from the offences in which a public official is involved.

Pursuant to art. 321 of the criminal code, the penalties established by articles 318 and 319 of the criminal code also apply to those who give or promise money or another benefit to the public official or employee.

It is lastly noted that the criminal offences of bribery pursuant to articles 318 and 319 of the criminal code differ from official misconduct in that the bribe taker and the bribe payer have an agreement designed to achieve a mutual benefit, while in official misconduct, the public official's conduct is imposed upon the private individual.

***Bribery in judicial proceedings (Art. 319-ter of the criminal code)***

This offence is committed by those who, to favour or damage a party to a legal proceeding, corrupt a public official, and thus a judge, a clerk, or other officer of the court.

It is important to note that the Company may be charged with this offence regardless of whether it is itself party to the proceedings.

This criminal offence is punishable by six to twelve years' imprisonment, depending on whether the crime resulted in an unjust conviction, and on the type of unjust conviction handed down.

***Incitement to bribery (Art. 322 of the criminal code)***

This offence is committed when money or another benefit is offered or promised to a public official or a public service employee (for exercising his or her functions or powers, for neglecting or delaying an act of his or her office, or for carrying out an act counter to his or her duties) and this offer or promise is not accepted.

The penalty established for the party committing the aforementioned criminal offence is that laid down for the offence punishable under art. 318 of the criminal code, reduced by one third if the offer or promise is made to incite a public official or public service employee to carry out an act in the exercise of his or her functions or powers; however, if the offer or promise is made to incite a public official or public service employee to neglect or delay an act of his or her office, the penalty is that for the offence punishable under art. 319 of the criminal code, reduced by one third.

***Bribery among private individuals (art. 2635 of the civil code)***

This offence is committed when the administrators, general managers, directors charged with drawing up the corporate accounting documents, auditors, and liquidators even through an intermediary person, solicit or receive, for themselves or others, unowed money or another benefit, or accept the promise thereof, carry out or neglect acts, in breach of the obligations of their office or of their obligations of loyalty, thereby causing harm to the company. The offence is punishable by one to three years' imprisonment for the offences committed by whoever, in the organizational setting of the company or the private entity, performs executive functions other than those of the parties as per the preceding sentence.

Moreover, the offence is committed in cases where a person gives or promises money or another benefit to the persons indicated above. This case is the only one of relevance for the purposes of companies' administrative liability, in that it is expressly referred to by art. 25-ter of Legislative Decree no. 231/01.

Penalties are doubled for companies with shares listed on regulated markets in Italy or in other European Union countries, or widely circulated among the public pursuant to art. 116 of the Consolidated Financial Law.

***Instigation to bribery among private individuals (art. 2635 bis of the civil code)***

Under this offence, "whoever offers or promises unowed money or another benefit to the administrators, general managers, directors charged with drawing up the corporate accounting documents, auditors, and liquidators, of companies or of private entities, as well as to those who perform a working activity with the exercise of executive functions therein, so that they may carry out or neglect to carry out an act in breach of the obligations of their office or of their obligations of loyalty, should the offer or promise not be accepted, is subject to the penalty established in the first paragraph of article 2635, reduced by one third.

The penalty as per the first paragraph applies to administrators, general managers, directors charged with drawing up the corporate accounting documents, auditors, and liquidators, of companies or of private entities, as well as to those who perform a working activity with the exercise of executive functions therein, who solicit, for themselves or others, even through an intermediary person, a promise or gift of money or other benefit, to carry out or neglect to carry out an act in breach of the obligations of their office or of their obligations of loyalty, should the offer or promise not be accepted. Proceedings are brought upon the complaint of the injured party.

***Influence peddling (art. 346 bis of the criminal code)***

Art. 346 of the criminal punishes whoever, outside of complicity in the offences pursuant to articles 318, 319, 319-ter and in the corruption offences pursuant to article 322-bis, by exploiting or boasting existing or alleged relations with a public official or a person tasked with a public service, or one of the other parties pursuant to article 322-bis, unduly causes to be given or promised, to him or herself or to others, money or another benefit as the price for

his or her unlawful mediation with a public official or a person tasked with a public service, or one of the other parties pursuant to article 322-bis, or in order to remunerate him or her in connection with the discharge of his or her duties or the exercise of his or her powers.

The law also punishes those who unduly give or promise money or another benefit.

This measure is also aimed at punishing behaviour of corrupt agreements: it punishes those who offer to put a person in contact with a public official for the purpose of implementing an unlawful agreement in exchange for the promise or gift of money. It differs from “false claims,” art. 346 of the criminal code, according to which the person claims or boasts of a relationship – in reality non-existent – with the public agent.

This measure serves as a protection in anticipation of crimes of corruption, aimed at punishing the intermediary before he or she can complete the corrupt agreement between the private individual and Public Administration.

The offence is punishable by one year to one year and six months’ imprisonment. The punishment is increased if the individual who causes to be given or promised, to him or herself or to others, money or another benefit holds the qualification of public official or a person tasked with a public service. The punishments are also increased if the offences are committed in relation to the discharge of judicial activities or to remunerate the public official or a person tasked with a public service, or one of the other individuals pursuant to article 322-bis, in connection with performing an act contrary to official duties, or neglecting or delaying an act of his or her office. If the offences are particularly slight, the punishment is diminished.

***Abuse of office (art. 323 of the criminal code)***

This offence is committed when a public official or a person tasked with a public service intentionally:

- i) draws an unfair financial advantage in the discharge of his or her duties or in the performance of service in violation of the provisions of law or regulations;
- ii) draws an unfair financial advantage in the discharge of his or her duties or in the performance of service, by neglecting to abstain in matters concerning his or own interest, or the interest of his or her own next of kin;
- iii) produces wrongful damage in the discharge of his or her duties or in the performance of service, in violation of the provisions of law or regulations;
- iv) produces wrongful damage in the discharge of his or her duties or in the performance of service, by neglecting to abstain in matters concerning his or own interest, or the interest of his or her own next of kin.

As to the mode of perpetration of the offence:

- no specific acts need be committed, nor measures issued by the public official or person tasked with a public service;

- the abuse is committed through the exercise by the public official of a power for purposes other than those imposed by the nature of the function attributed to him or her;
- the term “violation of law” is to be understood as only that referring to provisions endowed with specific prescriptive content, excluding procedural rules;
- the offence is committed not only when the conduct conflicts with the systematic logical or literal meaning of a law, but also when the behaviour maintained by the public official or person tasked with a public service contradicts the specific purpose pursued by the law attributing the exercised power, in order to achieve a personal or selfish end, or at any rate a purpose extraneous to public administration, giving rise to a “diversion” that harms the interest protected by the criminal law provision;
- the offence is also committed when the public official or person tasked with a public service acts for retaliatory and vexatious purposes extraneous to the duties of office;
- in the case in which the purpose of drawing private benefit is combined with a public purpose, it is necessary to verify – from time to time – what was the true purpose pursued by the perpetrator, with the consequent exclusion of the crime solely in the case in which the public purpose overrode the private one.

The offence is punishable by one to four years’ imprisonment. The punishment is increased if the benefit or harm are highly serious in nature. The offence might become relevant for the company even if the company includes no persons who may be qualified as a public official or person tasked with a public service, on the basis of complicity in the public official’s crime.

The corporate representative (the so-called “*extraneus*”) might – to favour his or her own company – concretely instigate or aid the public official in committing one of the criminal acts, even without giving or promising benefits that would constitute acts of corruption.

According to Confindustria Guidelines, responsibility in concert – pursuant to art. 110 of the criminal code – of the *extraneus* may take place where the *extraneus*, while aware of the particular subjective qualification of his or her partner in crime (e.g. public official, mayor, etc.), is complicitous in the criminal behaviour the latter may be charged with.

The elements necessary for the purposes of charging complicity are therefore as follows:

1. awareness of the contacted person’s function as public official;
2. awareness of the unlawfulness of the required conduct;
3. active participation in the commission of the offence.

#### **4.1.2 Malfesance in office**

##### ***Malfesance in office (Art. 317 of the criminal code)***

This offence is committed when the public official, or a person in charge of a public service, abusing his or her office or powers, forces someone to unduly give or promise money or another benefit to him or herself or to a third party.

Like bribery, malfeasance in office is a bilateral crime, in that it requires the acts of two distinct parties: the party extorting the money or benefit, and the party so extorted.

The above offence is punishable by six to twelve years' imprisonment.

The offence might become relevant for the company even if the company includes no persons who may be qualified as a public official or person tasked with a public service, on the basis of complicity in the public official's crime.

The corporate representative (the so-called "*extraneus*") might – to favour his or her own company – concretely instigate or aid the public official in committing one of the criminal acts, even without giving or promising benefits that would constitute acts of corruption.

According to Confindustria Guidelines, responsibility in concert – pursuant to art. 110 of the criminal code – of the *extraneus* may take place where the *extraneus*, while aware of the particular subjective qualification of his or her partner in crime (e.g. public official, mayor, etc.), is complicitous in the criminal behaviour the latter may be charged with.

The elements necessary for the purposes of charging complicity are therefore as follows:

1. awareness of the contacted person's function as public official;
2. awareness of the unlawfulness of the required conduct;
3. active participation in the commission of the offence.

***Inducement to give or promise a benefit (art. 319-quater of the criminal code)***

This crime is committed when the public official or the public service employee, abusing his or her office or powers, forces someone to unduly give or promise money or another benefit to him or herself or to a third party.

The punishment for the public official or the public service employee is six to ten and a half years' imprisonment; the punishment for the party who gives or promises money or another benefit to the public official or the public service employee is up to three years' imprisonment.

The offence might become relevant for the company even if the company includes no persons who may be qualified as a public official or person tasked with a public service, on the basis of complicity in the public official's crime.

The corporate representative (the so-called "*extraneus*") might – to favour his or her own company – concretely instigate or aid the public official in committing one of the criminal acts, even without giving or promising benefits that would constitute acts of corruption.

According to Confindustria Guidelines, responsibility in concert – pursuant to art. 110 of the criminal code – of the *extraneus* may take place where the *extraneus*, while aware of the particular subjective qualification of his or her partner in crime (e.g. public official, mayor, etc.), is complicitous in the criminal behaviour the latter may be charged with.

The elements necessary for the purposes of charging complicity are therefore as follows:

1. awareness of the contacted person's function as public official;



2. awareness of the unlawfulness of the required conduct;
3. active participation in the commission of the offence.

#### **4.1.3 Fraud**

##### ***Fraud against the state or other public body (art. 640, paragraph 2, no. 1 of the criminal code)***

This offence is committed when, to procure unjust profit, artifice and deception is employed (with this definition also including any omission of information which, if known, would certainly have negatively determined the will of the State, of another public body, or of the European Union) so as to produce error or cause (financial) damage to these bodies.

This offence is punishable by one to five years' imprisonment and a fine of € 309 to € 1,549.

##### ***Aggravated fraud for the purpose of obtaining public funds (art. 640-bis of the criminal code)***

This offence is committed when the facts as per art. 640 of the criminal code as discussed above regard contributions, grants, financing, subsidized loans or other payments of the same kind, by whatever name, granted or paid by the State, by other Public Entities, or by the European Communities.

This offence is punishable by one to six years' imprisonment.

##### ***Computer fraud (Art. 640-ter of the criminal code)***

Computer fraud is committed when, to procure unjust profit for oneself or for others, the function of a computer or online system is altered in any way, or when intervening, without being entitled to do so, on data, information, or programs contained in or pertaining to a computer or online system.

The penalty of imprisonment and the fine provided for in the first paragraph are increased in the circumstances provided for by number 1) of the second paragraph of article 640 of the criminal code, or if the fact is committed in abuse of the office of system operator. The third paragraph punishes, by the procedures indicated in the fourth paragraph, those who commit the offence with theft or undue use of digital identity to the detriment of one or more subjects.<sup>4</sup>

#### **4.1.4 Embezzlement and misappropriation of payments**

##### ***Embezzlement of public funds (Art. 316-bis of the criminal code)***

These offences are committed by any party, outside of public administration, that, having obtained from the State or from another public body, or from the European Communities, contributions, grants, funding, subsidized loans or other payments of the same kind, by

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<sup>4</sup> Paragraph 3 of art. 640-ter of the criminal code was inserted by art. 9, paragraph 1, letter. a), of Legislative Decree no. 933 of 14 August 2013, converted with amendments by Law no.119 of 15 October 2013.

whatever name, intended for the achievement of one or more purposes, fails to allocate them to the planned activities.

To rise to the level of committing the offence, it is sufficient that only a part of the received benefits is used for purposes other than those provided for, it being of no importance whatsoever whether the planned activity has at any rate been carried out. Also of no relevance are the purposes that the offender had wished to achieve, since the subjective element of the crime is the desire to divert resources allocated to a pre-established purpose.

The above criminal offence is punishable by six months' to four years' imprisonment.

#### ***Misappropriation of public payments (Art. 316-ter of the criminal code)***

This offence is committed in cases where, through the use or submission of false or untruthful declarations or documents, or through the omission of required information, contributions, grants, funding, facilitated loans, or other payments of this kind, however they are called, granted or paid by the State, by other Public Entities, or by the European Communities, are obtained unduly, for oneself or for others.

In this case, contrary to what was seen with regard to the previous offence, the use that is made of the payments is of no relevance, as the offence is committed at the moment the funding is obtained.

It is to be stressed that this criminal offence is a residual scenario to the crime pursuant to art. 640-*bis* of the criminal code (aggravated fraud for the purpose of obtaining public funds), in the sense that it arises only in cases where the act does not rise to the level of fraud under that provision.

The demarcation line between the offence of Misappropriation of public payments (pursuant to art. 316-ter of the criminal code) and that of Aggravated fraud for the purpose of obtaining public funds (pursuant to art. 640-*bis* of the criminal code) lies in the type of criminal conduct by the offender who, in the first case, goes no further than to submit false documents or omit required information, while in the latter case he or she employs artifice and deception to mislead Public Administration.

#### ***4.1.5 Cases of embezzlement***

##### ***Embezzlement (art. 314 of the criminal code)<sup>5</sup>***

The offence is committed if the public official or person tasked with a public service: i) appropriates money or anything else of value in his or her possession or at any rate available to him or her in connection with his or her office (paragraph 1); ii) appropriates money or

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<sup>5</sup> Reference is also made to the case established by art. 316 del of the criminal code (embezzlement through profit from another's error), based on which "the public official or person tasked with a public service who, in discharging his or her duties or service, benefitting from the errors of someone else, unduly receives or retains, for him or herself, money or another benefit, is punished with six months' to three years' imprisonment. The punishment of six months' to four years' imprisonment applies when the crime offends the financial interests of the European Union, or the damage or profit exceeds € 100,000." This article was recently amended by Legislative Decree no. 75 of 14 July 2020.

anything else of value in his or her possession or at any rate available to him or her in connection with his or her office in order to make momentary use of it, returning the money or benefit immediately after use (paragraph 2).

Towards this end, it is sufficient for the “reasons of office or of service” established by art. 314 of the criminal code to originate even from practice, and it is not necessary for the qualified possession of another party’s money or anything else of value by the public official or person tasked with a public service to be included in his or her specific functional sphere of competence.

Similarly, the offence is also committed by the de facto official not formally endowed with public office.

Cases: the offence of embezzlement is committed by the manager of a public authority’s treasury unit, who prepares and signs payment orders to him or herself, citing wholly unsupported reasons, and then cashes them personally at the bank that performed the treasury service<sup>6</sup>.

The offence is punishable by four years’ to ten years and six months’ imprisonment in the case set out by paragraph 1, and six months’ to three years’ imprisonment in the case set out by paragraph 2.

The offence might become relevant for the company even if the company includes no persons who may be qualified as a public official or person tasked with a public service, on the basis of complicity in the public official’s crime.

The corporate representative (the so-called “*extraneus*”) might – to favour his or her own company – concretely instigate or aid the public official in committing one of the criminal acts, even without giving or promising benefits that would constitute acts of corruption.

According to Confindustria Guidelines, responsibility in concert – pursuant to art. 110 of the criminal code – of the *extraneus* may take place where the *extraneus*, while aware of the particular subjective qualification of his or her partner in crime (e.g. public official, mayor, etc.), is complicitous in the criminal behaviour the latter may be charged with.

The elements necessary for the purposes of charging complicity are therefore as follows:

1. awareness of the contacted person’s function as public official;
2. awareness of the unlawfulness of the required conduct;
3. active participation in the commission of the offence.

#### **4.1.6. Embezzlement, malfeasance in office, undue inducement to give or promise a benefit, bribery and instigation of bribery of members of the international courts or of the Bodies of the European Union, or of international parliamentary assemblies or of**

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<sup>6</sup> Corte di Cassazione, criminal section VI, 18 September 2013, no. 41093.

### **international organizations and of officials of the European Union and of foreign States.**

With the introduction of art. 322-bis of the criminal code, members of international institutions or institutions of foreign states, if they commit the individual offences described above, are considered on a par with the person tasked with a public service<sup>7</sup>.

The considerations made as to embezzlement, with regard to the public official's possible complicity in the crime, also apply.

#### **4.1.6. Fraud in public procurement and farm fraud**

A) The crime of fraud in public procurement takes place in the event of commission of the crime of fraud in the performance of procurement contracts or in the fulfilment of the other contractual obligations indicated in article 355 of the criminal code (default of procurement contracts)<sup>8</sup>.

The offence is punishable by one to five years' imprisonment and a fine of up to € 1,032.

The punishment is increased in the cases established by the first paragraph of article 355 of the criminal code

This crime applies to anyone who commits fraud in the performance of procurement contracts or in the fulfilment of the other contractual obligations derived from a procurement contract

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<sup>7</sup> The following is the text of Art. 322-bis of the criminal code, amended by Legislative Decree no. 75 of 14 July 2020: [I]. The provisions of articles 314, 316, from 317 to 320 and 322, third and fourth paragraphs, also apply:

1) to members of the European Commission, of the European Parliament, of the Court of Justice, and of the Court of Auditors of the European Union;

2) to the officials and servants hired by contract in accordance with the staff regulations of Officials of the European Union or with the regime applicable to servants of the European Union;

3) to persons seconded by Member States or by any public or private body at the European Union, that perform functions corresponding to those of the officials or of servants of the European Union;

4) to the members and employees of entities constituted on the basis of the founding treaties of the European Union;

5) to those who, in the setting of other Member States of the European Union, perform functions or activities corresponding to those of public officials and of persons tasked with a public service;

5-bis) to the judges, to the prosecutor, to the deputy prosecutors, to the officers and agents of the International Criminal Court, to the persons seconded by States belonging to the Treaty founding the International Criminal Court that perform functions corresponding to those of the officers or agents of that court, to the members and employees of entities constituted on the basis of the Treaty founding the International Criminal Court;

5-ter) to persons that perform functions or activities corresponding to those of public officials and of persons tasked with a public service in the context of international public organizations;

5-quater) to the members of international parliamentary assemblies or of an international or supranational organization, and to the judges and officers of international courts.

The provisions of articles 319-quater, second paragraph, 321 and 322, first and second paragraphs, also apply if money or another benefit is given, offered or promised:

1) to the persons indicated in the first paragraph of this article;

2) to persons that perform functions or activities corresponding to those of public officials and of persons tasked with a public service in the context of other foreign States or international public organization.

5-quinquies) to persons that perform functions or activities corresponding to those of public officials and of persons tasked with a public service in the context of other States that do not belong to the European Union, when the crime offends the financial interests of the European Union. The persons indicated in the first paragraph are likened to public officials if they perform corresponding functions, and to persons tasked with a public service in the other cases."

<sup>8</sup> Article 356 of the criminal code, "fraud in public procurement," was inserted into the body of Art. 24 of Legislative Decree no. 231/01 by Legislative Decree no. 75 of 14 July, 2020, and paragraph 2-bis of Art. 24 of Legislative Decree no. 231 is referred to under Art. 2 of Law no.898 of 23 December 1986 (2.bis. The entity is subject to the sanctions established under the previous paragraphs with regard to the commission of the offence pursuant to Art.2 of Law no. 898 of 23 December 1986 as amended).

concluded with the State, with another public entity, or with an enterprise providing public services or essential public services, also to the detriment of the European Union.

The crime of fraud in public procurement takes place in the fraudulent performance not only of a supply contract, but also of a works contract.

Simple contractual default does not rise to the level of crime, as the criminal law provision also requires contractual bad faith, which is to say the presence of a malicious contrivance or of a deception, that are such as to cause the performance of the contract to appear to conform to the obligations taken on (e.g.: awareness of delivering and desire to deliver things other than those agreed upon). No specific deceit is required, nor do the flaws have to be hidden, but the criminal intent in performing the public procurement of goods or services contract is sufficient.

B) The crime of farm fraud is committed when, through the presentation of false data or information, one unduly earns, for oneself or for others, aid, rewards, compensation, restitutions, contributions, or other payments borne totally or partially by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development<sup>9</sup>.

#### ***4.1.7 Offences of rigged bidding and rigged contractor selection***

Rigged bidding (art. 353 of the Italian Criminal Code)

The law punishes anyone who, by violence or threat or with gifts, promises, collusion, or other fraudulent means, impedes or rigs bidding in public auctions or private tenders on behalf of public administrations, or keeps bidders away.

The offence is punished by six months' to five years' imprisonment, and with a fine of € 103 to € 1,032.

If the guilty party is the person charged by law or by the authorities with the aforementioned auctions or tenders, imprisonment is from one to five years, and the fine becomes € 516 to € 2,065.

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<sup>9</sup> Art. 2 of law no. 898 of 23 December 1986, as amended, introduced into art. 24 of Legislative Decree no. 231/2001 by Legislative Decree no. 75 of 14 July 2020, "farm fraud," states as follows: "1. Where the offence does not rise to the more serious crime provided for by article 640-bis of the criminal code, anyone who, through the presentation of false data or information, unduly earns, for oneself or for others, aid, rewards, compensation, restitutions, contributions, or other payments borne totally or partially by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, is punished by six months' to three years' imprisonment. When the unduly earned sum is less than or equal to € 5,000, only the administrative sanction pursuant to paragraphs 1 and 2 of Art. 24 of Legislative Decree no. 231/01 shall apply. 2. To the effects of the provision as per paragraph 1 above and of the provision as per paragraph 1 of article 3, the payments borne by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development are likened to the national quotas provided for by EU regulations to complement the sums borne by said Funds, as well as the payments wholly borne by national financial resources on the basis of EU regulations. 3. With the decision, the judge also determines the amount unduly earned and sentences the guilty party to make restitution to the administration that ordered the payment as per paragraph 1."

The same punishments also apply in the case of private tenders on behalf of private parties directed by a public official or a legally authorized person, but are reduced by one half.

The public auction is a procedure implemented by public administration for the execution of contracts with private parties. This type of auction consists of a tender open to several bidders, with the contract being assigned to the most advantageous bid.

Private tendering, on the other hand, is a public administration contractor selection system in which only the parties considered suitable for concluding the contract are invited to take part.

#### ***Rigged contractor selection (art. 353-bis of the Italian Criminal Code)***

This offence is committed by anyone who, by violence or threat or with gifts, promises, collusion, or other fraudulent means, rigs the administration process aimed at establishing the content of the call for bids or other equivalent act in order to condition the procedures for contractor selection by public administration.

This case is punishable with six months' to five years' imprisonment, and with a fine of € 103 to € 1,032.

The law in question punishes behaviour leading to the commission of acts liable to rig the choice of contractor by public administration, by rigging the administrative proceeding aimed at establishing the content of the call for bids or other equivalent act.

#### **4.2 Identification of the sensitive areas and activities in the context of the offences in relations with Public Administration and of the crime of bribery among private individuals**

With regard to the crimes predicated upon the establishment of direct or indirect relations with Public Administration, all the corporate areas that involve establishing relations with Public Administrations have been identified as sensitive activities:

- 1. Management of relations with public parties in the event of obligations, visits and inspections***
- 2. Requesting, acquiring, and managing contributions and financing***
- 3. Management of the proceedings in and out of court, and arbitration proceedings***

Also identified are the following processes to be considered both as “instrumental” to the activities examined above – since, although they are not characterized by the existence of direct relations with Public Administration, they may be a support for and predicate (financial and operative) to the commission of crimes in relations with Public Administration – and as

“sensitive” activities with reference to the offence of bribery among private individuals, as they are characterized by the existence of direct relations with private parties:

**4. Publishing areas of purchasing rights and film production:**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

**5. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

**6. Sales, distribution, and marketing area**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**
- **Selecting and managing agents (natural and legal persons)**

**7. Management of human resources:**

- **Selecting employed personnel**
- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**
- **Conferring collaboration and consulting assignments to natural persons**
- **Managing industrial relationships**
- **Managing travel (advances, expense reimbursements, and credit cards)**

**8. Promotion and external relations:**

- **Organizing and attending film festivals and events**
- **Managing sponsorships and donations**
- **Managing gifts, free items, and benefits**
- **Managing external communications**

**9. Financial statements, administration, and finance area:**

- **Managing credit (including invoices receivable)**

- **Managing debt (including invoices payable)**
- **Treasury management (payments/collections)**
- **Managing the activities of preparing the financial statements**
- **Managing entertainment expenses (advances, expense reimbursements, and credit cards)**

#### 4.3 Principles of behaviour and implementation of decision-making processes

##### 4.3.1 Principles of behaviour

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators, limited respectively to the obligations contemplated in the specific procedures and codes of behaviour and in the specific clauses inserted in the implementation contracts, to implement, collaborate towards, or give cause to the behaviours that – considered individually or collectively

- constitute, directly or indirectly, the criminal offenses included among those considered above (articles. 24, 25, 25-ter letter s-bis) of articles. 24, 25, 25-ter letter s-bis) of Legislative Decree no. 231/01);
- although not such as to constitute, in and of themselves, criminal offences included among those considered above, may potentially become so;
- foster any situation of conflict of interest with regard to Public Administration in relation to the provisions of the aforementioned criminal offences;
- violate the corporate principles and procedures provided for in this Special Section.

This Special Section thus entails the obligation for the parties mentioned above to comply scrupulously with all the laws in force, and in particular:

- not to accept or solicit gifts, acts of courtesy such as free items or forms of hospitality, or other benefits except within the limits of modest value and such as might be considered customary for the occasion, and so as not to be interpreted by an impartial observer as designed to acquire undue advantages. It is not permitted to offer, promise, or make gifts, acts of courtesy such as free items or forms of hospitality, or other benefits except within the limits of modest value, as indicated in the Ethical Code. In any event, these expenses shall always be authorized and documented, and in compliance with budget limits.
- during a business negotiation, application, or commercial relationship with Public Administration or with a private party, not to undertake the following actions, directly or indirectly:
  - examining or proposing employment and/or commercial opportunities that may benefit employees of Public Administration personally, or private parties;



- soliciting or obtaining confidential information that may compromise the integrity or reputation of both parties;
- within the sphere of relations including those of a non-commercial nature established between Rai Cinema and Public Administration, public officials, public service employees and private parties to refrain from:
  - offering, promising, or giving – even through an intermediary person – money or another benefit, which may also consist of work or commercial opportunities, to the involved public official or to the private party, to their Family Members,<sup>10</sup> or to parties in any way associated with them;
  - accepting the demand or solicitations, even through an intermediary person, of money or another benefit, which may also consist of work or commercial opportunities, from the involved public official, from the Family Members of the parties indicated above, and from parties in any way associated with them;
  - unlawfully seeking or establishing personal relations of favour, influence, or interference, that may directly or indirectly condition the outcome of the relationship;
- not to abuse their office or their powers to force or induce someone to give or promise, unduly, to them or to a third party, also on behalf of Rai Cinema, money, gifts, or another benefit from parties that have drawn or may draw benefits from activities or decisions pertinent to the office;
- not to make unofficial payments for the purpose of accelerating, favouring, or ensuring the performance of a routine activity, or of an activity that is at any rate within the sphere of duties of the public entities or private parties with which Rai Cinema has relations;
- not to request services by consultants that are not adequately justified within the context of the relationship established with them;
- not to provide, in any form, untruthful or incomplete information to national or foreign Public Administration;
- not to allocate sums received from national or EU public bodies as payments, aid, or funding, for purposes other than those for which they were intended;
- not to condition, in any form and with any means, the freedom of determination of parties who, on any grounds, are called upon to make declarations before the Judicial Authority;

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<sup>10</sup> The term “Family Member” shall be understood as: the spouse of the Public Party; grandparents, parents, siblings, children, grandchildren, nephews and nieces, uncles and aunts, and first cousins of the Public Party and of his or her spouse; the spouse of each of said persons; and any other party that shares a residence with them; the spouse of the private party; grandparents, parents, siblings, children, grandchildren, nephews and nieces, uncles and aunts, and first cousins of the private party and of his or her spouse; the spouse of each of said persons; and any other party that shares a residence with them.

- not to promise or follow up on employment applications in favour of representatives/members of Public Administration or of parties indicated by them, for the purpose of influencing their impartial judgment or inducing them to secure any advantage for Rai Cinema;
- to neither carry out nor induce others to carry out corruption of any kind.
- not to sign deeds or documents that have relevance outside the Company in the absence of formally attributed powers, or lying outside the attributed powers
- not to maintain behaviour deceptive of Public Administration that is such as to lead it into assessment errors during the evaluation of requests for authorizations, licences, certifications, and the like;
- not to omit required information in order to influence in their favour decisions by Public Administration;
- not to recognize travel and entertainment expenses that are not adequately justified in relation to the type of activity performed, or in the absence of justifying documentation;
- not to transfer on any grounds cash or bank or postal passbooks to bearer or bearer securities in euros or in foreign currency, when the value of the operation, even in fractions, reaches a total equal to or greater than the threshold indicated by the regulations in force;
- not to use cash as a means of payment and collection outside the cases permitted by the regulations and by corporate procedures, and at any rate not in an improper fashion;
- not to issue bank or postal cheques that fail to indicate the beneficiary's name or the corporate name as well as the non-transferability clause;
- not to make bank transfers, including international ones, without explicit indication of the other party;
- not to order payments to or collect money from countries included on the main international black lists without adequate documentation proving the actual and specific need;
- not to make payments or compensation to third parties without adequate contractual documentation or at any rate that are not adequately documented, justified, and authorized;
- not to yield to recommendations or pressure from public officials or public service employees;
- not to define the incentive schemes for commercial agents in an unclear and non-transparent fashion;

- not to sponsor companies indicated by parties having the quality of public officials or of public service employees or close to them, and all the more so if they carry out any function in an administrative proceeding in which the Company has an interest or in a contractual relationship to which the Company is party;
- not to condition in any form or by any means the freedom of determination of parties that, on any grounds, are called upon to make declarations before the Judicial Authority.

#### **4.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities.

For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

##### **1. Management of relations with public parties in the event of obligations, visits and inspections**

The performance of the activity entails:

- Integrity, transparency, and fairness: directives are formalized to enshrine the obligation of the utmost collaboration and transparency in managing relations with Public Administration and with the Authorities. There must also be specific control systems (e.g. holding meetings, reporting the rulings) in order to guarantee respect for the principles of integrity, transparency, and fair process;
- Verification of the outgoing documentation: managers are identified for the activities of receiving, checking, consolidating and transmitting, validating, and reviewing the data, information, and documents to be transmitted to Public Administration, to the Supervisory Authorities, and to other control bodies. Specific checks of the truthfulness and correctness of the documentation to be transmitted are also performed. The relevant Area Manager checks the correctness / truthfulness of the data to be transmitted and, where required, initials the documentation to highlight the verification and submits it to the relevant representative.
- Formal checks: roles and tasks of the Office/Department responsible for the formal check of the phases of obtaining and managing concessions, licences, and/or authorizations are defined, with particular regard to the de jure and de facto prerequisites for submitting the request therefor.

- Representation in relations with the Authorities: the following parties are formally identified: the parties tasked with representing the Company before the Supervisory Authorities and the other control bodies (through the conferral of delegated powers and/or powers of attorney); the Offices/Departments responsible for managing the inspections and verifications (within the corresponding Procedure); the cases and procedures for consulting any additional Offices/Departments or, where necessary and urgent, for informing the corporate leadership.
- Tax declarations: there will be system of controls over the activities in preparation for processing tax declarations, including the performance of complementary checks by internal and independent external parties.
- Flows of information: there are to be specific flows of information, and outlines, between the Offices/Departments involved in the process, with the purpose of mutual verification and coordination.
- Traceability: with reference to the management of relations with Public Administration for authorizations, permits, licences, administrative measures, and obligations, traceability is guaranteed through: i) communications taking place in formal fashion through certified e-mail; ii) outgoing documentation protocolled and sent via instruments guaranteeing traceability; iii) in the event of authorizations and the fulfilment of obligations, the relevant area oversees the filing of the documents in the original. With reference to inspections by Public Administration, traceability is guaranteed by the evidence sheets to be prepared upon the opening and closing of the inspections by the relevant area Manager ("Announcement of start of activities" and "Announcement of close of activities"); correspondence with Public Administration takes place in a tracked fashion (e.g. certified e-mail) and outgoing documentation is protocolled for tracking.

## **2. Requesting, acquiring, and managing contributions and financing**

Regulation of the activity establishes:

- Truthfulness and correctness of the documentation: there are specific activities for verifying the truthfulness and correctness of the documents whose production is necessary for accessing the aid and/or funding.
- Representation in relations with Public Administration: through the conferral of delegated powers and/or powers of attorney for this purpose, the party tasked with representing the Company before the paying national or foreign Public Administration is formally identified.
- Use of the contribution: checks are to be performed, aimed at verifying the exact correspondence between how the aid and/or of the granted funding was actually used, and the purpose for which it was obtained.

## **3. Management of the proceedings in and out of court or in arbitration**

Regulation of the activity establishes:

- Transmission of the protest: terms and procedures shall be formalized for the prompt transmission of the protest to the Legal and TV Product Purchasing Contracts Directorate, along with a report illustrating the actual circumstances on which the protest is based;
- Settlements and reconciliation: the protest shall be based on objective parameters and any settlement and/or reconciliation shall be conducted by a person bearing *ad litem* powers of attorney and delegated powers including the power to reconcile or settle the dispute.
- Outside counsel: outside professionals are selected on the basis of criteria of experience, subjective requirements of professionalism and integrity, qualifying references. Also carried out is the check of the doings of said professionals, the activity of overseeing the dispute and approval of the invoices issued by the consultant, also with reference to the bills' being in line with the applied fee structure.
- Relations with Public Administration: it is required that relations with the Judicial Authority and with Public Administration in the context of dispute in and out of court be based on principles of fairness, transparency, and traceability, even when they are managed through an outside attorney.

#### **4. Publishing areas of purchasing rights and film production:**

##### **Selecting and evaluating the product and supplier**

Regulation of the activity establishes:

- Segregation of roles and responsibilities: participation of a number of parties in the process's activities.
- Procedure: existence of formalized procedures regulating the entire process of purchasing rights and film production.
- Monitoring: performance of an activity monitoring the rights market, carried out, based on the respective areas of responsibility, by the Product Area, and the publishing offices.
- Regular development of purchasing plans based on the scouting activities on the audiovisual markets and the product or rights warehouse needs and requirements, in coordination with the Rai – Rai Cinema rights purchasing Committee.
- Formalization of purchase requirement: the procedural process is formalized starting from defining the need until the authorization and issuance of a purchase request, indicating the management procedure and the authorization levels.
- Generation of the purchase request: the purchase requests are generated in accordance with criteria of impartiality, transparency, effectiveness, efficiency, and internal control.

- Verification of the purchase request: verification is made of the correctness of the planned authorization path; the completeness of the information contained in the purchase request; the clarity and comprehensive nature of the description of the object as in the purchase request.
- Budget capacity: a check is made of the purchase request's capacity and consistency with the approved budget, as well as the correctness of the accounting entries indicated therein. Any budget overrun shall be approved by the relevant party.
- Exceptional/urgent purchase: any exceptions to the general purchasing process (including urgent purchasing) are adequately justified and approved by the relevant party. Only expressly identified and authorized parties must be able to make urgent purchases.
- Fractioning of the purchase request: it is forbidden to fraction an objectively unitary supply request into a number of requests.
- Criteria for determining the object: the criteria for determining the object of the contract are – taking account of the typical characteristics of the film and audiovisual products and of the corresponding purchasing and production markets – to the extent possible objective, standardized, predetermined, and commensurate with the Company's requirements.
- List/Register of Suppliers: there is a periodically updated list/register of Group suppliers.
- Assessment of suppliers: the assessment of suppliers complies with the principles of transparency, of fair treatment, and of the Ethical Code. A verification on the counterpart is performed, aimed at analyzing its requirements of ethics and honorability. In the event of negative outcomes of said verification, the results are transmitted to corporate leadership for the appropriate assessments.
- Decision-making process and reasons for choice: formalization is planned of the decision-making path and of the reasons leading to the choice of supplier/production partner (for example: said party's legitimate holding of the relevant copyright) and of investment possibilities, taking account of the artistic, editorial, and economic-financial assessments of the product, and the analysis of consistency with the editorial lines defined by Senior Management and with the Company's investment plans.
- Product assessment criteria: the general criteria for evaluating the product are non-discriminatory and adequately weighted/justified.
- Artistic and editorial assessment: the artistic and editorial assessment of the offered or presented products and projects is: a) inspired by the maximum possible objectivity; b) suitably justified and tracked; c) the result of dialoguing and sharing among colleagues, where applicable also using "readers" from outside the Company. In the event of a negative assessment or at any rate in the event of lack of interest, written disclosure thereof must always be provided, in a reasonable time, to the proposing/offering party.

- Disclosure: the employees in the publishing areas that should receive offers or proposals of acquisition/production from outside parties must provide immediate and adequate written disclosure thereof to the area manager.
- Register: those responsible for the publishing areas are required to register and conserve on data sheets for this purpose, on computer support or with procedures that are such as to guarantee their maximum possible traceability, the data relating to the purchase proposals/offers of purchase and/or of development/pre-purchase/productive financing, indicating the name of the proposer/offeror and identifying the products/projects proposed.
- Traceability: with reference to the decisions agreed upon during the Committees' meetings: TV Product Purchase, Film Production, Foreign Product for Distribution, the corporate offices involved share choices and, at the end of the meetings, approve same with a report filed by the competent office.

#### ***Negotiating and defining the contract***

Regulation of the activity establishes:

- Purchase order: the content of the purchase/production contract is formally identified and verification is to be made that it coincides with the authorized purchase request. The procedures for its authorization and execution are also identified;
- Written form and contractual standards: the contract is always drawn up in written form and in accordance with the principles and orientations defined by the competent Offices/Departments. The Business Affairs, Legal and Contracts Area – if necessary, in agreement with the publishing unit for the purposes of completing the contract – prepares the modifications to the contractual standard. In this regard, contractual conditions are drawn up that take account of costs, safety conditions, procurement times, any other aspects of importance for carrying out the activity; remuneration procedures, in compliance with the corporate rules issued in the matter of payments; duration of the contracts. The contract is drawn up by parties endowed with appropriate powers.

- Corporate compliance clauses: the contracts contain compliance clauses that require the supplier's declaration that the amount paid is exclusively the payment for the service provided for in the contract, and that these sums will never be transmitted to a Public Party or to a private individual or to one of his or her Family Members for the purposes of corruption, or transferred, directly or indirectly, to the members of the Company's corporate bodies, administrators, or employees; the prohibition for the supplier to transfer the payment, directly or indirectly, to the company's administrators, executives, members of the corporate bodies, or employees, or to their Family Members; supplier's declaration as to compliance with the principles contained in the three-year corruption prevention plan (PTCP), in Model 231, and in the Ethical Code adopted by Rai Cinema; indication of the obligated parties for which the supplier takes on the guarantee of compliance with the applicable laws, and in particular with the applicable Anti-Corruption laws, the PTCP, Model 231 and Ethical Code; regulations of the subcontract; application of penalties in the event of the supplier's violation of obligations, declarations, and guarantees as reported above, or in the event of breach of Anti-Corruption laws.
- Should the counterpart require modifications of the Rai Cinema clauses of relevance to Legislative Decree no. 231/2001 and to the Decree no. 231 Organization, Management, and Control Model (or announce the decision that it does not intend to accept them), the Legal and Corporate Affairs and TV Product Purchasing Contracts Area must be informed in order to assess any alternative modifications or solutions at any rate suitable for protecting the Company. The circumstances and assessments relating to the modification or to the non-application of the clauses in the matter of Legislative Decree no. 231/2001 shall be tracked; information on the above must be provided to the Supervisory Board every six months.
- Subcontracting: within the context of supply contracts, transparency regarding those entrusted with subcontracted works must be guaranteed.
- Contract Manager: the management of the contract is assigned to a Contract Manager, responsible for monitoring and ascertaining the proper performance of the contract; ascertaining and ensuring that the counterparty always operates in compliance with the criteria of the utmost diligence, honesty, transparency, and integrity, and in observance of Anti-Bribery Laws, the Three-Year Corruption Prevention Plan (PTCP), the 231 Model, and the Company's Ethical Code; highlighting any possible critical areas found in carrying out the relationship in the activities performed by the supplier, and immediately alerting the competent office;
- Notation in the budget: the office tasked with verification records the budget commitment, creates the expense forecast in the corporate information system, and prepares the budget record form that is signed by the managers of the involved offices. Fractioning: fractioning objectively unitary negotiated operations is forbidden.



- Assessment of the consistency of product budgets and the monitoring of film production investments: the assessments of the consistency of product budgets and the monitoring of the investments in film productions are carried out not only by internal offices charged with economic and financial verifications, but also by auditing firms that produce a detailed technical/economic report for the objective assessment of the expense estimate.
- Traceability: with reference to the negotiation and contractual activities, the involved corporate structures conserve the documentation relating to their activities in order to permit the proper traceability of the entire process.

### **Carrying out the contract**

Regulation of the activity establishes:

- Start of activities: within the context of the start of delivery of the service by the third party; this check is prerequisite to preparation for carrying out the services by the other party to the contract; it is established That this should take place after the contract is concluded, except for cases of justified urgency.
- Reception of the service: the procedures for receiving and accepting the service are defined in advance.
- Check of production activities: the assigned publishing office verifies the production partner's compliance with the working plan and with the production budget; for this verification activity, the assigned publishing office relies, where appropriate, on the support of the previously selected auditing firm;
- Contractual variants: no variations are admitted that, by significantly altering the purpose of the contract, make it substantially unsuitable for meeting the needs originally expressed, or at any rate end up becoming a publishing operation different from that originally intended to be carried carry out.
- Contractual renewals and extensions: the use of extensions and/or renewals of the contracts must be adequately justified and linked to objective circumstances that are such as to hold that the service that is the object of the contract to be extended is indispensable, urgent, and not subject to interruption in the interest of the performance of corporate activity. Tacit renewal of contracts is expressly forbidden. Renewal is admitted exclusively if the power thereof has been expressly provided for in the original contract.
- Contractual terminations and revocations: the contract expressly defines and regulates the procedures for its termination and revocation.

### **5. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

#### **Selecting and evaluating the product and supplier**

Regulation of the activity establishes:

- Segregation of roles and responsibilities: the area's activities are segregated among the following players: the Requesting Area, through the Qualified Party, enters the Purchase Request into system; the Purchase Request is verified depending on the capacity/consistency with the budget by the Planning, Budget and Control area; the area tasked with the purchasing activity – which is to say the Purchases area, to the exclusion of the exclusive procurement of the Communications, External relations and Events Area which are followed by the "Management Support" defined with the Service order of 03 August 2021 – takes on the Purchase Request, verifies that it is correct and complies with the authorization powers, and proceeds to select the supplier and to negotiate and define the contract, proceeding with the signature by the appropriate representative; the Purchases area conducts the verifications on the other party; the Business Affairs, Legal and Contracts area – if necessary at the request of the Purchases area – prepares the modifications to the contract, if variations to the contractual standard are needed; the Financial Statements, Administration, and Finance area verifies that the incoming invoice is correct and, if it is correct, transmits it to the RAI Administrative Service for registration and payment.
- Formalization of purchase requirement: the procedural process is formalized starting from defining the need until the authorization and issuance of a purchase request, indicating the management procedure and the authorization levels.
- Generation of the purchase request: the purchase requests are generated in accordance with criteria of impartiality, transparency, effectiveness, efficiency, and internal control.
- Verification of the purchase request: verification is made of the correctness of the planned authorization path; the completeness of the information contained in the purchase request; the clarity and comprehensive nature of the description of the object as in the purchase request.
- Budget capacity: a check is made of the purchase request's capacity and consistency with the approved budget, as well as the correctness of the accounting entries indicated therein. Any budget overrun shall be approved by the relevant party.
- Exceptional/urgent purchase: any exceptions to the general purchasing process (including urgent purchasing) are adequately assessed by the requesting party.
- Fractioning of the purchase request: it is forbidden to fraction an objectively unitary supply request into a number of requests.
- Non-fungibility: requests to rely on a given economic operator are always appropriately assessed and highlighted by the requesting area.
- Criteria for determining the object: the criteria for determining the object of the contract are objective, predetermined, and commensurate with the Company's requirements.
- Product assessment criteria: the general criteria for evaluating the product are defined, detailed, non-discriminatory and adequately weighted/justified.

- RAI's Register of Suppliers: an open computer database gathering and conserving the main information relating to the Economic Operators in the radio and television industry with which Rai or the Group's Companies maintain commercial relationships.
- Register of Economic Operators holding exclusive Rai rights: computer database listing the Economic Operators holding exclusive rights or entrusted with directly negotiated contracts;
- Assessment of suppliers: the assessment of suppliers complies with the principles of transparency, of fair treatment, and of the Ethical Code.
- Selection of the supplier: there are rules and criteria that make it possible to verify and monitor a supplier's ethical, economic, and financial reliability on the basis of objective and predetermined objectives.
- Bid request: the criteria used to select the suppliers to which to send the bid request are objective, non-discriminatory, pertinent, proportional to the object of the assignment, and oriented towards favouring the rotation of suppliers.
- Competitiveness: competitive mechanisms are guaranteed that allow a number of suppliers to take part in the selection procedures, in order to be able to maximize the efficiency of the purchasing activities.
- Direct assignment: reliance on direct negotiation with a single economic operator is referred to the cases assessed and highlighted by the requesting area.
- Traceability: all the documentation of relevance is filed with the Requesting Area. It is the responsibility of the areas involved in the sphere of activity of acquiring works, goods, services, supplies, and consulting for Rai Cinema to conserve the documentation regarding the activities that are performed, in order to permit the proper traceability of the entire process. The area tasked with the purchasing activity sees to archiving the signed Contract and the order confirmation signed by the supplier, with its attachments.

### ***Negotiating and defining the contract***

Regulation of the activity establishes:

- Purchase order: the content of the purchase order is formally identified, and there is verification that it coincides with the authorized purchase request. Also identified are the procedures for authorization and execution thereof;

- Assessment of counterparts: during the negotiation with the supplier, a verification of the counterparts is performed with regard to: acquisition of information on the company, on shareholders, and on administrators (also through and outside company); acquisition of information for anti-mafia obligations, where the conditions therefore exist; verifying that the counterpart is well known and reliable, and with a positive reputation as pertains to fair commercial practices; entry in the Group list/register of suppliers; not being included in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia); all the other and additional verifications that should become necessary.
- Written form and contractual standards: the contract assigning the services is always drawn up in written form and in accordance with the principles and orientations defined by the competent Offices/Departments, with possible exceptions relating to cases that have not permitted this formalization. The Business Affairs, Legal and Contracts Area – if necessary at the request of the Purchases area – prepares the modifications to the contract should variations to the contractual standard become necessary, in compliance with the regulations in force. Contractual conditions are drawn up in this regard that take account of costs, safety conditions, procurement times, any other aspects of importance for carrying out the activity; remuneration procedures for the good, the work or service requested, in compliance with the corporate rules issued in the matter of traceability of payments; duration of the contracts.
- Corporate compliance clauses: the contracts contain compliance clauses that provide for the supplier's declaration that the amount paid is exclusively the payment for the service provided for in the contract, and that these sums will never be transmitted to a Public Party or to a private individual or to one of his or her Family Members for the purposes of corruption, or transferred, directly or indirectly, to the members of the Company's corporate bodies, administrators, or employees; the prohibition for the supplier to transfer the payment, directly or indirectly, to the company's administrators, executives, members of the corporate bodies, or employees, or to their Family Members; supplier's declaration as to compliance with the principles contained in the three-year corruption prevention plan (PTCP), in Model 231, and in the Ethical Code adopted by Rai Cinema; indication of the obligated parties for which the supplier takes on the guarantee of compliance with the applicable laws, and in particular with the applicable Anti-Corruption laws, the PTCP, Model 231 and Ethical Code; regulations of the subcontract; application of penalties in the event of the supplier's violation of obligations, declarations, and guarantees as reported above, or in the event of breach of Anti-Corruption laws.

- Should the counterpart require modifications of the Rai Cinema clauses of relevance to Legislative Decree no. 231/2001 and to the Decree no. 231 Organization, Management, and Control Model (or announce the decision that it does not intend to accept them), the Legal and Corporate Affairs and TV Product Purchasing Contracts Area must be informed in order to assess any alternative modifications or solutions at any rate suitable for protecting the Company. The circumstances and assessments relating to the modification or to the non-application of the clauses in the matter of Legislative Decree no. 231/2001 shall be tracked; information on the above must be provided to the Supervisory Board every six months.
- Subcontracting: within the context of supply contracts, transparency regarding those entrusted with subcontracted works must be guaranteed.
- Contract Manager: the management of the supply contract is assigned to a Contract Manager, responsible for monitoring and ascertaining the proper performance of the contract; ascertaining and ensuring that the counterpart always operates in compliance with the criteria of the utmost diligence, honesty, transparency, and integrity, and in observance of Anti-Bribery Laws, the Three-Year Corruption Prevention Plan (PTCP), the 231 Model, and the Company's Ethical Code; highlighting any possible critical areas found in carrying out the relationship in the activities performed by the supplier, and immediately alerting the competent office;
- Service contract: services performed within the group are regulated by a written contract that identifies, in addition to the object of the services: the service levels that the supplier must guarantee; any penalties for failure to comply with the contractual SLAs; definition of the payments at fair market value.
- Fractioning: fractioning objectively unitary negotiated operations is forbidden.

### **Carrying out the contract**

Regulation of the activity establishes:

- Start of the activities: in the context of the start of performance of the services by the party given the assignment, it is established that this should take place after the contract is concluded, except for cases of justified urgency.
- Reception of the service: the procedures for receiving and accepting the service, and the declaration of acceptance thereof, are defined in advance. The certification of performance of the supplies/services by the contractually established deadlines is the task of the requesting area's manager.

- Payment: the phase leading up to payment calls for verifying the following requirements: formal correctness of the document; presence of an order in the company's computer system (issued by authorized parties); correspondence of the taxable amount indicated in the invoice with the amount of the order; presence of the goods' system-tracked arrival and clearance for payment; correspondence of the taxable amount indicated in the invoice with the amount of the arrival of the goods and of the clearance for payment; suitability of tax documentation; check that the payment's beneficiary indicated in the invoice does not differ from the company that issued the invoice.
- Contractual variants: no variations are admitted that, by significantly altering the purpose of the contract, make it substantially unsuitable for meeting the needs originally expressed by the original purchase request or at any rate end up becoming a commercial operation different from that intended to be carried carry with the original purchase request. With a view to this, no variations are admitted that significantly alter the object and/or the amount and/or the mode of performance, including performance/completion times, as established in the original contract.
- Contractual renewals and extensions: the use of extensions and/or renewals of the supply/service contracts is carried out in compliance with regulations and adequately justified and linked to objective circumstances that are such as to hold that the service that is the object of the contract to be extended is indispensable, urgent, and not subject to interruption in the interest of the performance of corporate activity. Tacit renewal of contracts is expressly forbidden. Renewal is admitted exclusively if the power thereof has been expressly provided for in the purchase request and in the contract subsequently executed. At any rate, at most two renewals of the first contractually agreed-upon expiry are permitted.
- Contractual terminations and revocations: the contract expressly defines and regulates the procedures for its termination and revocation.

## **6. Sales, distribution, and marketing area**

### **Selecting and evaluating customers and distribution partners**

Regulation of the activity establishes:

- Verifications of the counterpart: verifications are formalized for the counterpart prior to signing the sale contract, taking account of the specific features and characteristics typical of the audiovisual and film rights market.
- Register: the managers of the commercial and distribution areas are required to register and conserve on data sheets for this purpose, on computer support or with procedures that are such as to guarantee their maximum possible traceability, the data relating to the proposals/offers received from potential customers, indicating the name of the proposer/offeror and identifying the products and rights requested.

- Disclosure: the employees in the commercial and distribution areas that should receive offers or proposals from outside parties must provide immediate and adequate written disclosure thereof to the area manager.
- Commercial assessment: the commercial assessment of the products proposed or requested for sale, distribution, or marketing, the determination of the payments and of the additional contractual aspects with economic effects, for the part under their responsibility, must be the result: a) of a justified and weighted assessment as to the purposes of the contractual operation and, where existent, of the corresponding projections of overall economic returns (or returns in terms of image), as well as of strategic assessments connected with the Company's mission and position on the markets; b) of a negotiation performed at market values, taking account of the operation's overall logic and characteristics; c) of a negotiation that is non-discriminatory with respect to other, similar negotiations; d) of an assessment that is as shared as possible, through the direct involvement of the other competent areas. In the event of negative assessment or, at any rate, in the event of absence of interest in the sale/distribution/marketing, written disclosure must always be provided to the proposer/offeror in a reasonable time.
- Traceability: the decisions taken with reference to distribution/marketing are defined among the various offices in compliance with the mutual responsibilities formalized in the following documents, filed by the competent offices: "Prints & Advertising" (P&A), the Marketing Plan, the "Economic/financial assessment sheet," the "Contract data sheet," the "Correction data sheet," and, where applicable, the "Note on correction of the distribution agreements."

### ***Negotiating and defining the contract***

Regulation of the activity establishes:

- Contract's conformity with the characteristics of the good: the check is aimed at verifying that the characteristics of the goods that are the object of sale conform to the content of the draft proposal/offer of sale.
- Written form and contractual standards: the contract is always drawn up in written form and in accordance with the principles of protecting the company's interest, also in the framework of the company's strategic guidelines, and the orientations defined by the competent Offices/Departments. The Business Affairs, Legal and Contracts Area – if necessary, in agreement with the for the purposes of completing the contract – prepares the modifications to the contractual standard.
- Ownership of the rights: prior to concluding the execution of the contract, controls are planned, aimed at verifying the existence, availability, ownership, and origin of the goods that are the object of sale.

- Corporate compliance clauses: the contracts contain compliance clauses that require the supplier's declaration that the amount paid is exclusively the payment for the service provided for in the contract, and that these sums will never be transmitted to a Public Party or to a private individual or to one of his or her Family Members for the purposes of corruption, or transferred, directly or indirectly, to the members of the Company's corporate bodies, administrators, or employees; the prohibition for the supplier to transfer the payment, directly or indirectly, to the company's administrators, executives, members of the corporate bodies, or employees, or to their Family Members; supplier's declaration as to compliance with the principles contained in the three-year corruption prevention plan (PTCP), in Model 231, and in the Ethical Code adopted by Rai Cinema; indication of the obligated parties for which the supplier takes on the guarantee of compliance with the applicable laws, and in particular with the applicable Anti-Corruption laws, the PTCP, Model 231 and Ethical Code; regulations of the subcontract; application of penalties in the event of the supplier's violation of obligations, declarations, and guarantees as reported above, or in the event of breach of Anti-Corruption laws.

Should the counterpart require modifications of the Rai Cinema clauses of relevance to Legislative Decree no. 231/2001 and to the Decree no. 231 Organization, Management, and Control Model (or announce the decision that it does not intend to accept them), the Legal and Corporate Affairs and TV Product Purchasing Contracts Area must be informed in order to assess any alternative modifications or solutions at any rate suitable for protecting the Company. The circumstances and assessments relating to the modification or to the non-application of the clauses in the matter of Legislative Decree no. 231/2001 shall be tracked; information on the above must be provided to the Supervisory Board every six months.

- Contract Manager: the management of the contract is assigned to a Contract Manager, responsible for monitoring and ascertaining the proper performance of the contract; ascertaining and ensuring that the counterpart always operates in compliance with the criteria of the utmost diligence, honesty, transparency, and integrity, and in observance of Anti-Bribery Laws, the Three-Year Corruption Prevention Plan (PTCP), the 231 Model, and the Company's Ethical Code; highlighting any possible critical areas found in carrying out the relationship in the activities performed by the supplier, and immediately alerting the competent office.
- Traceability: with reference to the negotiation and contractual activities, the involved corporate structures conserve the documentation relating to their activities in order to permit the proper traceability of the entire process.

### **Carrying out the contract**

Regulation of the activity establishes:



- Start of activities: the start of performance of the services always takes place after the contract is concluded, except for cases of justified urgency.
- Verifications regarding deliveries: specific controls are formalized with regard to the proper performance of the activities that were performed, and the delivery of the good in compliance with the requirements and deadlines defined in the contracts; that the nature, quantities, and characteristics (including those of quality) of the sold/distributed goods correspond – with the established tolerances – with what is indicated in the documents proving the performance of the supply, or with the contractual commitments taken on.
- Budget verification: the economic and financial results of the distribution activities are monitored, any deviations from spending and economic return forecasts are analyzed, the introduction of the distribution plan into the corporate systems of reference is carried out, and the data sheet summarizing the distribution project is developed.

### **Selection and management of agents (natural persons and legal persons)**

Regulation of the activity establishes:

- Decision-making process and reasons for choice: formalization is planned of the path of decision-making and of the reasons leading to the choice of agent.
- Minimum requirements of counterpart: minimum requirements of the agent's commercial reliability/honorability/reliability are defined beforehand, on the basis of certain relevant indices (e.g. prejudicial public data – protests, insolvency procedures – or acquisition of commercial information on the company, on shareholders, and on administrators, through specialized companies and/or by obtaining specific self-certification from the counterpart and/or by presenting the General Certificate from the criminal record).
- Price list: the home video products that are owned by or legitimately available to Rai Cinema and the price list thereof, defined in advance by the persons in charge thereof, are contained in a catalogue that the Company periodically updates and enters into the company's computer system.
- Definition of compensation: the definition of compensation is to be anchored to defined parameters and authorized in advance by the parties in charge thereof, taking account of the specific nature, of the characteristics, and of the practices inherent to the market of reference.
- Verifications of candidates' honorability: the parties taking part in the selection procedure must have no criminal convictions or be the recipients of provisions for the enforcement of prevention measures; they must not be in situations of incompatibility pursuant to the provisions existing in the company, as summarized by the Ethical Code in force; in no case shall Rai Cinema hire or confer collaboration assignments to persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia);

- Anti-corruption clauses: the agency contract has specific anti-corruption clauses.
- Contract Manager: the management of the agency contract is assigned to a Contract Manager.
- Performance verification: verifications on the agent's doings are performed, making it possible to define, objectively and in a way that can be reconstructed after the fact, the commissions paid to the agent.
- Payment of Commissions: commissions are paid by the Parent Company, which operates on the basis of a service contract that regulates its roles/responsibilities, as a consequence of the authorization for payment that takes place following the verifications: with regard to the summary of orders issued by the agent, to the commissions accrued as a function of the contract, and to the conformity and correctness of the invoice transmitted by the agent.

## **7. Management of human resources:**

### **Selecting employed personnel**

Regulation of the activity establishes:

- Introduction needs: the activities of selecting/finding personnel must be performed in line with the introduction needs identified by the Company.
- "Criteria and modes of personnel recruitment and conferral of collaboration assignments"  
Regulation: existence of a regulation that establishes that: it is corporate policy that privileges the internal recruitment instrument which calls for a preliminary phase of seeking the profiles required in the Rai corporate group, using management tools; the procedure is called by agreement between the CEO or General Manager with the Manager of Human Resources and Information Systems, Processes, and Organization.
- Selection notice: where made via the job posting tool or web channels, it must specify: the characteristics of the position to be held; the specific requirements necessary for taking part; information on tests where provided for; criteria for assessing titles and tests, which shall be objective and transparent (for example, secondary school/university diploma, knowledge of foreign languages, prior work experience, etc.); the procedures and deadlines for submitting applications and sending in résumés; selection, performed with a view to assessing the candidates' potential, will take place in tests and/or interviews of a technical-professional nature. The choice of those held suitable is made by a delegated representative of the Personnel and Services area.
- Verifications of candidates' honorability: the parties taking part in the selection procedure must have no criminal convictions or be the recipients of provisions for the enforcement of prevention measures; they must not be in situations of incompatibility pursuant to the provisions existing in the company, as summarized by the Ethical Code in force.

- Selection criteria: objective and transparent candidate selection criteria (e.g. secondary school/university diploma, knowledge of foreign languages, prior work experience, etc.) are defined and formalized.
- Traceability of résumés: the traceability of the obtaining of the résumés is guaranteed.
- Selection path: a selective path that makes it possible to verify the regularity of the hiring/collaboration process, is defined and carried out.
- Transparency: relations with the selected candidates are kept in keeping with transparency as to the definition of the type of contractual relationship and the proposed remuneration.
- Employment contract: the employment contract must be drawn up in written form and in accordance with the principles and policies defined by the competent Offices/Departments, and signed by the competent corporate representative.

### **Managing employed personnel**

Regulation of the activity establishes:

- Payroll: raises, leave, holiday, absences, etc. are paid following the proper performance of the defined authorization path and in line with the collective bargaining agreement.
- Remuneration/career: the remuneration and career policies are adopted within the framework of the guidelines and indications provided by the Parent Company.
- Bonus system: assignments of bonuses and rewards are adopted within the framework of the guidelines and indications provided by the Parent Company.

### **Conferring collaboration and consulting assignments to natural persons**

Regulation of the activity establishes:

- Written form and contractual standards: the contract is drawn up in written form and in accordance with the principles of protection of the corporate interest, also in the framework of the company's strategic guidelines and the guidelines defined by the relevant Structures/Departments. Any variation from/exception to the contractual standard must be authorized by the relevant Structures/Departments. The Structures/Departments must in particular guarantee compliance with the regulations in force, including antitrust and anti-corruption regulations;
- Internal rules: existence of a "Criteria and modes of personnel recruitment and conferral of collaboration assignments" Regulation that governs roles, responsibilities, and modes of operation for conferring collaboration assignments.

- Preliminary verifications: the proposing Area preliminarily ascertains the objective impossibility of using the human resources available in house; the Human Resources and Information Systems, Processes, and Organization Area proceeds with the consequent verifications as needed; the service must be of a temporary, specialist, and qualified nature; duration, place, purpose, and compensation for the collaboration must be determined in advance, taking account not only of the characteristics of the assignment, but also of the market values as well as the corporate standards for similar services.
- Selection of the collaborator: for the purpose of entrusting outside assignments, the Company, through the corporate structures involved, can proceed to compare a number of different résumés in its possession, capable of highlighting the professional profile necessary for fulfilling the assignment to be conferred. To acquire the résumés, the Company may also make requests therefor from the competent professional orders, or from research bodies and institutions.
- Principle of rotation and prohibition against fractioning: in choosing names, the requesting corporate departments must comply with a criterion of rotation, avoid entrusting to the same person a number of different assignments with the same functional connection (“tying”), and also avoid the artificial fractioning of assignments that are objectively unitary in relation to the purpose.
- Verifications of the third party’s honorability: the party to whom the assignment was conferred must also possess the following requirements: having no criminal convictions and not having been the recipients of provisions for the enforcement of prevention measures; not to be in situations of incompatibility pursuant to the provisions existing at Rai Cinema, as summarized by the Ethical Code in force.
- Levels of authorization: the conferred assignments are signed by the appropriate representative.
- Traceability: it is the responsibility of the areas involved in the setting of the activities conferring assignments at Rai Cinema to conserve the documentation related to the activities that are performed, in order to permit the proper traceability of the entire process.

### **Managing industrial relationships**

Regulation of the activity establishes:

- Meetings: meetings among the Company’s personnel assigned to manage industrial relationships and trade union representations must be drawn up in a report, and a workers’ representative within the Company (RSU) must be present at all times. The minute of the meeting must report at least the following information: name and office of attendees; subject of discussion; main decisions.

- Communications: all communications exchanged with the trade unions and with the workers' representatives within the Company (RSU) shall take place in a traceable fashion.
- Roles and responsibilities: attribution of specific powers with reference to the conducting of trade union bargaining, and signing of the corresponding agreements and representing the company before trade-union associations and organizations.

### **Managing travel (advances, expense reimbursements, and credit cards)**

Regulation of the activity establishes:

- Authorizations: travel must be authorized by the competent representative (or by a person formally delegated by him or her), who is in charge of applying the procedures of reference.
- Pre-assessment: when authorizing travel ("travel sheet") and offsite services, the area managers must assess: the need to travel and consistency with the duration thereof, authorizing particular conditions where applicable; compliance with criteria of economy; necessity and amount of any advance.
- Post-assessment: for the expenses incurred by the employee or made by corporate credit card, it is required that: the presence of the expense refund authorization issued by the competent party (also in the case of any exceptions and derogations) is ascertained; the consistency of the expenses and their compliance with the corporate provisions of reference is assessed; the presence is verified of any reports by the competent party as to irregularities or non-refundable expenses; the adequacy, completeness, and pertinence of the submitted justifications are assessed; the refund parameters are applied to the expense items, detracting the excess from the requested amount where necessary.
- Authorization forms: there must be a formalized form for the employee to fill out, in order to request authorization for travel ("travel sheet"). This form must contain such information as the employee's name and surname, location of travel, start date and end date of travel, purpose of travel, means of transport to be used, etc.
- Refund and reporting: Rai Cinema applies the Parent Company's regulations as relates to the procedures for refund and reporting of incurred travel expenses.
- Cash advances: the use of cash advances for travel expenses is not permitted except in exceptional cases authorized by the CEO.

## **8. Promotion and external relations**

### **Organizing and attending film festivals and events**

Regulation of the activity establishes:

- Budget: all the activities related to events are carried out in line with the approved budget. Any off-budget costs to be allocated to attendance at festivals and events must be approved in advance by the appropriate organizational levels, with disclosure made to the Board of Directors.
- Formalization of requests: the formalization of requests for initiating the organization of the event and the minimum information that these requests must contain is regulated.
- Authorization: the parties qualified to authorize the event, and the modes of operation thereof, are identified.
- Attendance: it is to be verified that the promoter is a party well known to and recognized by the market as reliable, and that the event/festival is nationally/internationally recognized.
- Reporting of expenses: upon the conclusion of the event, an operative meeting among the affected areas is held, at which the event's pre-budget is developed, verifying the costs actually incurred against those included in the estimate approved in Committee (including any approved re-forecasting and items outside the budget). Subsequently, the department in charge develops the summary of the verifications made, outlining in particular any off-budget items emerging from the comparison between the pre-budget and the latest re-forecast.

### **Managing sponsorships and donations**

Regulation of the activity establishes:

- Verifications on recipients of donations: the beneficiary's reputation is to be subject to documentation and appropriate verification: beneficiaries of donations must be clearly identified, and must be entities of long standing that are well known and reliable, with an excellent reputation for honesty and for fair commercial practices; they must also possess all the certifications needed to demonstrate having met all the requirements for operating in compliance with applicable laws.
- Authorization of donations: financial donations may be made only after an authorization process shared between the CEO and Chairman, who every six months provide a disclosure to the Board of any authorized donations; this disclosure is to provide an adequate description as to the amount and purpose of the contribution.
- Event sponsorship: in the context of organizing/attending an event, the presence of any sponsor must be clearly indicated in the request.
- Sponsorship declaration: a written declaration must be submitted, attesting that the amount paid constitutes exclusively the payment for the service provided for in the sponsorship contract (also in the form of an exchange of business letters). Sums will never be transmitted, directly or indirectly, for the purposes of corruption, to a public or private party, to the members of the corporate bodies, or to the Company's employees.

- Sponsorship contract: the sponsorship contract is always drawn up in writing. Sponsorship contracts are developed in such a way as always to contain the minimum information needed to define the main elements of the relationship, and the related legality guarantees.
- Contract manager: the management of the sponsorship contract is assigned to a Contract Manager.

### **Managing gifts, free items, and benefits**

Regulation of the activity establishes:

- Management of free items, gifts, and benefits: a clear identification of roles, responsibilities, and modes of operation is defined for the phase of requesting assessment of the approval of the free items.
- Characteristics of free items, gifts, and benefits: any free item, gift and benefit or economic advantage, or other benefit offered to or received by personnel must be objectively reasonable and in good faith. Free items, gifts, and benefits must also have characteristics formally defined in advance, and belong prevalently to “brand promotion.”
- Recording of expenses for free items: the expenses connected to institutional free items and to free items related to specific projects must be accurately and transparently recorded among the company’s financial information, with sufficient detail provided. Moreover, these expenses, if not of “modest value,” must be supported by appropriate reference documentation that makes it possible to identify the name and title of each beneficiary, as well as the purpose of the free item, economic advantage, or other benefit.
- Budget: the needs for free items are managed in line with the approved budgets.
- Free items received: with reference to this topic, all Rai Cinema personnel is subject to application of the provisions provided for in the Rai Ethical Code, Rai Cinema’s Organization, Management, and Control Model pursuant to Legislative Decree no. 231/2001, this three-year corruption prevention plan (PTCP), as well as the specific Rai circular also available on the RaiPlace website, which provides detailed specifications as to the management of free items, gifts, and benefits. In particular, all free items received and/or refused by all personnel must be registered in the Rai Free Items Register; moreover, each individual free item or benefit must not exceed “*modest value*.”

### **Managing external communications**

Regulation of the activity establishes:

- Authorization for the dissemination of information to the outside: the parties authorized for preparing and disseminating data and information are clearly identified within the company; moreover, the office that provides the data and prepares the announcement, and the party authorizing the dissemination thereof, are clearly identified.

- Prohibition against spreading important information: the confidentiality of the important information that come into the knowledge of Employees/External Collaborators must be guaranteed. These constraints establish the prohibition of disseminating important information inside or outside the Company except via the institutionally established channel.
- Information dissemination channels: channels are identified through which information on the Company may be made known to the outside.

Corporate communications: representing or transmitting, for elaboration or representation in financial statements or other corporate communications, false data, incomplete data, or data that at any rate do not correspond with reality, with regard to the company's economic, asset, and financial situation, is prohibited. Omitting data and information required by law with regard to the company's economic, asset, and financial situation is also prohibited.

#### **9. Financial statements, administration, and finance area:**

##### **Managing credit (including invoices receivable) / Managing debt (including invoices payable)**

Regulation of the activity establishes:

- Service contract: the activities related to managing credit / debt are performed by Rai Cinema with the support of the RAI service, which operates on the basis of a service contract that governs its roles and responsibilities. The contract also defines the following qualifying elements: i) the service levels with which the supplier must comply in fulfilling its obligations; ii) definition of the payment based on the fair market value; iii) the existence of penalties in the event of the supplier's failure to achieve the service levels; iv) clauses of compliance with Model 231, the Three-Year Corruption Prevention Plan (PTCP), and the Ethical Code.
- Recording of invoices: checks and procedures for recording the invoices payable/receivable are defined.
- Invoices within the group: formalized rules are established in contracts within the group to manage billing among the Group companies.
- Corporate management information systems: use will be made of corporate management information systems, support of the management of activities connected with payable and receivable billing and to collections and payments and of the recording of the phases of generating a cost/revenue.
- Verifications of payable invoices: payable invoices are to be recorded in accounting only after the verifications of correspondence performed on the acceptance of the good/service have yielded a positive result.



- Verifications of receivable invoices: billing is to be in compliance with the prescriptions of law and regulations in terms of noting the quantities that may be charged, as well as application of the items that go towards determining the payment for the service.
- Administrative and accounting processes: Rai Cinema's administrative and accounting processes must be defined and regulated in the context of a Governance and Control model that guarantees the definition of roles, instruments, and modes of operation with regard to these processes, and includes periodic verifications on the reliability of the checks established for the main phases in the processes.
- Monitoring of credits/debts: the processes of monitoring and managing credit and debt positions opened with regard to customers and suppliers are regulated.

### **Treasury management (payments/collections)**

Regulation of the activity establishes:

- Service contract: the activities related to managing the treasury are performed by Rai Cinema with the support of the Rai service, which operates on the basis of a service contract that governs its roles and responsibilities. The contract also defines the following qualifying elements: i) the service levels with which the supplier must comply in fulfilling its obligations; ii) definition of the payment based on the fair market value; iii) the existence of penalties in the event of the supplier's failure to achieve the service levels; iv) clauses of compliance with Model 231, the Three-Year Corruption Prevention Plan (PTCP), and the Ethical Code.
- Payments: procedures are regulated with regard to: preparing and authorizing the payment proposal; making payments; recording payments. All payments are made on the basis of appropriate contractual justification or at any rate are suitably documented, justified, and authorized.
- Reconciliations: periodic activities are performed to reconcile banking accounts by reason for incoming and outgoing funds (any reconciliation items must be justified and tracked with support documentation).
- Collections: the procedures related to recording collections and entering them into the books are regulated.
- Cash: the use of cash outside the thresholds established by the regulations of reference, or of any other financial bearer instrument, for any operation of collection, payment, transfer of funds, investment, or other use of financing is prohibited, as is the use of banking accounts or savings accounts in anonymous form or under a fictitious name. Possible exceptions to the use of cash or of other financial bearer instrument are admitted for modest amounts, and are regulated by specific procedure (e.g. petty cash, collections of modest sums from customers/shops).

- Counterpart's identity: it is prohibited to accept collections originating from parties that are unidentifiable, not present in the register, or for which payment is not traceable (amount, name/company name, address and banking account number), or if the complete correspondence between the name of the supplier/customer and the title of the account is not ensured; if it is expressly provided for by the contract, or in special cases, payments originating from parties other than the debtor may be accepted if the accountant's description reports the details of the Rai Cinema invoice that is the object of collection, or references of the screening (film and date). It is also prohibited to collect money or wire transfers from parties residing in the countries included on the black lists established by Banca d'Italia, without adequate documentation proving the actual and specific need.
- Traceability of payments: it is established that payments to the beneficiary must be made exclusively to the account in the beneficiary's name; no payments may be made to numbered accounts or in cash, or to a party other than the beneficiary, or in a country different from the beneficiary's or from the one where the services was performed, except for the case in which, at the time the contract is executed, the Supplier declares and justifies the request for payment to a different party (e.g. assignments of credit, collection account agent, etc.) and/or in a different country (e.g. group policy of major international companies). It is also prohibited to make payments to parties residing in the countries included on the black lists established by Banca d'Italia, without adequate documentation proving the actual and specific need.
- Authorizations for payments: payments must be made: (a) upon written authorization of the Contract Manager attesting to the service having been performed and/or the occurrence of the conditions provided for in the Contract as to making the payment, (b) only for invoices or payment requests written by the counterpart and in compliance with contractual provisions.

### **Managing the activities of preparing the financial statements**

Regulation of the activity establishes:

- Service contract: the activities related to managing the activities of drawing up the financial statements are performed by Rai Cinema with the support of the RAI service, which operates on the basis of a service contract that governs its roles and responsibilities. The contract also defines the following qualifying elements: i) the service levels with which the supplier must comply in fulfilling its obligations; ii) definition of the payment based on the fair market value; iii) the existence of penalties in the event of the supplier's failure to achieve the service levels; iv) clauses of compliance with Model 231, the Three-Year Corruption Prevention Plan (PTCP), and the Ethical Code.
- General accounting and financial statements: the main phases are defined with regard to the activities of managing general accounting; assessing and estimating financial statement entries; drawing up the civil-law financial statements and the interim statements.

- Financial statement standards: for the personnel involved in activities for drawing up the financial statements, rules shall be defined and disseminated, clearly specifying the accounting standards to be adopted for defining the financial statement entries and the modes of operation for entering them into the books. These standards must be promptly supplemented / updated by indications provided by the competent office based on new elements in terms of civil-law regulations, and disseminated to the aforementioned recipients.
- Instructions for the financial statements: instructions for the Departments are provided for and disseminated, establishing what data and information must be provided to the Financial Statements, Administration and Finance Department, also as Director in charge, with regard to the yearly and interim closings (for the civil-law financial statements) and to the Parent Company's Administration Directorate (for the consolidated financial statements), by what procedures, and the timing thereof.
- Training: the performance of basic training activities is established (regarding the main legal and accounting notions and problems for financial statements) for the offices involved in defining the evaluative entries of the financial statements, as well as the offices involved in drawing up the financial statements and the connected documents.
- Verifications: rules and responsibilities must be clearly defined, aimed at verifications of the financial statement values with specific references to the activities of monitoring financial disclosures.
- Administrative/accounting processes: Rai Cinema has a set of instruments, organizational structures, and corporate rules and regulations consistent with those adopted by the Parent Company, aimed at permitting a company management that is healthy, proper, and consistent with corporate purposes, through an appropriate process to identify, measure, manage, and monitor the main risks, and by structuring flows of information adequate to ensure that the information will circulate.
- Funds: events that determine the creation of funds in the financial statements must be: reported to the office that deals with recording the entries in the accounting by the competent offices, by means of formal communications; assessed, valued, and handled on the basis of clear, transparent, and continuously applied criteria, also with the possible support of outside professionals; formalized in tracked and filed disclosures that set out the analyses performed; and approved in accordance with a process involving the Financial Statements, Administration and Finance Manager, the Executive in Charge, top management, and the control bodies.
- Collaboration and transparency: maximum collaboration and transparency is required in relations with the auditing company, the Board of Statutory Auditors, and on the occasion of requests by the shareholder.

- Information and documents: the Manager of the Directorate/Office of reference must guarantee the completeness, relevancy, and correctness of the information and documents provided to the auditing company, the Board of Statutory Auditors, or the shareholder, and make available to them the information and/or documents requested by them and/or necessary for carrying out the control activity assigned them, guaranteeing compliance with the regulations of reference.
- Certification and sub-certifications: the Managers of the corporate departments must have letters of certification of the truthfulness, correctness, accuracy, and completeness of the data and information that are sent and intended to be entered into the financial statements, as well as of the other elements of information made available by the Company.
- Declaration by the Director in charge: the Director in charge must prepare a declaration to be submitted for the attention of the bodies with responsibility in this matter when the financial statement draft is presented.
- Truthful and correct financial statements: representing or transmitting, for elaboration or representation in financial statements or other corporate communications, false data, incomplete data, or data that at any rate do not correspond with reality, with regard to the company's economic, asset, and financial situation, is expressly prohibited.
- Filing: the service contract establishes that the management of the activities connected with the preparation of the financial statements involves the filing and conservation of the documentation by the Rai and Rai Cinema supplier, in accordance with the provisions of the regulations in force.

**Managing entertainment expenses (advances, expense reimbursements, and credit cards)**

Regulation of the activity establishes:

- Regulation of entertainment expenses: roles, responsibilities, and modes of operation are regulated for the phase of requesting, assessing, and approving entertainment expenses. The process is regulated by a procedure that defines: i) the types of expenses admitted; ii) the prior expense authorizations; iii) reporting and authorization of expenses incurred; iv) checks after spending, monitoring, and refund.
- Reasonable and good-faith expenses: entertainment expenses must be permitted only in the case in which it is a matter of expenses that are reasonable and in good faith, within the limits of the provisions of the Ethical Code, and must have certain, formally defined characteristics.

- Prior authorizations: expenses are authorized in advance by the CEO. The corporate Manager, during the preparation of the budget, performs an estimate of entertainment expenses in concert with the Planning, Budget, and Control Manager. The budget is assessed and formally approved by the CEO who provides disclosure of it to the Board of Directors. The CEO also authorizes any expenses outside the budget of which it provides appropriate disclosure to the Board of Directors in the final balance.
- Reporting: a form is to be compiled and signed, reporting the name/office of the persons/companies for which expenses are to be incurred, and submitting the form for the authorization of the qualified position; the compilation and signing of the reporting form, specifying the name and title of the recipient, the name and title of each beneficiary of the spending, and the purpose of said spending, attaching the documentation justifying the expenses made and, except for the cases established as reasons for urgency or operative impossibility. The party signs the report and attaches the justifications in support of the expenses, and initiates the refund authorization process.
- Authorization for the expense incurred: the requesting party submits the report to the CEO who assesses the admissibility, relevancy, and consistency of the expenses incurred and, in the event of irregularities found by the CEO, provides clarifications. Should the requesting party not report to the CEO, he or she brings the report for the signature of his or her superior in the hierarchy, and makes an initial verification of consistency and admissibility.
- Subsequent verifications, monitoring, and refund: the Planning, Budget, and Control area monitors the budget capacity of each office on the basis of the submitted reports. The checks on the reports are performed by the Financial Statements, Administration, and Finance Area; in the event of a positive outcome of the checks the Financial Statements, Administration, and Finance Area manager sees to requesting the expense refund to the Rai Treasury; in the event of a negative outcome, the document is returned to the employee and the anomalies that are found are made known, with the request, where applicable, for clarifications for said irregularities and, in the event of payment with the corporate credit card, advises the department responsible for payroll to charge to the employee's pay envelope any expenses that are not to be borne by the company.
- Credit cards: the formal system of credit cards to corporate personnel, and the activity of verifying their statements, is regulated.
- Cash advances: the use of cash advances for entertainment expenses is prohibited except in exceptional cases authorized by the CEO.
- Traceability: the process's traceability is guaranteed through the conservation / filing by the relevant structures, of the following documentation: material related to the assignment of the budget and any authorizations outside the budget; copy of the authorized reports and of their expense justifications; interim reporting on the expenses incurred by top management prepared by the Planning, Budget, and Control area and by the CEO's Staff.

## 5. SPECIAL SECTION B – Forgery of identification instruments or marks and offences against industry and trade

### 5.1 Criminal offenses related to forgery of identification instruments or marks (art. 25-bis of Legislative Decree no. 231/01) and of offences against industry and trade (art. 25-bis.1 of Legislative Decree no. 231/01)

The following are the regulatory references of the relevant criminal offences and a brief description of certain significant aspects for each of the predicate offences pursuant to articles 25-bis and 25-bis no. 1 of Legislative Decree no. 231/01.

#### **Counterfeiting, altering, or using trademarks or distinctive marks, or patents, models, and designs (art. 473 of the criminal code)**

The criminal offence punishes anyone who, although aware of the existence of industrial property, counterfeits or alters trademarks or distinctive marks, national or foreign, of industrial products, or anyone who, without having participated in the counterfeiting or alteration, uses said counterfeit or altered trademarks or mark, and is punished by six months' to three years' imprisonment and by a fine of € 2,500 to € 25,000.

Whoever counterfeits or alters patents, designs, or industrial models, national or foreign, or, without having taken part in the counterfeiting or alteration, uses said counterfeit or altered patents, designs, or industrial models, is subject to one to four years' imprisonment and a fine of € 3,500 to € 35,000.

The crimes provided for by the first and second paragraphs above are punishable under the condition that the regulations of internal laws, of EU regulations, and of international conventions on the protection of intellectual or industrial property have been complied with.

The first paragraph protects the trademarks and distinctive marks of intellectual property or of industrial products.

The trademark is an emblematic or nominative mark used by the entrepreneur to mark a product or the good.

The term "patent" is to be understood as the certification that a new invention or industrial discovery may be ascribed to a given party, to which the State grants the exclusive right to exploit said invention.

Patents, then, are substantially public documents that may also be protected by the general regulations on document fraud, but that lawmakers have intended to protect by inserting them within the regulations on forgery in markings, given the specific importance patents have in this area.

The words "designs" and "models," on the other hand, are to be understood, for the purposes of art. 473 of the criminal code, as patents for designs and models, in the sense of certificates

of concession with regard to the patents for industrial models and to patents for ornamental models and designs.

In terms of punishable behaviour, art. 473 of the criminal code suppresses above all acts of counterfeiting or altering.

The term “counterfeiting” is to be understood as an act designed to have the forged trademark take on such qualities as to generate confusion as to the product’s authentic provenance, thus possibly misleading consumers.

Alteration, on the other hand, should consist of the partial modification of a genuine trademark, that has been obtained.

The punishable behaviour must at any rate be laid upon the distinctive mark that is subject to registration and not on the tools (stamp, press, pattern, etc.) needed to reproduce the mark by eliminating or adding marginal constituent elements.

***Introduction into the State and trade of products with false marks (art. 474 of the criminal code)***

The criminal offence punishes, outside of the cases of complicity in the crimes provided for by article 473, whoever introduces into the State’s territory, for the purposes of profiting therefrom, industrial products with trademarks or other distinctive marks, national or foreign, counterfeit or altered, and is subject to one to four years’ imprisonment and a fine of € 3,500 to € 35,000.

Outside of the cases of participation in counterfeiting, altering, and introducing into State territory, whoever holds for sale, places on sale or otherwise introduces into circulation, for the purposes of profiting therefrom, the products as per the first paragraph, is subject to up to two years’ imprisonment and a fine of up to € 20,000.

The crimes provided for by the first and second paragraphs above are punishable under the condition that the regulations of internal laws, of EU regulations, and of international conventions on the protection of intellectual or industrial property have been complied with.

In this regard, it must be stressed that the crimes pursuant to articles 473 and 474 of the criminal code respectively punish, among the multiple acts, that of “using” and that of “otherwise placing in circulation” products with false marks.

These wordings appear to refer to a very broad range of activity, including, in extreme summary, all the cases of using the trademark (provided, of course, that it is a matter of commercial or industrial – and not exclusively personal – use).

According to the interpreters of the law in particular, “placing in circulation” is a behaviour that describes every possible form of placing the good in contact with the market of consumers: it may then be reasonably assumed that advertising is a form of “placing in contact” – albeit indirect – of the type mentioned here. One may consider the case in which an advertising space is entrusted (with awareness of the deceptiveness of the trademark, and the desire to

disseminate it) to a company to promote a product or a service bearing a trademark that is designed to deceive or generate confusion in the public for its similarity to another trademark of a similar product.

***Sale of industrial products with mendacious marks (art. 517 of the criminal code).***

The criminal offence punishes whoever places for sale or otherwise places in circulation original works or industrial products, with names, trademarks, or distinctive marks, national or foreign, designed to mislead the buyer as to the origin, provenance, or quality of the work or product.

The offence is of a subsidiary nature, because it is punished only if the act is established as a crime by another provision of law.

The good protected by the provision is bona fides and fair trading, the violation of which is considered as hazardous to the interests of most consumers.

On the concepts of “placing on sale” or “placing in circulation,” see the comment on the previous law.

The intellectual works or the products must be placed on sale or in circulation with names, trademarks, or distinctive marks, national or foreign, designed to mislead the buyer as to the origin, provenance, or quality of the work or product.

The term “trademarks or distinctive marks, national or foreign” is to be understood as emblematic or nominative marks used by the entrepreneur to mark a product or the good. However, the trademarks need not be registered, since art. 517 of the criminal code, unlike art. 474 of the criminal code, does not prescribe prior observance of the regulations on industrial property. The trademark may also belong to a group, indicating the provenance of the products from all the associated enterprises.

The term “names” is to be understood as the names characterizing the product within a given genre.

All Italian and foreign marks must be designed to mislead the buyer: this aptitude is to be assessed with respect to the average consumer’s purchasing habits.

The deception must regard the origin, provenance, or quality of the work or product, for which reference is to be made to what was already described with regard to art. 515 of the criminal code.

***Manufacture and trade of goods made by encroaching on industrial property rights (art. 517-ter of the criminal code)***

The criminal offence punishes, without prejudice to application of articles 473 and 474 of the criminal code, whoever, when able to know about the existence of an industrial property right, manufactures or industrially uses objects or other goods made by encroaching on an industrial property right or in violation thereof, as well as whoever, in order to profit therefrom,



introduces into the State's territory, holds for sale, places on sale with direct offer to the consumers, or at any rates places in circulation the goods described above.

***Disruption of freedom of industry or of trade (art. 513 of the criminal code)***

The criminal offence punishes whoever uses violence against things or fraudulent means to hamper or disrupt the exercise of an industry or a trade. The offence safeguards the normal exercise of the industrial or commercial activity carried out by private parties

The term "violence against things" refers to the notion contained in art. 392, second paragraph, of the criminal code, according to which "to the effects of criminal law, there is violence against things when the thing is damaged or transformed, or its intended use is changed."

Therefore, reference must be made to any act modifying the physical state of things, with or without damage thereto.

In particular, the thing is damaged when it is destroyed, lost, or deteriorated; it is transformed when it is materially modified, even if for the better; its intended use is changed when there is a subjective change in intended use with regard to those to whom it was available or who could use it.

The term "fraudulent means" is to be understood as those means designed to deceive, such as deceit, misleading, simulation, and falsehoods. Therefore, the frequent occurrence of this act depending on an act of competition has led some legal theory to liken fraudulent means to the acts described by art. 2598 of the civil code.

The criminal offence may also be relevant in the matter of unfair competition, when the disruption of others' economic activity derives from behaviour implemented with deception and unlawful deceit for the purpose of damaging said activity, and provided that the use of fraudulent means is not designed to secure an economic benefit.

The behaviour must be oriented towards tampering or disturbing industry or trade.

The term "hampering" is to be understood as not allowing the activity to be carried out, or hindering its start, or paralyzing its function if it is already in progress.

The term "disruption" is to be understood as an alteration of the regular performance of the activity that may take place at the outset or in the functional phase.

The criminal offence has a subsidiary nature because it is operative if the act does not constitute a graver offence. Due to the presence of the subsidiarity clause, the criminal offence is intended for a function that is complementary and subsidiary to that contained in art. 513-*bis* of the criminal code, with regard to more seriously penalized conduct.

Lastly, it bears stating that the term "trade" is to be understood as any activity of exchanging goods or services, thus including banking, insurance, transport, and navigation activity.

***Unlawful competition with threats or violence (art. 513-bis of the criminal code)***

The criminal offence introduced into the criminal code by art. 8 of law no. 646 of 1982, punishes anyone who, in the exercise of a commercial, industrial, or at any rate productive activity, carries out acts of competition with violence or threats. The penalty is increased if the acts of competition regard an activity financed in whole or in part, and in any way, by the State or by other Public Entities.

The cited regulation refers to those that, as they are implemented with violence or threats, constitute unfair competition that takes concrete shape in forms of intimidation aimed at controlling or at any rate conditioning commercial, industrial, or productive activities.

In fact, the criminal offence was introduced by lawmakers to penalize competition implemented with the Mafia's methods; therefore, in accordance with the *voluntas legis*, this is typified by reliance on the forms of intimidation typical of organized crime which, with violent or threatening methods, impacts the fundamental law of market competition designed to guarantee the proper functioning of the economic system and, by effect of this, people's freedom of self-determination in the sector.

However, no special relationship may be established between the offences as per art. 513-*bis* of the criminal code and the crime of conspiracy pursuant to art. 416 of the criminal code and mafia-related conspiracy pursuant to art. 416 *bis* of the criminal code, given the episodic nature of the former, and the conspiracy inherent to the second; it follows that they can work in concert.

The offence may be committed by anyone acting in the exercise of a commercial, industrial, or at any rate productive activity.

A "commercial" activity is any activity of intermediation in the circulation of goods; an "industrial" activity is any activity aimed at producing goods or services; and a "productive" activity is any activity economically oriented towards preparing and offering products or services on a certain market.

The crime is aggravated if the acts of competition concern activities financed with public funds. The reasoning behind the aggravating circumstance is the need to strengthen the safeguarding of activities financed with public funds, which have a significant social utility. Further, the aggravation is justified by virtue of the criminological datum according to which criminal organizations, when they insert themselves into commercial or productive activities, privilege precisely the sectors sustained by public funding and are designed to assume a monopoly position in absorbing public funds.

Moreover, the crime in question also covers the offences of private violence, damage, and battery. Lastly, the relationship with the offence pursuant to art. 513 of the criminal code is resolved with the prevalence of art. 513-*bis*, given the subsidiary nature of the crime pursuant to art. 513 of the criminal code.

***Fraud against national industries (art. 514 of the criminal code)***

The criminal offence punishes selling, or otherwise placing in circulation, on national or foreign markets, industrial goods, with counterfeit or altered names, trademarks, or distinctive marks, such as to cause harm to national industry.

Acts of placing on sale or introducing into distribution circuits relate to the activity of marketing, production, and distribution, as a necessary appendix to the production activity.

Alongside providing for trademarks and distinctive marks, the criminal offence also lists “names,” identifiable as indications like corporate names, signs, emblems, signatures, etc., put in place to mark the products but not belonging to the trademark.

The harm to national industry – a constituent element of art. 514 – may take the form of any prejudice caused to national industry, such as for example diminished business in Italy or abroad, the failure to increase business, tarnishing of the company’s good name with respect to the product in question or to fair trade.

The crime is considered as committed when and in the place where the harm occurs. Therefore the crime is committed in Italy even if the trade is carried out on foreign markets, provided that the effects have repercussions on and prejudice national economic potential.

***Fraud in the exercise of trade (art. 515 of the criminal code)***

The criminal offence punishes anyone who, in the exercise of a commercial activity, or in an establishment open to the public, delivers to the acquirer one movable good for another, or a movable good that, in origin, provenance, quality, or quantity, is different from that declared or agreed upon.

This offence impacts the economic interests of an undetermined circle of persons and reflects damage to the financial interest of the private party in a more general dimension. The good protected by the law is the honesty and fairness of commercial exchanges. The offence is of a subsidiary nature because it is operative if the deed does not constitute a graver offence.

Fraud in trade presupposes the existence of a contract: in fact, as the law refers to the acquirer and not the purchaser, it may be any contract that produces the obligation to deliver a movable good (e.g. a contract of consignment, supply, or exchange) and not only the sale, which at any rate remains the form of negotiation to whose scope the offence most frequently belongs. However, the law in question, although operating in a strictly bilateral relationship, does not refer to the parties’ financial interests, but rather to bona fides in commercial exchanges, protecting the public of both consumers and of producers and merchants. In the individual act of dishonest exchange, the entire community’s interest that a habit of fair, honest, and loyal trade be observed is protected.

The crime is committed upon the delivery of the thing, which is to say the reception of the thing by the acquirer. Delivery takes place not only when the acquirer materially receives the good, but also when an equivalent document is accepted (waybill, bill of lading, etc.).

The delivered thing must be other than that declared or agreed to: this difference is to be identified precisely with respect to the content of the declaration or agreement.

Difference “in origin” concerns the geographical place of production of things that receive particular appreciation from consumers precisely for having been made in a given area or region.

Difference “in provenance” mainly concerns two possibilities; the first consists of marking, with an original indication, a product other than the original one, while the second possibility consists of using, in a product’s packaging, the activity of a company other than the one that it is marked by.

There is difference “in quality” when a thing is delivered of the same kind or type as that declared or agreed to, but inferior in price or usability due to a different composition or a variation in taste.

Difference “in quantity” regards weight, measurement, or number.

The paragraph of art. 515 of the criminal code also provides for a special aggravating circumstance, which relates to fraud of precious objects, with “precious objects” to be understood as things that for their rarity, for their artistic and historic value, or for their antiquity have a greater than ordinary sale value.

The criminal offence in question overlaps with art. 517 of the criminal code, “Sale of industrial products with mendacious marks,” with the crime pursuant to art. 515 of the criminal code prevailing because it is intended to address the truthfulness of the markings.

The aforementioned criminal offence also overlaps with art. 516 of the criminal code “sale of non-genuine food items as genuine,” given the structural difference between the two crimes.

Lastly, worthy of mention is the relationship between the crime of commercial fraud and the criminal offence of unfair competition pursuant to art. 2598, n. 3 of the civil code. In fact, case law has constantly stated that an act of commercial fraud, corresponding to that provided for by art. 515 of the criminal code, does not on its own constitute an act of unfair competition pursuant to art. 2598, no. 3 of the civil code, as it is not necessary for the action to be designed to generate the danger of damage due to the immediate or possible repercussions in the sphere of a competing enterprise.

By virtue of the provisions of art. 518 of the criminal code, the sentence also includes advertising of the decision.

***Sale of non-genuine food items as genuine (art. 516 of the criminal code)***

The criminal offence punishes anyone who offers for sale or otherwise introduces onto the market non-genuine food items as genuine.

This criminal offence is to safeguard a general interest, such as bona fides in commercial exchanges, the breach of which presumptively results in harm to economic order.

The term “offering for sale” is to be understood as offering a given item for a charge.

The term “placing in circulation,” on the other hand, is to be understood as any form of placing the goods in contact with the public, even free of charge.

The object of the action is non-genuine food items.

The term “food items” is intended to comprise both the products originating directly or indirectly from the earth (by growing or breeding) and products that are manipulated, processed, and transformed, and therefore originating from industry, whatever their physical state (solid, liquid, or gas) may be.

Genuineness is an essential feature of food products, and may be understood in the natural and formal sense; “natural genuineness” indicates the condition of a substance that has undergone no processes of alteration of its normal biochemical composition; the formal conception of genuineness (“legal genuineness”), on the other hand, reflects the compliance of a product’s composition with the requirements formalized in a pertinent regulation. Therefore, products that have undergone an alteration in their essence and their composition through the blending of extraneous substances or the subtraction of nutrients from those prescribed are to be considered non-genuine.

By virtue of the provisions of art. 518 of the criminal code, the sentence also includes advertising of the decision.

***Counterfeiting of geographical indications or designations of origin of agricultural and food products (art. 517-quater of the criminal code)***

The criminal offence punishes anyone who counterfeits or at any rate alters geographical indications or designations of agricultural and food products, as well as anyone who, in order to profit therefrom, introduces into the State’s territory, holds for sale, places on sale with direct offer to the consumers, or at any rate places in circulation said products with counterfeit indications or designations.

Offences of fraud in exercising trade, sale of food items, and counterfeiting of geographical indications or designations of agricultural and food products (respectively outlined in articles 515, 516, and 517-quater of the criminal code) are crimes that appear to lie outside the sphere of Rai Cinema’s business activity

## 5.2 Identification of the sensitive areas and activities in the context of forgery in identification instruments or marks and offences against industry and trade

The analysis of corporate processes carried out during the Project<sup>11</sup>, allowed the activities to be identified in whose sphere the criminal offences referred to by art. 25-*bis* and 25-*bis*.1 of Legislative Decree no. 231/01 might in the abstract occur.

The following is a list of the processes examined with regard to art. 25-*bis* and art. 25-*bis*.1:

### **Sales, distribution, and marketing area:**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**

## 5.3 Principles of behaviour and of implementation of decision-making processes

### 5.3.1 Principles of behaviour

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts in implementation of the following principles) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above (art. 25-*bis* and 25-*bis*.1 of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

Within the sphere of said behaviours, it is particularly forbidden to:

1. offer for sale or place in circulation – also through advertising messages and telepromotions – industrial products with names, trademarks, or distinctive marks, national or foreign, designed to mislead the buyer as to the product's origin, provenance, or quality;
2. transmit untruthful information to the detriment of potential competing third parties;
3. carry out any form of intimidation or harassment of competitors.

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<sup>11</sup> In this regard see paragraph 3.1 in the General Section.

### **5.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive Activities. For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

#### **1. Sales, distribution, and marketing area:**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**

The activity is performed in compliance with the established control standards reported in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals” to which reference should be made.

Moreover, the performance of the activities entails, for the sensitive activities indicated above:

- verification of the proper performance of the activities carried out, and of the delivery of the good, against the prerequisites and terms defined in the contracts;
- verification, prior to placing on the market, of the proper placement of the name and/or trademark and/or distinctive mark on the product;
- verification that the nature, quantities, and features (including qualitative features) of the goods correspond with the established tolerances, with the indications made in the documents proving the performance of the supply, or with the contractual commitments taken on.

## 6. SPECIAL SECTION C – Corporate offences

### 6.1 Crimes constituting corporate offences (art. 25-ter of Legislative Decree no. 231/01)

The following are the regulatory references of the criminal offences of relevance pursuant to art. 25-ter (so-called “corporate offences”) as well as a brief description of certain significant aspects for each of the predicate offences under Legislative Decree no. 231/01.

#### **Corporate offences**

##### ***False corporate communications and false corporate communications of listed Companies (articles 2621 and 2622 of the civil code)***

This offence is committed by setting out – in the financial statements, in the reports, or in the other corporate communications provided for by law, addressed to shareholders or the public – knowingly, untruthful relevant materials, or by omitting relevant material facts whose communication is imposed by law, as to the economic situation, finances, or assets of the company or of the group to which it belongs.

It is specified that:

- the active parties in the crime may be administrators, executives, general managers, directors charged with drawing up the corporate accounting documents, statutory auditors, and liquidators (this is then the so-called “crime proper”), as well as those who, in accordance with art. 110 of the criminal code, contribute towards the offence committed by them<sup>12</sup>;
- the act must be designed to achieve undue profit for oneself or others;
- the act must be designed to concretely mislead the recipients of the communications;
- there is also liability in the case where the information regards assets owned or administered by the company on behalf of third parties;

##### ***Obstructed control (art. 2625 of the civil code)***

The first paragraph of art. 2625 of the civil code establishes an administrative offence by administrators, consisting of obstructing the control functions attributed to the shareholders or the corporate bodies. The administrative offence does not generate the entity’s direct liability, which instead is established for the criminal offence contemplated by the second paragraph of the same art. 2625 of the civil code, which takes place when the act of obstruction gives rise to damage to the shareholders. Having specified that the third paragraph aggravates the punishment if the crime concerns listed companies, it is to be kept in mind that the punishable act consists of concealing documentation, or of carrying out other deceptions designed to produce the two events constituting the crime (obstructed control or

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<sup>12</sup> This observation (regarding the so-called complicity of the “*extraneus*”) applies, in principle, to all crimes proper.



obstructed auditing). It also bears noting that the law also includes, among the forms of manifestation of the prohibited conduct, simple obstruction, thus extending the area of prohibition to mere obstructionism.

With regard to the criminal offences referred to above, it is to be noted that art. 37, paragraphs 34 and 35, of Legislative Decree no. 39 of 27 January 2010, which implements the directive 2006/43/EC on statutory audits, in amending art. 2625<sup>13</sup> of the civil code, did not coordinate with art. 25-ter of Legislative Decree no. 231/01; in fact, art. 25-ter refers to art. 2625 of the civil code which, in the new version, no longer includes obstructed control of auditors, which was shifted to Legislative Decree no. 39/2010, under art. 29, which is not referred to by art. 25-ter and calls for two new criminal offences (in the form of crime under administrative and criminal law) of obstructed control with regard to the auditing activity itself.<sup>14</sup>

In particular, the first paragraph of art. 29 of Legislative Decree no. 39/2010 punishes administrators who, by concealing documents or with other suitable deceptions, hamper or at any rate obstruct the performance of the auditing activities.

The second paragraph provides for the criminal offence when the act of obstruction causes damage to the shareholders. The third paragraph aggravates the penalty in the event of auditing of entities of public interest.

Given the principle of legality in force in criminal law, the aforementioned criminal offence that was the object of the recent legislative intervention should therefore no longer be listed in the catalogue of predicate offences of the entity's administrative liability; moreover, by way of precaution it has been deemed appropriate to take this into account all the same in developing this Model.

#### ***Undue restitution of conferrals (art. 2626 of the civil code)***

The "typical conduct" of this offence is, outside of cases of legitimate reduction of the share capital, the restitution – even simulated – of the conferrals to shareholders, or their being freed from the obligation to carry them out.

It is specified that the active parties in the crime are the administrators.

#### ***Unlawful division of profits or reserves (art. 2627 of the civil code)***

This criminal offence consists of distributing profits or accounts on profits not actually earned, or allocated by law to the reserve, or of distributing reserves, including those not constituted with profits, that by law cannot be distributed.

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<sup>13</sup> Art. 2625 of the civil code, in force prior to the amendment ordered by Legislative Decree no. 39 of 27 January 2010, read as follows: Obstructed control – *The administrators who, by concealing documents or with other suitable deceptions, hamper or at any rate obstruct the performance of the control or auditing activities legally attributed to the shareholders, to other corporate bodies, or to auditing firms, are punished by an administrative fine of up to € 10,329. Conduct that causes damage to the shareholders is punishable by up to one year's imprisonment, and prosecution is on the complaint of the injured party.*

*The penalty is doubled in the case of companies with stocks listed on Italian or other EU countries' regulated markets, or widely held by public investors, as per article 116 of the consolidated law pursuant to Legislative Decree no 58 of 24 February 1998.*

<sup>14</sup> Legislative Decree no. 8 of 15 January 2016 decriminalized this offence, transforming it into an administrative offence.

It is noted that:

- the active parties in the crime are the administrators;
- a way of extinguishing the offence is returning the profits or reconstituting the reserves prior to the deadline established for approving the financial statements.

***Unlawful operations on shares or stock of the company or of the parent company (art. 2628 of the civil code)***

This crime is committed with the purchase or underwriting, outside the cases provided for by law, of stocks or shares in the company or in the parent company that injures the integrity of the share capital or of the reserves that cannot be distributed by law.

It is noted that:

- the active parties in the crime are the administrators;
- a way of extinguishing the offence is reconstituting the share capital or reserves prior to the deadline established for approving the financial statements, for the financial year in which the act took place.

***Transactions to the detriment of creditors (art. 2629 of the civil code)***

This criminal offence is committed by making, in violation of the provisions of law protecting creditors, reductions in the share capital or mergers with other companies or splits, that cause damage to the creditors.

It is noted that:

- the active parties in the crime are the administrators;
- a way of extinguishing the offence is compensating the creditors for the damage before a court ruling

***Failure to communicate conflict of interest (art. 2629-bis c.c.)***

- The administrator or member of the management board of a company with shares listed on regulated markets in Italy or in other European Union countries, or widely circulated among the public, or of a party subject to supervision pursuant to the consolidated law pursuant to Legislative Decree no. 385 of 01 September 1993, the aforementioned consolidated law pursuant to Legislative Decree no. 58 of 1998, Legislative Decree no. 209 of 07 September 2005, n. 576, or Legislative Decree no. 124 of 21 April 1993, who violates the obligations provided for by article 2391<sup>15</sup>, first paragraph, is punished by one

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<sup>15</sup> Art. 2391 (interests of administrators): “The administrator must inform the other administrators and the Board of Statutory Auditors of any interest that, on his or her own behalf or on behalf of third parties, has in a given operation of the company, specifying the nature, terms, origin, and scope thereof; if it is the CEO, he or she shall also refrain from carrying out the operation, vesting it with the board body.

In the cases provided for by the above paragraph, the decision of the Board of Directors shall adequately justify the reasons for the operation and its convenience for the company.”

to three years' imprisonment, if the violation results in damage to the company or to third parties.

***Fictitious formation of capital (art. 2632 of the civil code)***

- This offence may arise when: a company's capital is fictitiously formed or increased by attributing company shares or stocks in an amount that, in total, exceeds the amount of the share capital; shares or stocks are reciprocally underwritten; the conferrals of goods in kind, the credits, or the company's assets, in the case of transformation, are significantly overvalued.
- It is specified that the active parties in the crime are the conferring shareholders and administrators.

***Undue distribution of corporate assets by liquidators (art. 2633 of the civil code)***

The offence is committed with the distribution of corporate assets among the shareholders prior to payment of the company's creditors or the allocation of the sums as needed to satisfy them, causing damage to the creditors.

It is noted that:

- the active parties in the crime are the liquidators;
- a way of extinguishing the offence is compensating the creditors for the damage before a court ruling.

***Undue influence on the shareholders' meeting (art. 2636 of the civil code)***

The "typical conduct" provides that, by simulated acts or fraud, the majority in the shareholders' meeting is determined in order to obtain undue profit for oneself or for others.

***Stock manipulation (art. 2637 of the civil code)***

The criminal offence is committed when false information is spread or simulated operations or other deceptions are implemented, concretely designed to cause a considerable alteration of the price of financial instruments, whether or not listed, or to significantly impact the public's trust in the financial stability of banks or banking groups.

***Obstructing the exercise of the function of the public supervisory authorities (art. 2638 of the civil code)***

The criminal offence is committed by setting out in communications to the Supervisory Authority provided for by law, for the purpose of obstructing their functions, untruthful material facts, even if subject to assessments, as to the economic situation, finances, or assets of the subjects subject to supervision; or by concealing, by other fraudulent means, in whole or in part, facts that should have been made known, concerning the same situation.

The criminal act is also committed when the Supervisory Authority's functions are intentionally obstructed in any form, also through omission of required communications.

It is specified that:

- the active parties in the crime are the administrators, general managers, statutory auditors, and liquidators of companies or entities, and the other parties subjected by law to public supervisory authorities, or held to obligations to them;
- there is also liability in the case in which the information regards assets possessed or administered by the company on behalf of third parties.

## **6.2 Identification of the sensitive activities and areas in the context of corporate offences**

Analysis of the corporate processes, carried out during the Project<sup>16</sup>, made it possible to identify the activities in the context of which the criminal offences referred to by art. 25-ter of Legislative Decree no. 231/01 might in the abstract be committed. The following is a list of the examined processes:

- 1. Managing the activities of preparing the financial statements**
- 2. Management of relations with shareholders, the Board of Statutory Auditors, and the auditing company**
- 3. Relations with the Supervisory Authority**
- 4. Operations on capital and profit allocation**
- 5. Announcing, holding, and drawing up the minutes of Shareholders' Meetings**
- 6. Issuing press releases and market disclosures**

## **6.3 Principles of behaviour and of implementation of decision-making processes**

### **6.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts in implementation of the following principles) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above (art. 25-ter of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

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<sup>16</sup> See in this regard paragraph 3.1 of the General Section.

This Special Section consequently involves the obligation of the parties indicated above to comply scrupulously with all the laws in force, and in particular to:

1. maintain proper, transparent, and collaborative behaviour, in compliance with the regulations of law and of corporate procedures, in all the activities aimed at the formation of the financial statements and of the other corporate communications, in order to provide to shareholders and third parties truthful and correct information on the company's economic situation, finances, and assets;
2. comply rigorously with all the norms established by law to protect the integrity and effectiveness of the share capital, in order not to harm the guarantees of creditors and of third parties in general;
3. ensure the proper function of the Company and of the Corporate Bodies, guaranteeing and facilitating any form of internal control over the corporate management provided for by law, as well as the free and proper formation of the will of the Shareholders' Meeting;
4. avoid carrying out simulated operations or spreading false information about the Company;
5. carry out, in any form and on any grounds, purchase, sale, or other types of operations with regard to financial instruments, using privileged information that came to be known by virtue of holding an office as a member of the issuer's administration, management, or control bodies, or by virtue of a stake held in the issuer's capital;
6. carry out said operations using privileged information that came to be known in the exercise of a working activity, profession, function, or office;
7. make this information known to third parties – provided that this takes place in the normal exercise of the work, profession, function, or office;
8. induce third parties to carry out the operations in question, or suggest that they do so, based on said information;
9. spread false information designed to trigger an alteration in the prices of financial instruments;
10. carry out simulated operations or other deceptions capable of causing an alteration in the prices of financial instruments.

Within the sphere of said behaviours, it is particularly forbidden to:

- a) represent or transmit, for processing and representation in financial statements or in other corporate communications, false, incomplete, or at any rate untruthful data regarding the company's economic situation, finances, and assets;
- b) omit data and information required by law on the company's economic situation, finances, and assets;

- c) return conferrals to shareholders, or free them from the obligation to carry them out, outside of cases of legitimate reduction of the share capital;
- d) distribute profits or accounts on profits not actually earned, or allocated by law to the reserve;
- e) purchase or underwrite stocks or shares outside the cases provided for by law, injuring the integrity of the share capital;
- f) carry out reductions in the share capital, mergers or splits, in violation of the provisions of law protecting creditors, causing them damage;
- g) proceed with the formation or fictitious increase of the share capital, by attributing shares for a value lower than their nominal value;
- h) implement behaviour that materially obstructs, by concealing documents or using other fraudulent means, the performance of the control activity by the shareholders and the Board of Statutory Auditors;
- i) unlawfully cause or influence the taking of decisions at the shareholders' meetings, implementing towards this end simulated or fraudulent acts designed to alter by deception the proper procedure for forming the will of the shareholders' meeting;
- j) publish or spread false information, or implement simulated operations or other behaviours of a fraudulent or deceitful nature, regarding the Company's economic situation, finances, and assets;
- k) set out, in said communications and transmissions, untruthful facts, or conceal facts of relevance to the Company's economic conditions, assets, or finances;
- l) spread, or contribute towards spreading, in any way, false data or information, or carry out fraudulent or at any rate misleading operations in a manner even only potentially designed to cause an alteration of the price of financial instruments;
- m) observe the rules governing the formation of the price of the financial instruments, rigorously avoiding behaviours designed to cause a considerable alteration thereof, taking the concrete market situation into account.

### **6.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities.

For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

#### **1. Managing the activities of preparing the financial statements**

The activity is carried out in compliance with the control standards provided for in "Special Section "A" – Offences against Public Administration and bribery among private individuals," to which reference is made.

## **2. Management of relations with shareholders, the Board of Statutory Auditors, and the auditing company**

Carrying out this activity provides:

- for the obligation of maximum collaboration and transparency in relations with the auditing company, the Board of Statutory Auditors, and on the occasion of shareholder requests;
- for the obligation to transmit to the auditing company and to the Board of Statutory Auditors – with appropriate lead time – all the documents regarding the items on the agenda of the shareholders' meeting or the meeting of the Board of Directors, for which they must express an opinion pursuant to the law;
- for the manager of the Directorates/Office of reference to guarantee the completeness, relevancy, and correctness of the information and documents provided to the auditing company, the Board of Statutory Auditors, or the shareholder, and to make available to them the information and/or documents necessary for carrying out the control activity assigned them, guaranteeing compliance with the regulations of reference;
- attributing roles and responsibilities as to gathering all the requests arriving in formalized form and all the information / data / documents delivered or made available to the auditing company, the Board of Statutory Auditors, and the shareholders as a consequence of these requests;
- regulating the phases of selecting the auditing company and the rules for maintaining the auditing company's independence during its mandate.

## **3. Relations with the Supervisory Authority**

Carrying out this activity provides for:

- directives sanctioning the obligation of maximum collaboration and transparency in relations with the Supervisory Authority;
- identifying a party responsible for managing relations with the Supervisory Authority in the event of inspections, specially delegated by corporate leaders;
- identifying those responsible for receiving, controlling, consolidating and transmitting, validating, and reviewing the requested documents, information, and data;
- the procedures for archiving and conserving the information that is provided, and the obligation of making the initial report, and reporting on the close of the activities.

## **4. Operations on capital and profit allocation**

Carrying out this activity provides for:

- formalized rules, also originating from RAI, addressed to the Directorates/Offices involved in preparing the documents underlying decisions by the Board of Directors on accounts on dividends, conferrals, mergers, and splits, establishing responsibilities and procedures for preparing the support documentation;
- preparing a report for the Board of Directors justifying the distribution of profits and reserves in compliance with the provisions of law;
- the main phases of the sensitive activity in question to be appropriately documented and archived with the competent offices.

**5. *Announcing, holding, and drawing up the minutes of Shareholders' Meetings***

Carrying out this activity provides for:

- preparing documents necessary for holding the meetings of the Board of Directors and the shareholders' meeting, and for drawing up the minutes of the meetings of the Corporate Bodies;
- the relevant documentation, agenda, convocations, decisions, and minutes to be entered into the records, archived, and conserved (in hardcopy and/or in electronic format) at the competent offices.

**6. *Issuing press releases and market disclosures***

Carrying out this activity provides for:

- defining roles and duties of the parties involved in preparing and disseminating data and information, and separation between the office that provides the data and prepares the press release, and the party that authorizes the dissemination thereof;
- the party responsible for issuing press releases and similar disclosure elements to ensure the traceability of their sources and information;
- formalized rules identifying the roles and responsibilities for communication to the outside, and archiving of the approved document;
- formal constraints (procedures or internal circulars, contractual clauses) for maintaining the confidentiality of the relevant information of which the Employees/Outside Collaborators become aware. These constraints must expressly prohibit the dissemination of important information inside or outside the Company except via the channel institutionally provided for.



## **7. SPECIAL SECTION D – Offences of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering**

### **7.1 Relevant criminal offences (art. 25-octies)**

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

#### **7.1.1. Criminal offences of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering referred to by art. 25-octies of Legislative Decree no. 231/01.**

Legislative Decree no. 231 of 2007, in implementing Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, overhauled the anti-money-laundering regulations in our own legal system. Art. 63 (now art. 72), third paragraph, of Legislative Decree no. 231 introduced, in the list of predicate offences of administrative liability, art. 25-octies, establishing pecuniary and debarment sanctions against the entity with reference to the crimes of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance (crimes pursuant to articles 648, 648-bis and 648-ter of the criminal code).

Art. 64, paragraph 1, letter f), of said regulation also abrogated paragraphs 5 and 6 of art. 10 of Law no. 146/2006, against transnational organized crime, which already established, against the entity, the liability and the sanctions pursuant to Legislative Decree no. 231/01 for the crimes of money laundering and use of money, goods, or benefits of unlawful provenance (articles 648-bis and 648-ter of the criminal code), if characterized by the elements of transnationality in accordance with the definition contained in art. 3 of said law no. 146/2006.

It follows that pursuant to art. 25-octies of Legislative Decree no. 231/01, the entity is now punishable for the crimes of receipt of stolen goods, money laundering and use of unlawful money, even if committed in a strictly “national” setting, provided that there is an interest or advantage for the entity itself.

Subsequently, Law no. 186 of 15 December 2014 introduced into the Italian Criminal Code art. 648-ter-1, titled “Self Laundering,” and modified art. 25-octies of Legislative Decree no. 231/01, in order to insert the new crime among the predicate offences of the administrative liability of entities.

Lastly, Legislative Decree no. 195 of 08 November 2021 introduced modifications to the crimes for all the predicate offences considered in this Special Section.

In the first place, the list of predicate offences of receipt of stolen goods, money laundering and use of proceeds of unlawful provenance, as well as self laundering was extended to the misdemeanours punishable by a maximum of one year or a minimum of six months.

In the second place, the ability to charge these offences is also extended in the case of goods originating from any crime, including negligence (as already established for receipt of stolen goods and the use of proceeds of unlawful provenance, thereby making the crimes uniform).

The following is a description of the offences referred to by art. 25-*octies* of Legislative Decree no. 231/01 in the formulation in force.

***Receipt of stolen goods (art. 648 of the criminal code)***

Art. 648 of the criminal code punishes anyone who “outside of cases of complicity in the crime, purchases, receives, or conceals money or things originating from any offence, or at any rate intervenes in having them purchased, received, or concealed.”

The term “purchase” should be understood as the effect of a transaction activity, whether free of charge or for consideration, through which the agent gains possession of the good.

The term “receive” should be taken to indicate any form of gaining possession of the good originating from the offence, even if only temporarily or out of mere convenience.

The term “conceal” should be understood as hiding the good originating from the offence, after having received it.

Receipt of stolen goods may also be committed by intervening in purchasing, receiving, or concealing the item. This behaviour becomes manifest in any mediation activity, not to be understood in the civil-law sense (as specified by case-law), between the person committing the principal offence and the acquiring third party.

The final paragraph of art. 648 of the criminal code also extends punishability “when the person committing the offence from which the money or things originate cannot be charged or punished, or when the condition of being able to proceed with reference to said offence is lacking.”

The purpose of the charge of receipt of stolen goods is that of preventing the perpetration of the injury of financial interests initiated with the commission of the principal offence. An additional objective of the charge consists of preventing the commission of the principal offences, as a consequence of the limits placed on the circulation of goods originating from said offences.

***Money laundering (art. 648-bis of the criminal code)***

This crime is committed by anyone who, “outside the cases of complicity in the crime, substitutes or transfers money, goods, or other benefits originating from an offence; or carries out, in relation thereto, other operations, in such a way as to obstruct identification of their criminal provenance.” The crime in question is also committed when the person committing the offence from which the money or things originate cannot be charged or punished, or when

the condition of being able to proceed with reference to said offence is lacking. It is necessary that prior to this, an offence has been committed in which, however, the money launderer has not been complicit.

The penalty is increased when the offence is committed in the exercise of a professional activity, and is diminished if the money, goods, or other benefits originate from an offence for which the penalty is less than a maximum of five years' imprisonment.

The provision is also applicable when the person committing the offence from which the money or things originate cannot be charged or punished, or when the condition of being able to proceed with reference to said offence is lacking. Of relevance is the offence of those who obstruct the identification of said goods after they have been replaced or transferred.

***Use of money, goods, or benefits of unlawful provenance (art. 648-ter of the criminal code)***

The offence is committed by "anyone who, outside of cases of complicity in the crime and of the cases provided for by articles 648 of the criminal code (Receipt of stolen goods) and 648-bis (Money laundering) of the criminal code, uses, in economic or financial activities, money, goods, or benefits originating from crime."

This criminal offence also includes the aggravating circumstance of exercise of a professional activity, and the final paragraph of art. 648 extends to the parties, but the penalty is diminished if the offence is particularly tenuous.

The specific reference to the term "to use," with a broader meaning than "invest" which supposes a use aimed at particular objectives, expresses the meaning of "use in any manner." Conversely, the reference to the concept of "activity" to indicate the investment sector (economy or finance), makes it possible to exclude the uses of money or of other benefits that have an occasional or sporadic nature.

The specific nature of the offence with respect to that of money laundering lies in the purpose of concealing the traces of the unlawful provenance of money, goods, or other benefits, pursued by using said resources in economic or financial activities.

Lawmakers have seen fit to punish those mediated activities that, unlike money laundering, do not immediately replace the goods originating from the offence, but that at any rate contribute towards "laundering" the unlawful money.

***Self laundering (art. 648-ter 1 of the criminal code)***

Art. 648 ter 1 of the criminal code punishes anyone who, having committed or conspired to commit an offence, employs, replaces, or transfers into economic, financial, entrepreneurial, or speculative activities, money, assets, or other benefits derived from the commission of said offence, in such a way as to concretely hinder the identification of the criminal provenance thereof.

Lighter penalties are established when the money, assets, or other benefits originate from the commission of an offence punishable by a maximum of five years' imprisonment.

## **7.2 Identification of the sensitive areas and activities in the context of the offences of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering**

Analysis of the corporate processes, carried out during the Project<sup>17</sup>, made it possible to identify the activities in the context of which the following criminal offences might in the abstract be committed:

The criminal offences of receipt of stolen goods, money laundering, and use of money, goods, or benefits of unlawful provenance, as stated by art. 25-*octies* of Legislative Decree no. 231/01:

### **1. Publishing areas of purchasing rights and film production:**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

### **2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

### **3. Sales, distribution, and marketing area**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**
- **Selecting and managing agents (natural and legal persons)**

### **4. Management of human resources:**

- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**
- **Conferring collaboration and consulting assignments to natural persons**

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<sup>17</sup> See in this regard paragraph 3.1 of the General Section.

- **Managing travel (advances, expense reimbursements, and credit cards)**

**5. Promotion and external relations:**

- **Organizing and attending film festivals and events**
- **Managing sponsorships and donations**
- **Managing gifts, free items, and benefits**
- **Managing external communications**

**6. Management of the company's servers and Internet sites**

**7. Tax governance**

**8. Managing the activities of preparing the financial statements**

**7.3 Principles of behaviour and implementation of decision-making processes**

**7.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts in implementation of the following principles) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above;
- violate the principles and the corporate procedures provided for in this Special Section.

This Special Section thus forbids the above parties:

- to maintain relations, negotiate, and/or execute and/or implement contracts or documents with persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;
- to grant benefits to persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;

- to hire persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;
- to replace or transfer money, goods, or other benefits originating from offence, or carry out, with respect thereto, operations designed to obstruct identification of their unlawful provenance;
- to employ in economic or financial activities money, goods, or other benefits originating from crime;

### ***7.3.2 Principles of implementation of decision-making processes***

The following is a list of the control standards identified for the individual Sensitive activities. For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

#### ***1. Publishing areas of purchasing rights and film production:***

- ***Selecting and evaluating the product and supplier***
- ***Negotiating and defining the contract***
- ***Carrying out the contract***

The activity is carried out in compliance with the control standards provided for in "Special Section A - Offences in relations with Public Administration and Bribery among private individuals," to which reference is to be made.

#### ***2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):***

- ***Selecting and evaluating the product and supplier***
- ***Negotiating and defining the contract***
- ***Carrying out the contract***

The activity is carried out in compliance with the control standards provided for in "Special Section A - Offences in relations with Public Administration and Bribery among private individuals," to which reference is to be made.

#### ***3. Sales, distribution, and marketing area:***

- ***Selecting and evaluating customers and distribution partners***
- ***Negotiating and defining the contract***

- **Carrying out the contract**
- **Selecting and managing agents (natural and legal persons)**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **4. Management of human resources:**

- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**
- **Conferring collaboration and consulting assignments to natural persons**
- **Managing travel (advances, expense reimbursements, and credit cards)**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **5. Promotion and external relations:**

- **Organizing and attending film festivals and events**
- **Managing sponsorships and donations**
- **Managing gifts, free items, and benefits**
- **Managing external communications**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **6. Management of the company’s servers and Internet sites**

The activity is carried out in compliance with the control standards reported in “Special Section F- Computer crimes and unlawful processing of data,” to which reference is to be made.

#### **7. Tax governance**

The activity is carried out in compliance with the control standards reported in “Special Section L –Tax Offences,” to which reference is to be made.

#### **8. Keeping the accounts and preparing the Financial Statements**

The activity is carried out in compliance with the control standards reported in “Special Section A – Crimes in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

## 8. SPECIAL SECTION E – Offences committed in violation of occupational health and safety regulations

### 8.1 Relevant criminal offences in violation of occupational health and safety regulations

Art. 9 of Law no. 123/2007 introduced, into Legislative Decree no. 231/01, art. 25-*septies*, which extends the entities' administrative liability to crimes of culpable homicide (art. 589 – 2° paragraph of the criminal code) and serious or grievous involuntary personal injury (art. 590 – 3° paragraph of the criminal code), committed with violation of the regulations on accident prevention and the protection of occupational health and safety (such as for example those provided for by Legislative Decree no. 81 of 9 April 2008, "Consolidated Law on occupational health and safety" as amended and supplemented).

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

#### ***Culpable homicide (art. 589 of the criminal code)***

Whoever negligently causes a person's death is punished by six months' to five years' imprisonment.

Offences committed in violation of the regulations on road circulation or the prevention of occupational accidents are punished by one to five years' imprisonment. Offences causing the death of more than one person, or the death of one or more persons and injuries to one or more persons, are subject to the penalty that should be inflicted for the greatest of the violations committed, increased by up to three times; however, the penalty may not exceed twelve years.

#### ***Involuntary personal injury (art. 590 of the criminal code)***

Whoever causes a personal injury to others, out of negligence, is punished by up to three months' imprisonment or by a fine of up to € 309. Serious injury is punishable by one to six months' imprisonment or by a fine of € 123 to € 619; grievous injury is punishable by three months' to two years' imprisonment or a fine of € 309 to € 1,239.

Given the particular nature of the matter to be regulated, centred upon reducing risk, and with regard not to intentional crimes which typically spring from decisions, but to crimes of negligence, carried out in the performance of the productive activity, this "Special Section" denotes a structure in part different from that used to regulate the previous forms of risk: the difference is imposed by the fact that the sector in question is, to a great degree, externally regulated, which is to say that there is a dense network of regulatory provisions that embrace both the mechanisms of identification of the positions of guarantee, and the type and content of the precautionary controls. The "special nature" – regulatory and criminological – of the "context" thus necessitates constructing an autonomously "structured" prevention system.



As for the *objective criteria of charging* the liability to the entity, reference must be made to art. 5 of Legislative Decree no. 231/01, where it establishes that the underlying crimes may be ascribed to the entity only if committed (by senior and non-senior parties) in its interest or to its benefit. This applicability of this criterion of objective charge to crimes of negligence, which may be appreciated with an ex post assessment, is supported by the so-called “expenditure savings” for the entity: the advantage would consist of not using the economic resources needed to bring the corporate activity into conformity, in terms both of deployment of guarantors and of adopting and adjusting the precautionary measures, as well as in terms of saving time for carrying out the corporate activity.

As to the *criterion of subjective charge*, the adoption of the Organization, Management, and Control Model maintains a decisive function of exempting the entity from liability; in fact, in the case of an offence committed by the senior subjects, in accordance with an orientation of doctrine it would not even be necessary to demand demonstration of the elusive fraudulent conduct, it being actually sufficient, for the purposes of exempting the entity from liability, to demonstrate the model’s adoption, its prior suitability, and that its breach did not depend on flawed oversight and control.

With reference to the offences which may give rise to the entity’s administrative liability, Legislative Decree no. 81 of 09 April 2008, on the Consolidated Law on occupational health and safety, establishes, under art. 30 (Organization and management models) that the organization and management model suitable for having the effect of providing exemption from administrative liability, adopted and actually implemented, must ensure a corporate system for fulfilling all the legal obligations identified by the regulations regarding:

- a) compliance with legal technical/structural standards regarding equipment, plant, work places, and chemical, physical, and biological agents;
- b) activities of risk assessment and preparing the consequent prevention and protection measures;
- c) activities of an organizational nature, such as emergencies, first aid, management of contracts, periodic safety meetings, consultations with workers’ safety representatives;
- d) health surveillance activities;
- e) worker information and training activities;
- f) supervision activities with reference to the procedures and instructions for the workers to operate safely;
- g) acquisition of documents and certifications required by law;
- h) periodic verifications of the application and effectiveness of the adopted procedures.

This Organization and Management Model, pursuant to the aforementioned Legislative Decree no. 81/2008, must:

- also provide for appropriate systems for recording the performance of the aforementioned activities;
- in any case, to the extent required by the nature and size of the organization and the type of activity performed, provide for an organization of functions that ensures the technical skills and powers necessary for verifying, assessing, managing, and controlling risk, as well as a regulatory system designed to sanction failure to comply with the measures indicated in the model;
- also provide for a suitable system overseeing the implementation of said model and the maintenance over time of the conditions of suitability of the adopted measures. The review and any modification of the Organizational Model must be adopted when significant breaches of the occupational health and accident prevention regulations are discovered, or on the occasion of changes in the organization and activity in connection with scientific and technological progress.

The same art. 30 provides that:

- upon first-time application, the corporate organization models defined in keeping with the UNI-INAIL Guidelines for an occupational health and safety management system (*sistema di gestione della salute e sicurezza sul lavoro* – SGSL) of 28 September 2001 or the British Standard OHSAS 18001:2007 are presumed as complying with the requirements as per the above paragraphs for the corresponding parts (paragraph 5);
- the standing advisory committee for occupational health and safety develops simplified procedures for the adoption and actual implementation of the safety management and organization models in small- and medium-sized enterprises. These procedures are adopted with the decree of the Ministry of Labour, Health and Social Policies (paragraph 5-*bis*).

## 8.2 Rai Cinema and workplace health and safety management

The Company has adopted an occupational health and safety management system (*sistema di gestione della salute e sicurezza sul lavoro* – SGSL) certified in accordance with the profiles of regulation BS OHSAS 18001:2007.

The ordinary and extraordinary maintenance activities of the buildings and plant serving the infrastructures (e.g. air conditioning systems, fire-fighting equipment and systems, thermal plant, etc.) are regulated and defined on the basis of a contract between Rai Cinema and RAI, and are managed by RAI's Purchasing Directorate.

In order to permit a coordinated and integrated management of all the occupational health and safety obligations, and to attribute responsibilities regarding these obligations to specific corporate offices, the company has prepared an "Integrated management manual" with the purpose of ensuring full compliance with the legislation in force governing occupational health and safety, and pursuing the continuous improvement of safety performance.

The “Integrated management manual” reports the roles and responsibilities of the following corporate figures:

- *Management Representative (Rappresentante della Direzione – RD)*, which coincides with the Employer, with the following tasks and responsibilities:
  - draws up and improves the Integrated Policy;
  - must ensure compliance with laws;
  - must define the organizational arrangement, specifying interfunctional relationships and tasks, and assigning authorities and responsibilities for the management, performance, and verification of the activities for the purposes of environmental compliance and safety;
  - must ensure that the Company is operating in compliance with the Integrated Policy;
  - must ensure that the Integrated Management System (*Sistema di Gestione Integrata – SGI*) is implemented, and that its effectiveness is ascertained through internal and external verifications;
  - approves all the SGI’s documentation;
  - must ensure that a suitable budget is approved in order to guarantee the company’s environmental and safety performance and, in particular, guarantees the resources needed to implement the improvement Programme;
  - establishes the Company’s improvement objectives in collaboration with the Prevention and Protection Department Manager (*Responsabile del Servizio di Prevenzione e Protezione – RSPP*) / Integrated Management System Manager (*Responsabile del Sistema di Gestione Integrato – RSGI*), and approves the improvement Programme;
  - approves systems-related and/or procedural modifications for the improvement of environmental and safety performance.
- *Integrated Management System Manager (Responsabile del Sistema di Gestione Integrato – RSGI)*: is in charge of the Integrated Management System.

This corporate figure is assigned the following tasks and responsibilities:

- assists the Employer/RD in the daily management of the SGI and in defining and achieving the environment and safety objectives;
- approves operating rules and procedures and verifies they are complied with;
- must make sure that the Policy finds application, and ensures its distribution and availability;
- sees to issuing operating procedures for the optimal implementation of the activities for the purposes of environmental and safety performance;

- sees to issuing and distributing the approved documentation;
- reports periodically to DL/RD on the SGI's developments;
- sees to improving the environmental and safety standards and to preventing and reducing risks. This activity is carried out through:
  - analysis of near-accidents and implementation of the appropriate preventive actions;
  - collaboration in managing communication among personnel;
  - disseminating internal and external communications;
  - planning for the performance of auditing activities;
  - taking part in the Management Review;
  - drawing up and updating this manual and all the documentation of the SGI, and verifying its proper application;
- suggests the necessary preventive and corrective actions.

In addition to the figures listed above, the main components of the corporate prevention and management system are the following corporate figures:

- *Employer*: the party pursuant to art. 2 letter b) of Legislative Decree no. 81/08, who, if he or she coincides with the General Manager, must ensure detailed compliance with all the operative and organizational obligations required by Legislative Decree no. 81/08 as amended and supplemented, as well as any other provision of law in the matter of protecting and safeguarding occupational health;
- *Designated Officer*: The Employer, by conferring the delegation, has divided the tasks and corresponding responsibilities, except for those that cannot be delegated, among employed personnel.

In the case of Rai Cinema, the Designated Officer coincides with the Company's "Systems, General Affairs, and Safety" Manager.

- *Prevention and Protection Department Manager (Responsabile del Servizio di Prevenzione e Protezione – RSPP)*: person designated by the Employer to functionally coordinate the risk Prevention and Protection Department, possessing the skills and the professional prerequisites pursuant to article 32 (art. 2 letter f) of Legislative Decree no. 81/08). The Prevention and Protection Department consists of 1 RSPP and 1 Prevention and Protection Department Employee (*Addetto del Servizio di Prevenzione e Protezione – ASPP*).
- *Physician in charge*: physician in possession of one of the titles and of the training and professional prerequisites provided for by Legislative Decree no. 81/08, who collaborates with the Employer for the purpose of assessing the risks, and appointed by the Employer

to carry out health surveillance and for all the other tasks pursuant to Legislative Decree no. 81/08;

- *Workers' Safety Representatives (Rappresentanti dei Lavoratori per la Sicurezza – RLS)*: persons elected by trade-union representations to represent the workers as regards health and safety aspects during the work (art. 2 letter i) of Legislative Decree no. 81/08);
- *Emergency employees*: Rai Cinema has appointed, as provided for by art. 43 of Legislative Decree no. 81/08, one or more workers tasked with implementing the necessary measures both for the purpose of first aid and for the purpose of preventing fires, fire fighting, and evacuation of workers. These workers must be appropriately trained, and their appointments formalized in writing and made known to all interested personnel and to the RSPP.
- *Worker*: person who, regardless of the contract type, performs a working activity in the Employer's organization, with or without compensation, even for the sole purpose of learning a trade, art, or profession (art. 2 letter a) of Legislative Decree no. 81/08).

In addition to the flows of information provided for in the meeting phase pursuant to art. 35 of Legislative Decree no. 81/08, the Management Review will also be held at least on a yearly basis, attended by:

- Employer;
- Management representative;
- RSPP;
- RSGI;
- Central or Local Physician in charge.

During the Review, the following aspects of the Integrated Occupational Health and Safety Management System are assessed:

- the results of the internal audits and of the assessments on compliance with legislation (see audit reports);
- communications from the outside interested parties, including complaints;
- occupational safety performance;
- degree of achievement of goals and objectives;
- state of implementation of corrective and preventive actions;
- progress of actions provided for by prior Management Reviews;
- change in surrounding situations, including developments of legal prescriptions and of other prescriptions related to their own occupational health and safety risks;
- suggestions provided by RSGI to improve the SGI;

- management of any irregular and emergency situations;
- analysis of real or potential accidents;
- recommendations for improvement.

### 8.3 Documentation of the Occupational Health and Safety Management System

The main documents constituting the SGS are:

- Integrated environmental, health, and safety policy
- Integrated management manual
- “*Risk Assessment Document*” reporting the following information:
  - description of the company;
  - corporate roles in the matter of health and safety (Employer, Director delegated for safety, manager, worker, RSPP, Physician in charge, RLS, emergency unit);
  - accident trends;
  - risk assessment and methods adopted;
  - emergency management, including prevention and protection measures;
  - integrated management procedures;
  - forms;
  - modes of operation;
  - Improvement programme;
  - Emergency plan.

### 8.4 Identification of sensitive areas and activities in the context of the offences committed with violation of the rules safeguarding health and safety at the workplace

The analysis of corporate processes carried out during the Project <sup>18</sup> allowed the activities to be identified in whose sphere the criminal offences referred to by art. 25-*septies* of Legislative Decree no. 231/01 might in the abstract occur. The following is a list of the examined processes:

- 1. Planning:** the activity of planning and organizing the roles and activities connected with safeguarding occupational health, safety, and hygiene is aimed at:
  - setting objectives in line with corporate policy;

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<sup>18</sup> In this regard, see paragraph 3.1 of the General Section.

- establishing the processes needed to achieve the objectives;
  - defining and assigning resources.
- 2. Implementation and Operation:** the Implementation and Operation activity is aimed at defining:
- organizational structures and responsibilities;
  - training, consultation, and communication procedures;
  - procedures for managing the document, document control and data system;
  - operative control procedures;
  - emergency management.
- 3. Control and corrective actions:** the control and corrective actions activity is aimed at defining:
- monitoring and measuring performance;
  - recording and monitoring of injuries, accidents, nonconformities, corrective and preventive actions;
  - record management procedures;
  - procedures for carrying out periodic audits.
- 4. Management Review:** Corporate Management's periodic review is aimed at assessing whether the health and safety management system was completely developed, and if it is sufficient for carrying out the company's objectives and policy.

## 8.5 Principles of behaviour and of implementation of decision-making processes

### 8.5.1 Principles of behaviour

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above (25-septies of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

Preventing injuries and safeguarding health and safety at the workplace is a fundamental need for protecting own and third parties' human resources. In this setting, commitment is also made to preventing and suppressing behaviours and practises that may bring the effect

of demeaning the employee in his or her professional capacities and expectations, or that cause his or her marginalization in the working environment, discredits him or her, or harms his or her image. In particular, the fundamental principles and criteria underlying the decisions in the matter of health and safety are:

- avoiding risks;
- assessing the risks that cannot be avoided;
- combatting risks at the source;
- adjusting the work to the person, particularly as concerns the conception of the workplaces and the choice of working equipment and of the working and production methods, also for the purpose of attenuating monotonous work and repetitive work, and to reduce the effects on health of these kinds of work;
- taking into account the degree of technical evolution;
- replacing what is hazardous with that which is not hazardous, or less hazardous;
- planning prevention, aiming towards a consistent complex that integrates, in the same technique, organization of work, working conditions, social relations, and the influence of factors of working environment;
- prioritizing collective protection measures over personal protection measures;
- imparting appropriate instructions to the workers.

#### **8.5.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities.

For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

#### **A. Planning**

For this activity, the regulations provide for:

**Policy and objectives:** the existence of a formalized Policy document that defines the orientations and general objectives in the matter of health and safety that the company resolves to achieve:

- formally approved by the company's top management;
- containing the commitment to comply with the applicable health and safety laws in force and with the other subscribed requirements;
- containing the commitment to preventing occupational illnesses and injuries, and to the continuous improvement of the performance and management of the health and safety system;



- appropriately disseminated to employees and to the interested parties<sup>19</sup>;
- periodically reviewed to ensure that the objectives indicated in it are appropriate for and adjusted to the risks present in the organization (e.g. new regulations and laws).

Yearly and multi-year **Plans**: the existence of an occupational health and safety Improvement Plan/Investment Plan, approved by the delegated corporate bodies:

- containing a clear identification of due dates, responsibilities, and availability of the resources needed for implementation (financial, human, logistical, and of equipment);
- made suitably known to the organization so personnel has a sufficient understanding thereof;
- that provides for the responsibilities in the matter of approving, making, and reporting the expenditures in terms of health, safety, and the environment.

**Legal and other prescriptions**: the existence of corporate rules that define criteria and procedures to be adopted for:

- updating with regard to relevant legislation, and the other applicable prescriptions in the matter of health and safety;
- identifying where these prescriptions are applied (corporate area) and the procedures for disseminating them.

## **B. Implementation and Operation**

For these activities, the regulations provide for:

**The system's rules and documentation**: the existence of corporate procedures that regulate roles, responsibilities in managing the documentation concerning the health and safety management system (e.g. Manual, Procedures, Working instructions) in keeping with the corporate Policy and Guidelines. In particular, the aforementioned procedures also report those for managing, archiving, and keeping the produced documentation (e.g.: archiving / protocol procedure to guarantee a suitable level of traceability / verifiability).

**Organization and Responsibilities – Employer**: the existence of organizational provisions to identify the figure of the employer, taking into account the organizational structure of the Company and of the sector of productive activity.

**Organization and Responsibilities – RSPP/ASPP/Physician in charge/Emergency employees**: the existence of organizational provisions regarding the designation of the Prevention and Protection Department Manager (*Responsabile del Servizio di Prevenzione e Protezione* – RSPP), of the Prevention and Protection Department Employees (*Addetto del Servizio di Prevenzione e Protezione* – ASPP), of the Physician in charge, and of the Emergency management employees, that:

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<sup>19</sup> Individuals or groups interested or involved in, or influenced by an organization's occupational health and safety performance.

- define the specific requirements in line with the provisions of law in force;
- see that the verifications made with regard to possessing the specific requirements provided for by the regulations in force are traceable;
- see to carrying out the personnel assessment in order to comprehend their abilities and the time at their disposal to cover specific roles;
- formally designate and attribute assignments;
- see that the formal acceptance of the conferred assignments is traceable.

**System of delegations of functions:** the existence of a system of delegations of functions prepared in accordance with the following principles developed by jurisprudence:

- effectiveness / existence and presence of the delegate's decision-making and financial autonomy;
- the delegate's experience and technical/professional suitability;
- supervision of the delegate's activity, non-acquiescence, non-interference;
- certainty, specificity, and awareness.

The formalized system of delegations of functions involves the existence of corporate rules that:

- i) clearly identify the delegation's sphere of operation;
- ii) guarantee verification of the traceability and permanence of the delegations of functions, and the traceability of the express acceptance of the delegation of functions by the delegates/sub-delegates;
- iii) explicitly indicate whether or not it is possible for the delegate to sub-delegate health and safety functions;
- iv) entail the traceability of the criteria based on which the consistency between delegated functions and assigned decision-making and expenditure powers is determined;
- v) define control procedures as to the delegate's possessing the technical and professional prerequisites, a periodical plan for the delegate's professional and technical development and updating, and a periodic assessment system evaluating his or her technical/professional skills;
- vi) provide for a formalized continuous/periodic flow of information between the delegating and the delegated parties;
- vii) regulate a formalized supervision activity.

**Identifying and assessing risks – Roles and responsibilities:** the existence of corporate rules that identify roles, responsibilities, and procedures for carrying out, approving, and

updating the overall and documented assessment of all the risks present in the company setting. In particular, this procedure:

- identifies roles, authorities, competence requirements, and training needs of personnel responsible for identifying dangers, identifying risk, and controlling risk;
- identifies responsibilities for verifying, approving, and updating the Risk Assessment Document (*Documento di Valutazione dei Rischi – DVR*);
- identifies procedures and criteria for reviewing, in determined times or periods, the danger identification and risk assessment processes;
- where necessary, calls for the traceability of the Physician in charge's involvement in the danger identification and risk assessment process;
- calls for assessing the various types of risk source: ordinary or generic, ergonomic, specific, process, and organizational dangers, and identification of homogeneous areas in terms of danger within the company;
- calls for identifying the workers' representative duties;
- calls for censusing and characterizing the chemical agents and the equipment and machines present;
- calls for explicit definition of the assessment criteria adopted for the various risk categories in compliance with the requirements and regulations in force.

**Presence of the Risk Assessment Document (*Documento di Valutazione dei Rischi – DVR*):** the existence of the Risk Assessment Document drawn up in accordance with the defined provisions, containing at least:

- the assessment proceedings, specifying the adopted criteria;
- identification of the prevention and protection measures and of the personal protective equipment resulting from the assessment;
- programme of measures deemed appropriate for guaranteeing improvement of safety levels over time.

**Operative control – Entrusting tasks and duties:** the existence of corporate rules identifying the criteria and procedures defined for the Employer to entrust duties to workers. In particular, this procedure:

- defines the criteria for entrusting duties to workers based on their abilities and conditions with respect to their health and safety, and to what emerged from the results of the health verifications that were performed;
- defines the organizational measures for the participation of the Physician in charge and of the RSPP in defining the workers' roles and responsibilities;

- provides for the traceability of the assessment activities performed towards this end (e.g. defining targeted check lists, such as lists of critical tasks and/or processes impacting health and safety).

**Operative control – Personal protective equipment (PPE):** the existence of corporate rules for managing and distributing Personal Protective Equipment and maintaining it in efficient working order. In particular, this procedure:

- defines procedures for verifying such necessary requirements as PPE's resistance, suitability, and maintenance in a good state of conservation and efficiency;
- calls for the traceability of the activities of delivering and checking the function of PPE (e.g. targeted check lists, such as lists of personal protective equipment to be delivered, shared with the RSPP).

**Emergency management:** the existence of corporate rules for managing emergencies, aimed at mitigating the effects on the population's health and on the outside environment. In particular, this procedure calls for:

- identifying the measures for controlling risk situations in the event of emergency;
- identifying the procedures for leaving the workplace or the hazardous area where a grave and immediate danger persists;
- procedures for the intervention of the workers charged with implementing the measures of fire prevention, evacuation of workers in the event of grave and immediate danger, and first aid;
- identifying the measures for avoiding risks to the population's health, or deterioration of the outside environment;
- indication as to the procedures and timing/frequency of emergency tests.
- Fire risk management: the existence of corporate rules defining the necessary measures for preventing fires. In particular, this procedure contains:
  - roles and responsibilities of the activities to be performed, for the purpose of requesting issuance and renewal of the fire prevention certificate (*certificato prevenzione incendi* – CPI), including monitoring of the prescriptions required by the fire department;
  - indications as to the procedures for informing the workers as to the norms of behaviour to be implemented in the event of fire;
  - procedures for keeping and checking fire-fighting equipment;
  - indications as to the procedures for keeping and updating the fire record.

**Periodic meetings:** the existence of a calendar that schedules periodic meetings of all the figures charged with verifying the situation in the management of the issues related to health

and safety, and an appropriate dissemination of the meetings' results within the organization, in compliance with the legal regulations in force.

**Consultation and communication:** the existence of corporate rules governing the dissemination of health and safety information, guaranteeing to all corporate levels knowledge of use for identifying, reducing, and managing risks in the working environment. In particular, this procedure regulates:

- periodic information from the employer to the workers;
- informing the Physician in charge, where necessary, as to the processes and risks connected with productive activity.

**Information and training:** the existence of corporate rules that govern the training process. In particular, this procedure:

- defines procedures for training each worker in: enterprise risks; prevention and protection measures; specific risks and safety regulations; characteristics of hazardous substances (safety data sheets and norms of good operational practise); emergency procedures; names and roles of the RSPP and of the physician in charge; where applicable, instructions in using working equipment and personal protective equipment;
- defines the criteria for delivering the training of each worker (e.g. hiring, transfer, or change of duties, introduction of new equipment, technologies, hazardous substances);
- with reference to the parties involved in managing health and safety issues, defines the identification of the setting, and the training content and procedures depending on the role taken on within the organizational structure (Workers' Safety Representatives, Prevention and Protection Department Employees, Emergency Crews, and First Aid);
- defines the times for delivering training to the workers based on the defined procedures and criteria (defining a Training Plan on a yearly or multi-year basis).

**Training:** the existence of corporate rules governing the training activities. In particular, this procedure provides for:

- roles and responsibilities in the process of managing the training activities;
- timing of training activities for the purposes of prevention and protection;
- setting, content, and procedures for training all the parties involved in using working equipment, machines, plant, substances, devices and procedures.

**Relations with suppliers and contractors – information and coordination:** the existence of corporate rules that define:

- procedures and content of information that must be provided to outside enterprises with regard to the set of rules and prescriptions that a contractor winning an order must be acquainted with and undertake to comply with and to see that its employees comply with it;

- roles, responsibilities, and procedures for developing the Risk Assessment Document indicating the measures to be adopted to eliminate the risks due to interferences between workers in the event of different enterprises involved in carrying out a project.

**Relations with suppliers and contractors – qualification:** the existence of corporate rules that define procedures for qualifying the suppliers. In particular, this procedure takes into account:

- the results of the verification of the technical and professional prerequisites of contractors pursuant to article 26, paragraph 1 and article 90, paragraph 9 of Legislative Decree no. 81/08;
- compliance, by that which may have been supplied, with the purchase specifications and the best technologies available in the area of protecting health and safety.

**Relations with suppliers and contractors – contract clauses:** the existence of standard contract clauses regarding safety costs in supply contracts, contracting, and subcontracts.

**Management of assets:** the existence of corporate rules governing the activities of maintaining/inspecting the corporate assets in order that their integrity and adequacy may always be guaranteed. In particular, these rules provide for:

- roles, responsibilities, and procedures for managing assets;
- periodic verifications of the assets' integrity and adequacy, and of compliance with the applicable regulatory requirements;
- the planning, performance, and verification of the inspection and maintenance activities using suitable and qualified personnel.

### **C. Control and corrective actions**

Regulation of the activity establishes:

**Measuring and monitoring performance – injuries:** the existence of a procedure that indicates:

- roles, responsibilities, and procedures for the reporting, surveying, and internal investigation of injuries;
- roles, responsibilities, and procedures for the reporting, traceability, and investigation of the injuries/accidents that took place, and of “near misses”;
- procedures for operative managers to report accidents/injuries to the employer and to the manager of the prevention and protection department;
- roles, responsibilities, and procedures for monitoring the injuries that have occurred (taking into account any pending disputes/litigation with regard to injuries occurring at places of work) in order to identify the areas at greatest injury risk.

**Performance measurement and monitoring – other data (other than injuries and accidents):** the existence of a procedure that defines roles, responsibilities, and procedures for recording and monitoring (through the use of indicators) for:

- health surveillance data;
- data on the safety of plant (hoisting apparatus and lifts, electrical systems, pressure equipment, underground tanks, laser equipment, machines);
- data on the hazardous substances and preparations used at the company (safety data sheets);
- data other than injuries and accidents (taking into account any disputes/litigation that have arisen) for the purpose of identifying the areas at greatest injury risk.

**Performance measurement and monitoring – suits/disputes:** the existence of procedures that define roles, responsibilities, and procedures for monitoring pending disputes/litigation with regard to injuries occurring at places of work, in order to identify the areas at greatest injury risk.

**Audit:** the existence of a procedure that regulates roles, responsibilities, and operative procedures regarding the activities of the auditing and periodic verification of the efficiency and effectiveness of the safety management system. In particular, this procedure defines:

- the timing for scheduling the activities (formalized auditing plan);
- the skills needed for the personnel involved in the audit activities, in compliance with the principle of the auditor's independence of the activity that must be verified;
- the procedures for recording the audits;
- the procedures for identifying and applying the corrective actions should deviations be found from what was prescribed by the health and safety management system in the company, or from the applicable prescriptions and regulations;
- the procedures for verifying the implementation and effectiveness of the aforementioned corrective actions;
- the procedures for announcing the audit's results to Senior Management.

**Reporting:** the existence of corporate rules that regulate the roles, responsibilities, and operative procedures of the activities of reporting to Top Management. This report must guarantee the traceability and availability of the data regarding the activities connected with the safety management system, and in particular the periodic sending of information related to:

- deviations between the results obtained and the planned objectives (including regulatory developments, changes in systems, in the process, or in the corporate procedures that may necessitate updating the mapping and the Model);

- results of the audits (including accident/injury investigation reports, review reports, and any communications/reports originating from outside stakeholders, such as Control Bodies and third parties).

#### **D. Management Review**

Regulation of the activity establishes:

**Conduct of the review process:** the existence of a procedure that defines roles, responsibilities, and procedures for conducting the review process performed by Top Corporate Management with regard to the effectiveness and the efficiency of the health and safety management system in the company. This procedure provided for carrying out the following activities:

- analysis of any deviations between the results obtained and the planned objectives;
- analysis of the results of the audits;
- analysis of the results of the monitoring of the health and safety management system (injuries, other data);
- state of progress of any improvement actions defined in the previous review;
- identification of the improvement objectives for the subsequent period, and the need for any modifications to elements of the health and safety management system in the company;
- traceability of the activities performed.



## 9. SPECIAL SECTION F- Computer crimes and unlawful processing of data

### 9.1 Criminal offences regarding computer crimes and unlawful processing of data (art. 24-bis of Legislative Decree no. 231/01)

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

Law no. 48 of 18 March 2008, "Ratification and execution of the Convention of the Council of Europe on Cybercrime, done in Budapest on 23 November 2001, and regulations to adjust the entire legal system," broadened the criminal offences that may generate liability for companies.

The object of protection for the regulation in question are the **computer systems** (to be understood as "any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data" - Art. 1 Budapest Convention of 23 November 2001), or **computer data** – to be understood as "any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function."

Moreover, the difference between the concept of "computer system" and that of "online system" is highlighted: the former is in fact the set of hardware and software components that permit the automatic processing of data, which is to say the device normally called a "computer," along with the programs and data needed for operation. But when two or more computer systems are connected to one another by telecommunications networks, they give rise to a "online system," characterized by the ability to exchange data, which is to say the remote transfer of information and processing: the best example is the Internet. In essence, "online systems" or "telematics" arise from the need to apply the "telecommunications" system to "information technology."

Art. 7 of law no. 48/2008 introduced into the Decree art. 24-bis "Computer crimes and unlawful processing of data," which ascribes entities' administrative liability to the crimes identified below:

#### **Electronic documents (art. 491-bis of the criminal code)**

"If some of the forgeries provided for in this chapter regard a public electronic document having evidentiary effect, the provisions of said chapter concerning public documents shall apply."

The regulation subjects to criminal law the commission of forgery offences through the use of electronic documents. The forgery offences referred to are as follows:

**Material forgery committed by a public official in public documents (art. 476 of the criminal code):** “The public official who, in discharging his or her duties, draws up, in whole or in part, a false document or alters a true one, is punished by one to six years’ imprisonment. Forgery concerning a document or part of a document considered valid until the forgery complaint is punishable by three to ten years’ imprisonment.”

**Material forgery committed by a public official in certificates or administrative authorizations (art. 477 of the criminal code):** “The public official who, in discharging his or her duties, counterfeits or alters certificates or administrative authorizations, or, through counterfeiting and alteration, makes the conditions required for the validity thereof appear to have been met, is punished by six months’ to three years’ imprisonment.”

**Material forgery committed by a public official in authentic copies of public or private documents and in declarations attesting to the content of documents (art. 478 of the criminal code):** “The public official who, in discharging his or her duties, supposing that a public or private document exists, simulates a copy thereof and issues it in legal form, or issues a copy of a public or private document different from the original, is punished by one to four years’ imprisonment. Forgery concerning a document or part of a document considered valid until the forgery complaint is punishable by three to eight years’ imprisonment. Forgery committed by the public official in a declaration attesting to the content of public or private documents is punishable with one to three years’ imprisonment.”

**Criminal misrepresentation committed by a public official in public documents (art. 479 of the criminal code):** “The public official who, in receiving or forming a document in the discharge of his or her duties, falsely attests that a fact was done by him or her, or took place in his or her presence, or attests as received by him or her declarations not made to him or her, or neglects or alters declarations received by him or her, or at any rate attests falsely to facts the document is intended to verify, is subject to the penalties established in article 476.”

**Criminal misrepresentation committed by a public official in certificates or administrative authorizations (art. 480 of the criminal code):** “The public official who, in the discharge of his or her duties, falsely attests, in certificates or administrative authorizations to facts the document is intended to verify, is punished by three months’ to two years’ imprisonment.”

**Criminal misrepresentation committed by persons carrying out an essential public service (art. 481 of the criminal code):** “Whoever, in the exercise of a healthcare or legal profession, or of another essential public service, falsely attests, in a certificate, to facts the document is intended to verify, is punished by up to one year’s imprisonment or fined from € 51.00 to € 516.00. These punishments are applied jointly if the offence is committed for profit.”

**Criminal misrepresentation committed by a private party (art. 482 of the criminal code):** “Any of the offences provided for by articles 476, 477 and 478 committed by a private party, or by a public official outside the discharge of his or her functions, shall be punishable by the penalties respectively established in said articles reduced by one third”.

**Criminal misrepresentation committed by a private party in a public document (art. 483 of the criminal code):** “Whoever falsely attests to the public official, in a public document, to

facts the document is intended to verify, is punished by up to two years' imprisonment. Cases of false declarations in civil deeds are punishable by no less than three months' imprisonment."

**Forgery in records and notifications (art. 484 of the criminal code):** "Whoever, being obliged by law to make records subject to inspection by public safety authorities, or to make notifications to said authorities as to their industrial, commercial, or professional operations, writes or has others write false indications, is punished by up to six months' imprisonment or fined up to € 309.00".

**Forgery of a signed blank piece of paper. Public document (art. 487 of the criminal code):** "The public official who, in making wrongful use of signed blank piece of paper in his or her possession by reason of his or her office and on grounds that entail the power or obligation to complete it, writes therein, or allows others to write therein, a public document other than that for which he or she was authorized or under obligation, is subject to the penalties established respectively in articles 479 and 480".

**Other forgery of a signed blank piece of paper. Applicability of the regulations on forgery (art. 488 of the criminal code):** "Cases of forgery of a signed blank piece of paper other than those referred to in article 487, are subject to the provisions regarding forgery of public deeds."

**Use of false documents (art. 489 of the criminal code):** "Whoever, without being complicit in the forgery, uses a false document, is subject to the penalties established in the above articles, reduced by one third".

**Suppression, destruction, and concealment of genuine documents (art. 490 of the criminal code):** "Whoever, in whole or in part, destroys, suppresses, or conceals a real public document or, in order to procure a benefit for him or herself, or for others, or to cause damage to others, destroys, suppresses, or conceals a holographic will, a bill of exchange, or another security transmissible by endorsement or to the true bearer, is subject respectively to the penalties established in articles 476, 477, and 482, in accordance with the distinctions contained therein".

**Authentic copies taking the place of missing originals (art. 492 of the criminal code):** "To the effects of the previous provisions, the term "public documents" and "private contracts" shall include the original documents and the authentic copies thereof, when pursuant to the law they take the place of missing originals."

**Forgery committed by public employees entrusted with a public service (art. 493 of the criminal code):** "The provisions of the above articles on forgeries committed by public officials shall also apply to employees of the State or of another public entity, entrusted with a public service regarding the documents that they draw up in the discharge of their responsibilities."

#### **Unauthorized access to a computer or online system (art. 615-ter of the criminal code)**

This offence is committed by anyone who gains unauthorized access to a computer or online system protected by security measures, or maintains access thereto against the express or tacit will of whoever is entitled to exclude him or her.

***Possession and unauthorized circulation and installation of devices, codes, and other media suitable for gaining access to computer or online systems (art. 615-quater of the criminal code)***

This offence is committed by anyone who, in order to procure a benefit for him or herself or for others, or to cause damage to others, without authorization procures, holds, produces, reproduces, disseminates, imports, communicates, delivers, makes available in some other way to others or installs devices, instruments, parts of devices or of instruments, codes, passwords, or other means useful for accessing a computer or online system protected by security measures, or at any rate provides indications or instructions suitable for said purpose.

***Unlawful holding, dissemination, and installation of equipment, devices, or computer programs aimed at damaging or interrupting a computer or online system (art. 615-quinquies of the criminal code)***

This offence is committed by anyone who, in order to unlawfully damage a computer or online system, the information, data, or programs contained therein or pertaining thereto, or to foster the total or partial interruption or alteration of its operation, unlawfully obtains, holds, produces, reproduces, imports, circulates, communicates, delivers, or at any rate makes available in some other way to others or installs equipment, devices, or computer programs.

***Unlawful interception, hindrance, or interruption of computer or online communications (art. 617-quater of the criminal code)***

The offence, which may be committed by anyone, consists of the fraudulent interception or the hindrance or the interruption of communications with regard to a computer or online system, or between a number of systems.

Unless the act constitutes a graver offence, the same penalty applies to anyone who, using any medium of information to the public, reveals, in whole or in part, the content of the communications as per the first paragraph.

***Unlawful holding, dissemination, and installation of equipment, devices, or computer programs aimed at damaging or interrupting a computer or online system (art. 615-quinquies of the criminal code) (art. 617-quinquies of the criminal code)***

This offence is committed by anyone who, in order to unlawfully damage a computer or online system, the information, data, or programs contained therein or pertaining thereto, or to foster the total or partial interruption or alteration of its operation, unlawfully procures, holds, produces, reproduces, imports, circulates, communicates, delivers, or at any rate makes available in some other way to others or installs equipment, devices, or computer programs.

***Damage to computer information, data, or programs (art. 635-bis of the criminal code)***

The offence, unless the act constitutes a graver offence, consists of the destruction, deterioration, deletion, alteration, or suppression of computer information, data, or programs belonging to another party, implemented by anyone.

***Damage to computer information, data, or programs used by the State or by another public entity, or at any rate of public utility (art. 635-ter of the criminal code)***

The offence, which may be committed by anyone, consists – unless the act constitutes a graver offence – of the commission of a fact aimed at destroying, deteriorating, deleting, altering, or suppressing computer information, data, or programs used by the state or by another public entity or pertinent to them, or at any rate of public utility.

***Damage to computer and online systems (art. 635-quater of the criminal code)***

The offence, unless the act constitutes a graver offence, is committed by anyone who, through the conduct pursuant to article 635-bis of the criminal code, or through the introduction or transmission of data, information, or programs, destroys, damages, or makes computer or online systems belonging to others unusable, in whole or in part, or gravely obstructs their operation.

***Damage to computer and online systems of public utility (art. 635-quinquies of the criminal code)***

The offence is committed if the act pursuant to art. 635-quater of the criminal code is designed to destroy, damage, or make computer and online systems of public utility unusable, in whole or in part, or to gravely obstruct their operation.

***Computer fraud by a party performing electronic signature certification services (art. 640-quinquies of the criminal code)***

The offence is committed by the party that performs electronic signature certification services who, in order to procure undue profit for him or herself or for others or to cause damage to others, violates the obligations established by law for issuing a qualified certificate.

## **9.2 Identification of sensitive areas and activities in the context of computer crimes and unlawful processing of data**

The analysis of corporate processes carried out during the Project<sup>20</sup>, allowed the activities to be identified in whose sphere the criminal offences referred to by art. 24-bis of Legislative Decree no. 231/01 might in the abstract occur. The following is a list of the examined processes:

- 1. Management of user profiles and of the authentication process**
- 2. Management and protection of the work station**

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<sup>20</sup> In this regard, see paragraph 3.1 of the General Section.

3. Management of accesses to and from the outside
4. Management and protection of networks
5. Management of the system outputs and of the storage devices (e.g. USB, CD)
6. Physical security (includes safety of cables, network devices, etc.)

### 9.3 Principles of behaviour and of implementation of decision-making processes

#### 9.3.1 Principles of behaviour

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above (24-*bis* of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

Based on the international standards of reference, the term “corporate computer security system” is to be understood as the set of technical and organizational measures aimed at ensuring the protection of the integrity, availability, and confidentiality of the automated information and of the resources used to acquire, store, process, and communicate said information.

According to this approach, the fundamental objectives of computer security that the Company sets for itself are the following:

- **Integrity:** guarantee that each corporate datum is truly and completely representative, objectively and without interpretations, of the content to which it refers. This objective is pursued through the adoption of appropriate countermeasures that impede accidental or intentional alterations that may change their original meaning or, alternatively, provide the possibility of finding said alteration of the datum and recovering the intact datum.
- **Confidentiality:** guarantee that a corporate datum is made available solely to applications and users charged with and authorized for the use thereof;
- **Availability:** guarantee of retrievability of corporate data depending on the needs of continuity of corporate processes and compliance with regulations (of law and otherwise) that impose historical conservation or given service levels.

In particular, this Special Section consequently provides for the following standards of behaviour with reference to the subjects indicated above:

- a) prohibition against altering public or private electronic documents having evidentiary effect;
- b) prohibition against unlawfully accessing the computer or online system of public entities or private parties;
- c) prohibition against gaining unauthorized access to one's own computer or online system for the purpose of altering and/or deleting data and/or information;
- d) prohibition against possessing and using, without authorization, codes, passwords, or other means suitable for accessing a computer or online system of competing parties, public or private, for the purpose of acquiring confidential information;
- e) prohibition against possessing and using, without authorization, codes, passwords, or other means for accessing a computer or online system, in order to acquire confidential information;
- f) prohibition against carrying out activities of procurement and/or production and/or dissemination of equipment and/or software for the purpose of damaging a computer or online system of public or private parties, the information, data, or programs contained therein, or against fostering the total or partial interruption or alteration of the operation thereof;
- g) prohibition against carrying out fraudulent activity of intercepting, obstructing, or interrupting communications regarding a computer or online system of public or private parties in order to acquire confidential information;
- h) prohibition against installing equipment for intercepting, obstructing, or interrupting communications of public entities or private parties;
- i) prohibition against carrying out activities of modification and/or deletion of data, information, or programs of private parties or public entities, or at any rate of public utility;
- j) prohibition against carrying out activities damaging computer or online information, data, and programs belonging to others;
- k) prohibition against destroying, damaging, and rendering unusable computer or online systems of public utility;
- l) prohibition against unduly using, exploiting, circulating, or reproducing on any grounds, in any form, for profit or for personal uses, intellectual property of any kind covered by copyright.

Therefore, the subjects indicated above shall:

1. use the information, applications, and equipment exclusively for work-related reasons;
2. not lend or transfer any computer equipment to third parties without the prior authorization of the Manager of the Systems, General Affairs, and Security Area;

3. report to the Systems, General Affairs, and Security Area and to the Manager of its own Office the theft, damage, or misplacement of said instruments; moreover, should a theft take place or a computer device of any kind be misplaced, the interested party, or the party to whom it was delivered, by no later than 24 hours after the event, shall deliver to IT the original of the report made to the public security authority;
4. avoid introducing and/or keeping at the Company (in hardcopy, on computer support, and through the use of corporate instruments), on any grounds and for any reason, computer documentation and/or material of a confidential nature and the property of third parties, unless said materials were acquired with their express consent;
5. avoid transferring outside the Company and/or transmitting files, documents, or any other confidential documentation that is the property of the Company itself or of another Group company, except for purposes strictly pertaining to the discharge of their own duties, and at any rate with the prior authorization of their own Manager;
6. avoid leaving their own PC unguarded and/or accessible to others;
7. avoid using passwords of other corporate users, even for accessing protected areas in that person's name and on his or her behalf, without the express authorization of the Information Technologies Manager;
8. avoid using software and/or hardware tools designed to intercept, falsify, alter, or suppress the content of communications and/or of computer documents;
9. use the Internet connection for the purposes and time strictly needed to perform the activities that necessitated the connection;
10. comply with the established standards and procedures, promptly reporting to the competent offices any anomalous uses and/or operations of the computer resources;
11. use on the Company's equipment only products officially acquired by the company;
12. refrain from making copies of data and software that are not specifically authorized;
13. refrain from using the available computer tools outside the prescribed authorizations;
14. comply with any other specific regulation regarding accesses to the systems and protection of the company's data and applications;
15. comply scrupulously with what is provided for by the corporate security policies for the protection and control of computer systems.

### **9.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive Activities for the purposes of adjustment to Regulation (EU) 679/2016 in the matter of the production of personal data (GDPR), which constitute an additional support against the commission of the predicate offences as per this Special Section.



For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

ORGANIZATION, MANAGEMENT, AND CONTROL MODEL PURSUANT TO LEGISLATIVE DECREE NO. 231/01  
 - SPECIAL SECTIONS AND APPENDIX A -

	Security policies	Security organization for internal users	Security organization for external users	Classification and control of assets	Physical and environmental safety	Management of communications and operativity	Access control	Management of accidents and problems	Audits	Human resources and security	Cryptography	Security in acquisition, development, and maintenance
Management of user profiles and of authentication process	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management and protection of work station	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management of access to and from the outside	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management and protection of networks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management of system outputs and of storage devices (es. USB, CD)	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Physical security (includes safety of cables, network devices, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

**Computer Security Provisions:** the standard requires the existence of an information system security policy that, among other things, provides for:

- a) procedures for communicating to third parties as well;
- b) procedures for the review thereof, periodical or following significant changes.

**Security organization for internal users:** the standard requires the existence of a regulatory instrument that defines roles and responsibilities in the management of the access procedures of users inside the company, and their obligations in using the computer systems.

**Security organization for external users:** the standard requires the existence of a regulatory instrument that defines roles and responsibilities in the management of the access procedures of users outside the company, and their obligations in using the computer systems, as well as in the management of relations with third parties in the event of access, management, communication, supply of products/services for the processing of data and information by said third parties.

**Classification and control of assets:** the standard requires the existence of a regulatory instrument that defines roles and responsibilities for the identification and classification of the corporate assets (including data and information).

**Physical and environmental security:** the standard requires the existence of a regulatory instrument that provides for adopting controls for the purpose of preventing unauthorized accesses, damage, and interference with the premises and assets contained therein, by securing the areas and the equipment.

**Management of communications and operativity:** the standard requires the existence of a regulatory instrument that ensures the information systems' correct and secure operativity by means of policies and procedures. In particular, this regulatory instrument ensures:

- a) the proper and secure operation of the information processors;
- b) protection from dangerous software;
- c) backup of information and software;
- d) protection of the exchange of information through the use of all types of tools for communication, also with third parties;
- e) the tools for carrying out the tracking of the activities performed on the applications, the systems, and the networks, and protection of said information against unauthorized accesses;
- f) verification of the logs recording the users' activities, exceptions, and security-related events;
- g) control over the changes in the processors and the systems;
- h) management of removable devices.

**Access control:** the standard requires the existence of a regulatory instrument governing accesses to information, the information systems, the network, the operating systems, and the applications.

In particular, this regulatory instrument provides for:

- a) individual authentication of users by means of a user identification code and password, or other secure authentication system;
- b) control lists of personnel qualified to access the systems, as well as specific authorizations of the various users or categories of users;
- c) a registration/de-registration procedure to grant and revoke access to all the information services and systems;
- d) revisitation of the users' access rights in accordance with pre-established time intervals, using a formal process;
- e) removal of access rights in the case of cessation or change of the type of relationship that attributed the access right;
- f) access to network services exclusively by users that were specifically authorized, and restrictions on the users' ability to connect to the network;
- g) segmentation of the network so that it may be possible to ensure that the connections and flows of information do not violate the regulations on controlling accesses to corporate applications;
- h) closure of inactive sessions after a predefined period of time;
- i) the keeping of storage devices (e.g. USB keys, CDs, external hard disks, etc.), and
- j) adoption of clear screen rules for the processors used;
- k) plans and modes of operation for telework activities.

**Management of accidents and problems of computer security:** the standard requires the existence of an instrument that defines adequate procedures for processing accidents and the problems related to computer security. In particular, this regulatory instrument provides for:

- a) appropriate management channels for communicating Accidents and Problems;
- b) periodic analysis of all individual and recurring accidents, and identification of the root cause;
- c) management of the problems that generated one or more accidents, until their final solution;
- d) analysis of reports and trends in Accidents and Problems, and identification of preventive actions;

- e) appropriate management channels for communicating any observed or potential weakness of the systems or services themselves;
- f) analysis of the documentation available on the applications, and identification of weaknesses that might generate problems in the future;
- g) use of information databases to support Accident resolution;
- h) maintenance of databases containing information on known and still unresolved errors, the respective workarounds and the final solutions identified or implemented;
- i) quantification and monitoring of types, volumes, and costs for accidents connected with computer security.

**Audits:** the standard requires the existence of a regulatory instrument that regulates the roles, responsibilities, and modes of operation of the periodic activities verifying the efficiency and effectiveness of the computer security management system.

**Human resources and security:** the standard requires adopting a regulatory instrument that provides for:

- a) assessment (before hiring or the execution of a contract) of the experience of the persons who are to perform IT activities, with particular reference to the security of information systems and that takes into account the applicable regulations, the ethical principles, and the classification of the information to which said parties shall have access;
- b) specific training activities and periodic updates on the corporate computer security procedures for all employees and, where relevant, for third parties;
- c) the obligation, for employees and third parties at the time of conclusion of the employment relationship and/or of the contract, to return the assets supplied for carrying out the working activity (e.g. PC, cellphones, authentication token, etc.);
- d) removal, for all employees and third parties, of rights of access to information, systems, and applications at the time of the conclusion of the employment relationship and/or of the contract, or in the event change in the duty carried out.

**Security in acquiring, developing, and maintaining information systems:** the standard requires adopting a regulatory instrument that defines:

- a) identification of security requirements in the design phase or modifications of the existing information systems;
- b) management of risks of errors, losses, and unauthorized modifications of information processed by the applications;
- c) confidentiality, authenticity, and integrity of the information;
- d) security in the information systems development process.

## 10. SPECIAL SECTION G – Copyright violations

### 10.1 Criminal offences in the matter of copyright violations (art. 25-novies of Legislative Decree no. 231/01)

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

Article 25-novies of Legislative Decree no. 231/01, introduced by art. 15 paragraph 7, letter c) of Law no. 39 of 23 July 2009, most recently amended by Law no. 93 of 14 July 2023 and titled “Copyright violation offences,” reads as follows:

1. With regard to the commission of the offences provided for by articles 171, first paragraph, letter a-bis), and third paragraph, 171-bis, 171-ter, 171-septies and 171-octies of law no. 633 of 22 April 1941 (hereinafter, the “copyright law”), the entity is assessed a pecuniary sanction of up to five hundred shares.
2. In the case of conviction for the offences pursuant to paragraph 1, the entity shall be subjected to the debarment sanctions provided for by article 9, paragraph 2, for a duration of no more than one year. This is without prejudice to the provisions of article 174-quinquies of the aforementioned law no. 633 of 1941.

The regulations in question protect the *moral right*, and the right of *economic use* by their author:

- of *intellectual works* having a *creative* nature, belonging to literature, music, the figurative arts, architect, theatre and film-making, whatever the mode or form of expression may be;
- *computer programs* as literary works pursuant to the *Berne Convention* for the Protection of Literary and Artistic Works ratified and made executive with Law no. 399 of 20 June 1978, as well as the *data banks* that, by the choice or disposition of material, constitute an intellectual creation of the author.

In particular, the protection includes:

1. literary, dramatic, scientific, educational, and religious works, in both written and oral form;
2. musical works and compositions, with or without words, dramatic/musical works, and musical variations constituting on their own an original work;
3. choreography and works of pantomime, whose outline has been set down in writing or otherwise;

4. works of sculpture, painting, the art of drawing, of etching, and of similar figurative arts, including scenography;
5. architectural drawings and works;
6. works of silent or sound film-making, provided that this is not simple documentation protected pursuant to the norms of chapter five, title two;
7. photographic works and those expressed by procedure similar to photography;
8. computer programs, expressed in any form, provided they are original, as a result of the author's intellectual creation;
9. data banks understood as "collections of works, data, or other independent elements systematically or methodically arranged and individually accessible using electronic media or in another way." Moreover, the protection of the data banks does not extend to their content, and leaves the existing rights to this content unharmed;
10. works of industrial design that on their own have creative character and artistic value.

Also protected as original creations are collective works, which bring together several intellectual works or parts thereof, and the creative elaborations of pre-existing intellectual works, such as translations into another language (e.g. film dubbing), reworkings and adaptations.

Copyright arises from a creative fact that is externally perceivable and that therefore acquires an expressive form. It is not necessary that the creation be fixed on a support, as it can have an expressive form, for example, in oral communication, but it is excluded that the mere idea, precisely because it is unexpressed, may be protected by copyright.

Creation is intellectual work when, as an expression of the author's personality, it is characterized by novelty and originality. These two prerequisites can, as has been seen, also exist in collective works, mostly literary works such as encyclopaedias and newspapers – for which the creative activity consists more properly of the creative contribution of whoever organizes and directs the assemblage of pre-existing works – and in the creative elaborations of another person's intellectual work.

*Moral rights* arise for the author of the intellectual work out of the mere fact of creation. Unlike the *rights of economic use*, they are inalienable and may be invoked at any time, even after being devoid of the possibility of disposing economically of the asset being protected.

Like moral rights, rights of economic use also generally arise from the mere fact of creation; exceptions, however, are the creation of data banks, of computer programs, and of works of industrial design by the employed worker. In these cases, while the moral rights of the author/employee remain non-transferable, the use rights are instead acquired as original by the employer.

Different is the case of the producer of a film work, who will be the exclusive owner of the use rights which regard the work's cinematographic exploitation, without prejudice at any rate to

the moral and economic rights of the four co-authors (author of the story, author of the screenplay, the composer of the music, and the director), with respect to the film work (see art. 46 of the copyright law) and without prejudice to their exclusive use rights for the individual contributions (story, screenplay, and music, but not the direction), that do not impair the producer's rights. The meaning of this provision becomes clear when considering that, without the means of production and the film organization activities, it would be unthinkable that the creative contributions of the individual co-authors could be cinematographically developed; the film producer's contribution is thus indispensable. The film's use rights are at any rate limited to the exploitation of the work, and it is established that the producer may neither modify nor transform the work, except within the limits of the modifications needed for the film adaptation.

Distinguished from use rights are the rights connected with the film producer. They cannot be qualified as copyright, even in the economic sense, because they pertain to a set of situations deemed by law as deserving protection independently of the creation of an intellectual work.

The provision of the related rights responded to the need to prevent audio and video piracy as a phenomenon counter to the legitimate earning expectations of the audio and film producer who – regardless of the content of the produced medium – is entitled to enjoy the economic exploitation thereof, or of the copies derived therefrom, and thus the exclusive right to authorize such operations as reproduction, distribution, making available to the public, or rental.

Those who exercise the activity of radio or television broadcasting also hold related rights, including the exclusive right to authorize recording, reproducing, or distributing the broadcasts, or making them available to the public.

Related rights are also held by performing artists and interpreters, such as musicians, dancers, and singers, who have the exclusive right not only to authorize the recording of their own artistic performances, but also to authorize and draw earnings therefrom. Regardless of the granted rights, the producers of sounds, interpreters and performers are also entitled to receive a compensation for the for-profit use of the sounds (produced by them, or for which the recording of artistic performances was authorized) by means of cinematography and radio and television broadcasting, including communication to the public via satellite.

The criminal offences to which article 25-*novies* of Legislative Decree no. 231/01 refers in the matter of violation of copyright are:

- ***Making available to the public, in a system of online networks, through links of any kind, and without being so entitled, a work or part of a work of intellectual property protected by copyright (art. 171, paragraph 1, letter a-bis), Law no. 633/1941).***



- **Crimes as per the above point, committed with regard to the work of another party not intended for publication, or by falsely claiming authorship of the work, or by deforming, mutilating, or otherwise altering said work, if the author's integrity or reputation is harmed (art. 171, paragraph 3, Law no. 633/1941).**

Art. 171, paragraph 1, letter a *bis*, punishes whoever implements any form available to the public intellectual works protected by copyright, by introducing them into a system of online networks.

It is to be specified that the same acts aimed for profit are subject to the provisions of art. 171-*ter*, second paragraph, letter a *bis*.

- **Unauthorized duplication, to draw profit therefrom, of computer programs, importing, distribution, sale, and possession for commercial or other business purpose, or rental of programs contained on media not marked by SIAE; preparation of media to permit or facilitate the arbitrary removal or functional avoidance of devices protecting computer programs (art. 171-*bis*, paragraph 1, Law no. 633/1941).**
- **Reproduction on media not marked by SIAE, transfer to another medium, distribution, communication, presentation, or public demonstration of the content of a data bank in order to draw profit therefrom; extraction or reuse of the data bank in violation of the provisions on the rights of developers or users of a data bank; distribution, sale, or rental of data banks (art. 171-*bis*, paragraph 2, Law no. 633/1941).**

The first paragraph describes the unlawful conduct through a number of expressions (“duplicates without authorization [...] computer programs or [...] imports, distributes, sells, possesses for commercial or other business purpose or rents”) all referring to particular modes of use of the software, that are liable to prejudice the financial interests of the holder of the exploitation rights thereto. In essence, the indication of the prohibited behaviour is made by art. 171-*bis*, making reference to the content of the various rights of economic use of the intellectual work.

As to the notion of duplication, this conduct, with reference to the software, consists in the first place of copying files from a material support – which may be the hard disc of a personal computer, a floppy disc, or a compact disc – to another support of a type similar to that indicated here, in such a way that the party performing the duplication gains possession of the data without the prior *de facto* situation being modified to the detriment of the original holder.

However, the activities indicated by the law do not necessarily presume the existence of a material support, and might also be committed by unauthorized downloading of a program.

The provision in question is held to include violations of a program's license agreement; therefore, there is also liability for unlawful reproduction when failing to comply with the

contractual conditions governing the relationships between the holder of the corresponding rights and the program's user.

Moreover, in order to be of relevance under criminal law, the duplication must determine the production of an identical copy of the program, and not re-elaboration or the creation of new software, even if similar, under the condition that the program providing "inspiration" has not been unduly used or altered for this operation.

However, the back-up copy that the user produces to avoid loss of the program lies outside the scope of the regulation.

Moreover, it is pointed out that the program's duplication or unauthorized distribution must be aimed towards making a profit. This objective goes beyond earning alone, as it is not limited to seeking gain, but also characterizes conduct inspired by a purpose of savings, in the sense of non-diminution of property (e.g. using the same program on a number of stations).

As regards the commercial or business purpose that possessing the program must have, these are purposes that pertain to the context of the action, and thus this (static) activity will be of relevance not only when intended for sale, but also when directed towards the program's merely internal use within a company, or if it is useful or necessary in carrying out the business activity.

The same law also punishes the rental of programs not marked by SIAE<sup>21</sup>, in those cases where such marking is required. The reason becomes clear when considering that the rights of economic use are independent of one another, as they cannot be individually transferred (e.g. the license agreement for a given support does not confer the right to rent it, in the same way that acquiring legitimate possession of material protected by copyright does not also include the right of disseminating it in public), and that the mark on each individual support gives rise to the content of the right enclosed within it (e.g. usually, on CDs containing music files or video games, there is a warning that rental is prohibited).

Only the support that has passed through the virtually necessary intermediation of SIAE, even when it is not subject to marking, guarantees that the rights of economic use to the intellectual work enclosed therein have been respected.

The second part of the first paragraph of art. 171-*bis* punishes the act of duplication, distribution, sale, possession, and rental referring (not to the supports containing the computer program, but) to "any medium understood solely to permit or facilitate the arbitrary removal or functional avoidance of devices applied to protect a computer program."

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<sup>21</sup> The Italian society of authors and publishers (Società italiana degli autori ed editori – SIAE) places a mark on each support containing computer or multimedia programs, and on any support containing sound, voice, or moving images, that involves the recording of works or parts of works intended at any rate to be placed on the market or made available for use on any grounds for profit.

This mark shall at any rate have such characteristics that it cannot be transferred onto another support; it must contain such elements as to permit identification of the title of the work for which it was requested, of the author's name, and of the producer or holder of the copyright; it must lastly indicate a progressive number for each reproduced or recorded work, as well as its availability for sale, rental, or any other form of distribution.

This regulation achieves a form of anticipation of the protection of the financial interests that have been harmed, aimed at preventing access and unlawful duplication of the software precisely through the use of means designed to remove or avoid protection systems, as demonstrated by the fact that the law requires “that the means being referred to have as its sole purpose that of overcoming the protections put in place to safeguard the software.”

With regard to the conduct pursuant to art. 171-*bis*, paragraph 2, it is pointed out that the unlawful nature of the conduct cannot be ascribed to the ordinary exercise of the querying activities for private use carried out by the users authorized therefor, and on the presumption of a normal management of the data bank; it is triggered only if the management limits of collection are exceeded, or there is damage to the developer.

- **Crimes committed for profit, for reasons other than personal use, and marked by one of the actions described under art. 171-*ter*, paragraph 1, of Law no. 633/1941:**
  - unauthorized duplication, reproduction, transmission or public dissemination by any means of all or part of intellectual works developed for television or movie theatre use; sale or rental of discs, tapes or analog or other media containing sounds or images from musical works, films or similar audiovisual works or sequences of moving images (letter a);
  - unauthorized reproduction, transmission or public broadcast by any means of all or part of literary, theatrical, scientific, educational, musical, theatrical music or multimedia works, even when included in collective or composite works or data banks (letter b);
  - introduction into Italy, possessing with intent to sell or distribute, distributing, offering for sale, renting or transferring under any title, projecting in public, television broadcasting by any means and radio broadcasting of the unauthorized duplications or reproductions referred to in letters a) and b) without having taken part participating in their duplication or reproduction (letter c);
  - possession with intent to sell or distribute, distribution, offering for sale, renting or licensing under any title, public projection and television or radio broadcast by any means of video cassettes, music cassettes, any other medium containing sounds or images from musical works, films or audiovisual works or sequences of moving images, or of any other media that are required to carry affixed the SIAE mark and which, instead, do not carry such mark or carry a counterfeit or altered mark (letter d);
  - retransmission or broadcast by any means of an encrypted service received by means of devices or portions of devices designed to decode data transmitted with conditional access, without the approval of the lawful distributor (letter e);

- introduction into Italy, possessing with intent to sell or distribute, distributing, selling, renting, transferring under any title, promoting the sale of and installing special decoding devices or components to access an encrypted service without paying the required fee (letter f);
- manufacturing, importing, distributing, selling, renting, transferring under any title, advertising the sale or rental or possessing for commercial purposes equipment, products or components or services the commercial use or primary purpose of which is to bypass effective technological protective measures, or which have been designed, produced, adapted or built to allow or facilitate the bypassing of said measures (letter f-bis);
- unauthorized removal or alteration of electronic information concerning the rights referred to in Article 102-*quinquies*, or distributing, importing with intent to distribute, broadcasting by radio or television, communicating or making available to the public works or other protected materials in which the aforementioned electronic information has been removed or altered (letter h);
- unlawful – also by the procedures indicated under paragraph 1 of article 85-bis of the consolidated public security law, as per Royal Decree no. 773 of 18 June 1931 – recording onto digital, audio, video or audiovisual medium, in whole or in part, of a film, audiovisual, or publishing work, or unlawful reproduction, performance, or communication to the public of the unlawfully made recording (h-bis).<sup>22</sup>
- **Crimes characterized by one of the following actions described under art. 171-ter, paragraph 2, Law no. 633/1941:**
  - reproduction, duplication, transmission or unauthorized broadcast, sale or commerce, transfer under any title or unauthorized importation of more than 50 copies or originals of works protected by copyright and related rights (letter a);
  - publication for profit in a system of online networks, by any means, of an intellectual work, or portion thereof, protected by copyright, in violation of the author's exclusive right to communicate it to the public (letter a-bis);
  - performance of the actions referred to in Article 171-ter, paragraph 1, of Law no. 633/1941, by anyone who engages as a business in reproducing, distributing, selling, marketing or importing works protected by copyright and related rights (letter b);
  - promoting or organizing the unlawful activities referred to in art. 171-ter, paragraph 1, of Law no. 633/1941 (letter c).

The provisions of art. 171-ter, paragraphs 1 and 2 are to protect the rights of the producers of sounds or images, and are aimed at sanctioning so-called audio and video “piracy.” The

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<sup>22</sup> Letter introduced by article 3, paragraph 1, of Law no. 93 of 14 July 2023

party so entitled must authorize the reproduction and public dissemination of those intellectual works that are intended for sale and for the television and film market, in the same way that the reproduction and dissemination of supports containing sounds or images of musical, film, or audiovisual works must be authorized.

Subject to the same authorization are the reproduction or dissemination of literary, theatrical, musical, and other such works, or parts thereof, since said rights belong exclusively to the holder of the rights of economic use of the work: when these activities are performed without authorization and are intended for commerce (this constituting the purpose of profit), they rise to the level of the offence in question.

The rights of the producers or at any right of the holders of the rights of exploitation of the intellectual work shall also be deemed violated by those who, even if not having materially reproduced or disseminated the protected works of the sound or video supports containing an intellectual work, possess them for sale or for distribution, screen them in public, or broadcast them by radio or television or allow them to be heard in public.

If it is the producer that has the exclusive right to economically exploit the produced work, each of the indicated operations that is thus designed to achieve undue profit in fact constitutes unlawful economic exploitation of the work.

Inspired by the same reason is the provision under criminal law for the cases where the operations indicated above regard supports not marked by SIAE (in cases where the mark is mandatory): the lack of the mark, according to the law, in fact is a presumption of the support's unlawfulness.

Another criminal offence is committed when whoever has used a work "with conditional access" retransmits or disseminates it without authorization to do so.

Punished from the same perspective are the manufacture, distribution, and advertising for sale or rental, or the possession for commercial purposes, of devices that permit unlawful access to services with conditional access (for the payment of a fee) – such as the (unpermitted) removal of anti-piracy devices and the broadcast by radio or television of protected material from which said devices were removed. The protection under criminal law of the rights of economic use of the protected work, while on the one hand extending to those activities that threaten the violation of copyright, on the other hand leads also to punishing those who have benefitted from the material so "altered."

- **Failure to communicate to SIAE the identification data of supports for which the SIAE mark is not required, by the manufacturers or importers of such media or false declaration as to compliance with SIAE marking requirements (art. 171-septies, of Law no. 633/1941).**

Supports not subject to SIAE marking are not exempt from SIAE's intermediation, and thus the producer or importer that intends to offer said supports for sale on national territory shall be required to promptly report to SIAE the work's identification data.

- **Fraudulent manufacture, sale, importation, installation, modification and utilization for public or private use of devices or parts thereof designed to decode audiovisual broadcasts with conditional access over the air, by satellite or by cable, in analog or digital form (art. 171-octies, of Law no. 633/1941).**

The law punishes not only those who install and use (for public or private use), for fraudulent purposes, decoders of encrypted (“with conditional access,” “regardless of the imposing of a fee”) television broadcasts, but also those who manufacture or distribute said devices.

## **10.2 Identification of the sensitive areas and activities in the context of the offences in the matter of copyright violation**

The analysis of corporate processes carried out during the Project<sup>23</sup> allowed the activities to be identified in whose sphere the criminal offences referred to by art. 25-novies of Legislative Decree no. 231/01 might in the abstract occur:

- 1. Purchase of film/television and audiovisual products, sequences of moving images, and other works protected by copyright, and the free TV rights thereto (including any accessory rights)**
- 2. Purchase of film/television and audiovisual products, sequences of moving images, and other works protected by copyright, and the full rights thereto**
- 3. Co-production of film and home video works**
- 4. Sale to Public Administration and to private customers of film and audiovisual works, sequences of moving images, and other works protected by copyright, produced or purchased by third parties (including rights) and Distribution of film and home video products**
- 5. Production and distribution of CDs and DVDs**
- 6. Publication of content on Internet site/corporate web channels**
- 7. Installation of protected computer programs (e.g. software and data banks)**

## **10.3 Principles of behaviour and of implementation of decision-making processes**

### **10.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts) to:

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<sup>23</sup> In this regard see paragraph 3.1 in the General Section.

- implement, collaborate towards, or give cause to the behaviours that – considered individually or collectively – constitute, directly or indirectly, the criminal offenses included among those considered above (art. 25-*novies* of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

Within the sphere of said behaviours, it is particularly forbidden:

- to make illegitimately available to the public a protected intellectual work, or part thereof, by introducing it into a system of online networks, through links of any kind;
- to duplicate, import, distribute, sell, possess, install, or rent, without authorization, computer programs contained in supports not marked SIAE;
- to use means designed to permit or facilitate the arbitrary removal or functional avoidance of devices protecting the programs as above;
- to unlawfully reproduce, transfer onto another support, distribute, communicate, present, or exhibit in public the content of a data bank, or to unlawfully extract or reuse, distribute, install, sell, or rent same, or the data contained therein;
- to unlawfully duplicate, reproduce, transmit, or broadcast in public an intellectual work intended for the television or film circuit, or that of sale or rental of sounds or images from musical works, films or audiovisual works or sequences of moving images on any medium, literary, theatrical, scientific, educational, musical, theatrical music or multimedia works;
- to introduce into Italy, possess with intent to sell, offer for sale, or at any rate transfer on any grounds, or transmit by any means, the unauthorized duplications or reproductions as above;
- to possess with intent to sell, offer for sale, transfer under any title, transmit by any means, sounds or images of musical, film, or audiovisual works or sequences of moving images on any medium, that are required to carry affixed the SIAE mark and which, instead, do not carry such mark or carry a counterfeit or altered mark;
- to retransmit or broadcast by any means of an encrypted service received by means of devices or portions of devices designed to decode data transmitted with conditional access, without the approval of the lawful distributor;
- to introduce into Italy, possess with intent to sell, offer for sale, transfer under any title, commercially promote, or install special decoding devices or components to access an encrypted service without paying the required fee;
- to manufacture, sell, rent, transfer under any title, advertise for sale or rental, possess for commercial purposes, or use for commercial purposes equipment, products or components or services designed to bypass technological protective measures protecting copyright and other rights connected with the exercise thereof;

- to remove without authorization or alter the electronic information protecting copyright and other rights connected with the exercise thereof, or to distribute, import for the purposes of distribution, broadcast, communicate by any medium, or make available to the public works or other protected materials in which the aforementioned electronic information has been removed or altered;
- to produce, offer for sale, import, promote, install, modify, utilize for public and private use, for fraudulent purposes, devices or parts thereof designed to decode audiovisual transmissions with conditional access, over the air, by satellite or by cable, in analog or digital form.

Therefore, the above parties shall:

- purchase, develop, and put online only content (photographs, video sequences, poetry, comments, reviews, articles and other written content, music files in any format) with license agreement or at any rate in compliance with the regulations governing copyright and the other rights connected with their use;
- verify (by one or more managers expressly delegated for this purpose) beforehand, where possible, or by specific and even periodic control activity, with the utmost rigour and promptness, that the online content is in compliance with the regulations in force governing copyright and rights connected with the use of protected intellectual works;
- verify that for all the above content that is introduced online by third parties or acquired by the Company and brought online, there is express assumption of liability by said third parties as to compliance with the regulations in force governing copyright and the other rights connected with the use of protected intellectual works;
- likewise, verify that the introduction online of all the aforementioned content by users takes place upon identification (registration and authentication) of said users and their express assumption of liability as to bringing online content protected by the regulations governing copyright and the other rights connected with the use thereof;
- in any event, it will be necessary to guarantee the traceability of all operations of uploading, entry of content into blogs, forums, communities, etc., and the immediate removal of those not in compliance with the regulations governing copyright and the other rights connected with the use thereof;
- use only software with license agreement and within the limits and under the conditions provided for by the regulations in force and by the license itself, except for downloadable computer programs available for free use, again under the conditions and within the limits provided for by law or by the holder of the copyright and of the other rights connected with the use thereof;



- use only data banks with license agreement and within the limits and under the conditions provided for by the regulations in force and by the license itself, except for those that are freely consultable, again under the conditions and within the limits provided for by law or by the holder of the copyright and of the other rights connected with the use thereof, also as regards searching, extracting, processing, reprocessing, and publishing the data contained therein.

### **10.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities.

For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

- 1. Purchase of film/television and audiovisual products, sequences of moving images, and other works protected by copyright, and the free TV rights thereto (including any accessory rights)**
- 2. Purchase of film/television and audiovisual products, sequences of moving images, and other works protected by copyright, and the full rights thereto**
- 3. Co-production of film and home video works**

The activity is carried out in compliance with the control standards reported in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

Moreover, carrying out this activity provides for:

- the obligation to comply with the requirements dictated by the regulations governing moral and financial copyright, with specific reference to the use, conservation, and distribution of texts, music, drawings, image, photographs, computer programs, and data banks protected by copyright (“Works”).

In particular, it is necessary to comply with:

- the applicable provisions of law with reference to the acquisition, conservation, use, reproduction, duplication, processing, dissemination, and distribution (also via online networks) of Works or parts thereof;
- the provisions of law protecting the authorship of the works, as well as the established limitations upon the right of duplication of computer programs, and of reproduction, transfer, distribution and/or communication of the content of data banks;
- authorization mechanisms for the use, reproduction, processing, duplication, and distribution of Works or parts thereof;
- adoption of protection instruments (e.g. access rights) regarding the conservation and archiving of Works, ensuring they are inventoried;

- verification – in the phase of receiving supports containing computer programs, data banks, sounds or images of musical, film, or audiovisual works or sequences of moving images – of the presence thereon of the mark by the authorities charged with supervising copyright, or these supports' exemption from said obligation;
- the involvement of the competent Structure in defining, where applicable, contract clauses containing the commitment/certification (as the case may be) that the counterparty:
  - is the legitimate holder of the rights to economic exploitation of the works protected by copyright being transferred, or has obtained from the legitimate holders authorization to license the use thereof to third parties;
  - holds the Company harmless of any damage or harm that may be caused it by the untruthfulness, inaccuracy, or incompleteness of said declaration.

**4. Sale to Public Administration and to private customers of film and audiovisual works, sequences of moving images, and other works protected by copyright, produced or purchased by third parties (including rights) and Distribution of film and home video products**

**5. Production and distribution of CDs and DVDs**

**6. Publication of content on the corporate website**

The activity is carried out in compliance with the control standards reported in “Special Section F – Computer crimes and unlawful processing of data,” to which reference is to be made.

**7. Installation of protected computer programs (e.g.: software and data banks)**

The activity is carried out in compliance with the control standards reported in “Special Section F – Computer crimes and unlawful processing of data,” to which reference is to be made, and in compliance with the control standards discussed for the “Purchase of works, goods, and services” process and reported in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

Moreover, carrying out this activity provides for:

- the obligation to comply with the provisions of law protecting the authorship of the works, as well as the established limitations upon the right of duplication of computer programs, and of reproduction, transfer, distribution and/or communication of the content of data banks;
- authorization mechanisms for the use, reproduction, processing, duplication, and distribution of Works or parts thereof;

- adoption of protection instruments (e.g. access rights) regarding the conservation and archiving of Works, ensuring they are inventoried;
- formalized verification – in the phase of receiving supports containing computer programs, data banks, sounds or images of musical, film, or audiovisual works or sequences of moving images – of the presence thereon of the mark by the authorities charged with supervising copyright, or these supports' exemption from said obligation;
- management of the software licenses that, among other things, provides for: a) the procedures for defining the need; b) the procedures for managing the license purchasing process; c) the procedures for verifying the licenses in use, in comparison with those purchased;
- regulation of the installation of protected computer programs and identification of a party responsible for purchasing protected computer programs, other than the party responsible for the installation thereof.

## 11. SPECIAL SECTION H – Environmental crimes

### 11.1 Relevant offences of environmental crimes

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01, specifying that only offences regarding waste management and protection of stratospheric ozone are applicable to Rai Cinema's business.

#### **Crimes provided for by the Criminal code**

##### ***Killing, destroying, capturing, removing, possession of protected wild animal or plant species (art. 727-bis of the criminal code)***

Except where the act constitutes a greater offence, whoever, outside of the permitted cases, kills, captures, or possesses specimens belonging to a protected species of animal is subject to one to six months' arrest, or fined up to € 4,000 euro, except in cases where the act regards a negligible quantity of said specimens and has a negligible impact on the species' conservation status.

Whoever, outside the permitted cases, destroys, removes, or possesses specimens belonging to a protected wild plant species is subject to a fine of up to € 4,000, except in cases where the act regards a negligible quantity of said specimens and has a negligible impact on the species' conservation status.

For the purposes of application of the provision in question, the term "protected plant or animal species" shall be understood as those indicated in annex IV to directive 92/43/EC and annex I to directive 2009/147/EC.

##### ***Habitat destruction within a protected site (art. 733-bis of the criminal code)***

Whoever, outside the permitted cases, destroys a habitat within a protected site, or who at any rate deteriorates it, compromising its conservation status, is subject to up to eighteen months' arrest and to a fine of no less than € 3,000.

For the purposes of application of the provision in question, the term "habitat within a protected site" is to be understood as any habitat of species for which a zone is classified as a zone under special protection pursuant to article 4, paragraphs 1 or 2, of directive 2009/147/EC, or any natural species or a habitat of species for which a site is designated a special zone pursuant to art. 4, paragraph 4, of directive 92/43/EC.

The risk of committing this offence may be run in the case of corporate activities carried out in the protected natural areas.

##### ***Environmental pollution (art. 452-bis of the criminal code)***

Subject to two to six years' imprisonment and a fine of € 10,000 to € 100,000 is anyone who unlawfully causes significant and measurable impairment or deterioration:

1. of water or air, or extended or significant portions of the soil or subsoil;
2. of an ecosystem, of biodiversity, including agricultural biodiversity, of flora or of fauna.

When the pollution is produced in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural, or archaeological constraints, or harms protected animal and plant species, the punishment is increased.

***Environmental disaster (art. 452-quater of the criminal code)***

Outside of the cases provided for by art. 434, anyone who unlawfully causes an environmental disaster is subject to five to fifteen years' imprisonment.

The following shall constitute, alternatively, environmental disaster:

1. the irreversible alteration of an ecosystem's balance;
2. the alteration of an ecosystem's balance whose elimination is particularly onerous and achievable only by exceptional measures;
3. offense against public safety given the event's importance due to the extent of the impairment or of its harmful effects, or due to the number of people offended or exposed to danger.

When the disaster is produced in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural, or archaeological constraints, or harms protected animal and plant species, the punishment is increased.

***Unintentional environmental offences (art. 452-quinquies of the criminal code)***

If any of the crimes as per art. 452-bis and art. 452-quater is committed out of negligence, the penalties established by said articles are reduced by one third to two thirds.

If the commission of the crimes as per the above paragraph gives rise to the danger of environmental pollution or of environmental disaster, the penalties are reduced by an additional third.

***Crimes of association aggravated by being aimed (also concurrently) at the commission of the offences present in Title VI bis of the criminal code (art. 452-octies)***

When the association pursuant to art. 416 is aimed, exclusively or concurrently, at the purpose of committing any of the offences provided for by this Title, the penalties established by said article 416 are increased.

When the association pursuant to art. 416 is aimed at committing any of the offences provided for by this Title, or at acquiring the management or at any rate the control of economic activities, of concessions, of authorizations, or contracts, or of public services in environmental matters, the penalties established by said article 416 are increased.

The penalties pursuant to the first and second paragraphs are increased by one third to one half if the association includes public officials or persons tasked with a public service that exercise offices or perform services in environmental matters.

***Trafficking and abandoning highly radioactive material (violation of art. 452-sexies)***

Unless a more serious offence is committed, anyone who unlawfully transfers, purchases, receives, transports, imports, exports, procures for others, holds, transfers, abandons, or illegitimately disposes of highly radioactive material is subject to two to six years' imprisonment and a fine of € 10,000 to € 50,000.

The penalty as per the first paragraph is increased if the fact gives rise to the danger of impairment or deterioration:

1. of water or air, or extended or significant portions of the soil or subsoil;
2. of an ecosystem, of biodiversity, including agricultural biodiversity, of flora or of fauna.

If the crime results in a hazard to people's life and health, the penalty is increased by up to one half.

***Crimes provided for by the Environmental Code pursuant to Legislative Decree no. 152 of 03 April 2006***

***Water pollution (art. 137)***

- unauthorized discharge (authorization suspended, revoked, or lacking altogether) of industrial wastewater containing hazardous substances (paragraph 2);
- discharge of industrial wastewater containing hazardous substances in violation of the requirements imposed with the authorization or by competent authorities (paragraph 3):
- discharge of industrial wastewater containing hazardous substances in violation of the established limits or the more restrictive limits set by regions or autonomous Provinces, or by the competent authority (paragraph 5, first and second sentences);
- violation of the prohibitions of discharge onto the ground, into underground water, and in the subsoil (paragraph 11):
- discharge into the sea by vessels or aircraft of substances or materials whose spillage is prohibited, except in the minimum quantities and as authorized by the competent authority (paragraph 13).

The provision in question contains 14 criminal offences. In most cases, these are crimes of so-called abstract or presumed danger, which require neither any specific or concrete likelihood of causing harm, nor that the act has endangered the protected asset.

These criminal offences can be carried out by "anyone"; but in concrete terms, given that the criminal regulation hinges upon the industrial nature of the water, these are crimes of the

business itself, or at any rate of whoever carries out the service's artisanal or productive activity.

The protection under criminal law is subdivided into four types of offence:

- a) discharge without authorization, or with suspended or revoked authorization;
- b) exceeding the limit values contained in some tables attached to the consolidated environmental law or the more restrictive values set by the regions, autonomous provinces, or administrative authorities;
- c) failure to comply with the provisions contained in the authorization, or with prescriptions or measures of the competent authorities or prohibitions laid down in other state or regional provisions;
- d) violation of the obligations of conserving the data regarding automatic checks or communication thereof, and of the obligation to allow those responsible for the check to access production facilities.

***Unauthorized waste management (art. 256)***

- collection, transport, recovery, disposal, trade, and intermediation of hazardous and non-hazardous waste in the absence of the required authorization, registration, or communication (art. 256, paragraph 1, letters a) and b))
- developing or managing an unauthorized dump (art. 256, paragraph 3, first sentence)
- developing or managing an unauthorized dump intended, even in part, for the disposal of hazardous waste (art. 256, paragraph 3, second sentence)
- prohibited activities of mixing waste (art. 256, paragraph 5)
- temporary deposit of hazardous medical waste at the place of production (art. 256, paragraph 6)

Of the possible forms of unlawful waste management (own waste or waste produced by others), paragraph 1 of article 256 contemplates collection, transport, recovery, disposal, trade, and intermediation, if implemented outside the prescribed mechanisms of control by Public Administration, and in the absence of the required authorizations, registrations, or communications.

As a misdemeanour, the offence is punishable whether intentional or out of negligence, indifferently.

It is a crime of abstract danger, since lawmakers punish the exercise of activities outside the preventive control of Public Administration also in the event that, in concrete terms, the various activities are carried out with respect for the environment.

Paragraph 3 punishes anyone who develops or manages an unauthorized dump.

In order that there be a dump, it is necessary that waste be left in a given area designated for this purpose on a steady, if not a genuinely regular, basis; conversely, this behaviour does not include occasional acts of leaving waste, which come under the offences pursuant to art. 255, paragraph 1 and art. 256 paragraph 2. The dump also differs from an uncontrolled disposal site by its permanent nature.

The management of the dump, however, is an activity that comes after it is made; this may be done by the developer itself or by other parties, and consists of activating an organization of persons and things aimed at the dump's operation.

As a misdemeanour, the offence is punishable whether intentional or out of negligence, indifferently, and comes on top of the more serious possible misdemeanours provided for in the area of waste.

Paragraph 5 punishes violation of the prohibition against mixing hazardous wastes.

This criminal offence constitutes a case of common crime, given that the prohibition is aimed at all those to whom waste is materially available.

The mixing activity is to be understood as the blending of wastes, with the consequence of making it difficult or impossible to diversify the different mixed wastes.

This is a crime of an instantaneous nature, and is committed when the prohibited mixture of wastes takes place.

#### ***Contaminated sites (art. 257)***

- pollution of the soil, of the subsoil, of surface water and of underground water, exceeding the risk threshold concentrations (provided that reclamation, in compliance with the project approved by the competent authority, is not seen to) and failure to notify the competent entities (paragraphs 1 and 2). The act of pollution as per paragraph 2 is aggravated by the use of hazardous substances.

The provision in question punishes, alternatively by arrest or fine, anyone that causes pollution of the soil, of the subsoil, of surface water and of underground water, exceeding the risk threshold concentrations, if reclamation, in compliance with the project approved by the competent authority as part of an administrative proceeding for this purpose, is not seen to.

The regulation also incriminates whoever has committed potential pollution or discovers prior pollution committed by others and fails to notify the authorities.

Paragraph 2 contemplates an aggravating circumstance, subject to both arrest and a fine, in the case where the pollution is caused by hazardous substances.

The term "hazardous substances" refers to the waste indicated as such in attachment D; for the substances contained in water discharges, the reference is to be understood as to the tables cited in art. 137; to the contrary, Legislative Decree no. 152/2006 contains no definitions or classifications of hazardous substance for the air.

#### ***Falsification and use of false waste analysis certificates (articles. 258 and 260-bis)***



- drawing up of a false waste analysis certificate (with regard to information related to the waste's nature, composition, and chemical/physical characteristics) and use of false certificate during transport (art. 258, paragraph 4, second sentence);
- drawing up of a false waste analysis certificate, used as part of the waste traceability control system – SISTRI; entry of a false certificate in the data to be provided for the purposes of waste traceability (art. 260-*bis*, paragraph 6);
- transport of hazardous waste without hardcopy of the SISTRI – Handling Area data sheet, or of the analytical waste certificate, as well as use of an analysis certificate containing false statements as to the waste transported in the context of SISTRI (art. 260-*bis*, paragraphs 6 and 7, second and third sentences);
- waste transport with hardcopy of the SISTRI – Handling Area data sheet fraudulently altered (art. 260-*bis*, paragraph 8, first and second sentences). The act as per paragraph 8, second sentence, is aggravated when regarding hazardous waste.

**Unlawful traffic of waste (articles 259 and 260)**

- shipment of waste constituting unlawful traffic (art. 259, paragraph 1). The act is aggravated when regarding hazardous waste;
- organized activities, through a number of operations and arrangement of vehicles and ongoing activities, for the unlawful traffic of waste (art. 260). The offence is marked by specific criminal intent to gain undue profit, and a number of relevant acts (transfer, receiving, transport, export, import, or unauthorized management of large quantities of waste). The punishment is aggravated in the case of highly radioactive waste (paragraph 2).

Art. 259 provides for two criminal offences connected with the traffic and cross-border shipment of waste. According to EU regulation no. 1013/2006, illegal shipment is any cross-border shipment carried out a) without prior notification to the competent authorities; c) with the authorization of the competent authorities obtained through falsification, misrepresentation, or fraud; d) in a way which is not specified materially in the notification or movement documents; e) in a way which results in recovery or disposal in contravention of Community or international rules; and f) contrary to the articles of the regulation itself.

The provision as per art. 260 incriminates the more serious forms of unauthorized waste management, carried out on an ongoing and organized basis and regarding large quantities of waste.

The subjective element of the offence is specific criminal intent to gain undue profit.

The offence is not structured in the form of conspiracy; therefore, it may also be committed by a single person that manages to handle large quantities of waste without authorization.

However, for the crime to be committed, the operations have to have been actually carried out.

The offence may also be committed in the context of authorized activities, if the modes or types of processed waste violate, in whole or in part, the requirements contained in the authorizations, or other limits of law.

***Air pollution (art. 279)***

- violation, in a facility's operation, of the emission limits or of the requirements established by the authorization, by the plans and programmes, or by regulations, or by the competent authority, which results in exceeding the air quality limit values established by the regulations in force (paragraph 5).

**Offences provided for by Law no. 150 of 07 February 1992 in the matter of international trade in specimens of endangered animal and plant species, and possession of dangerous animals**

- unlawful importing, exporting, transport, and use of animal species (lacking valid certificate or permit, or contrary to the requirements dictated by these measures);
- possession, use for profit, purchase, sale, and display for sale or for commercial purposes of specimens without the required documentation; unlawful trade in artificially reproduced plants (art. 1, paragraphs 1 and 2 and art. 2, paragraphs 1 and 2). The acts pursuant to articles. 1, paragraph 2, and 2, paragraph 2, are aggravated in the case of repeat offence and of offence committed in the exercise of a business activity;
- falsification or alteration of certificates and permits; false or altered notifications, communications, or declarations for the purpose of acquiring a certificate or a permit; use of false or altered certificates and permits for the importing of animals (art. 3-bis, paragraph 1);
- possession of live specimens of mammal and reptile species, wild or reproduced in captivity, that represent a hazard to public health and safety (art. 6, paragraph 4).

The provision pursuant to art. 1 contains a full listing of unlawful acts.

This criminal law is built according to an analytical/case-by-case technique that opens with a reservation clause: "unless the act is not a greater offence."

The acts described in that article are the more serious among those provided for in the matter of unlawful international trade of super-protected species listed in Annex A of Regulation (EC) no. 338/1997.

The acts incriminated by letter a) are those of importing, exporting, and re-exporting without valid certificate or permit.

Letter b) contemplates the act of anyone who fails to comply with the requirements aimed at the safety of the specimens, as specified in an import or export permit, or in a re-export certificate.

Letter c) punishes anyone who uses the specimens of species indicated in Annex A of Regulation (EC) no. 338/1997 in a manner that deviates from the requirements contained in the authorization or certification measures that are issued along with the import permit, or certified at a later time.

Letter d) contemplates the acts of transport or transit, also on behalf of third parties, without the required certificates.

Letter e) incriminates an act not earlier established as a crime: trade in specimens of protected species.

Letter f) is subdivided into a number of unlawful acts with the common denominator of seeking profit.

The final provision of the article in question, contained in paragraph 3, concerns an administrative offence that occurs in the case of import, export, or re-export of personal or household objects derived from species indicated in paragraph 1, in violation of Regulation (EC) no. 939/1997.

With regard to the provision as per art. 2, the material object of the crime consists of the specimens (of plants and animals) of the species listed in Annexes B and C of Regulation (EC) no. 338/1997.

The acts provided for by letters a) through f) are entirely identical to those described by the same letters of article 1, although concerning species that are less endangered and therefore need of a lesser degree of protection. In fact, the penalty is either a fine or arrest with the option of a cash settlement.

Pursuant to paragraph 2, in the event of repeat offence, the aforementioned penalties, instead of being alternatives, are compounded.

Paragraph 4 lays down another administrative offence: failure to communicate the rejection of a permit or certificate application.

The regulation punishes the failure to comply with the applicant's obligation to make the prior rejection known to the management authority to which the new permit or certificate application is submitted.

The offences pursuant to art. 16 of Regulation (EC) no. 338 of 1997 of relevance for the purposes of the application of paragraph 1 are those concerning: 1) false, falsified, or invalid certificate or permit, or one altered without authorization by the issuing authority - letter a); 2) misrepresentation or false communication of scientifically false information, for the purpose of obtaining a permit or certificate – letter c); 3) use of a false, falsified, or invalid permit or certificate, or one altered without authorization, as a means to obtain an EC permit or certificate – letter d); 4) absent or false notification for importing– letter e); and 5) falsification or alteration of any permit or certificate issued pursuant to said regulation.

These are cases of falsification of documents, subject to the punishments established therefor by the criminal code.

Paragraph 2 of the article refers to Legislative Decree no. 43/1973, which is the Consolidated Law on customs matters.

The provision as per art. 6 forbids the possession of live specimens of mammal and reptile species originating from reproduction in captivity, that represent a hazard to public health and safety.

Pursuant to paragraph 2, lawmakers tasked the Ministry of Health, along with the Ministry of Agriculture and Forestry, with identifying the species as per the previous paragraph, and with drawing up the list of these specimens.

Paragraph 3 required parties who – on the date of publication in *Gazzetta Ufficiale* of the decree indicating the criteria to be applied in identifying the species as per paragraph 1 – held specimens included on the list, to report this to the prefecture with local jurisdiction by no later than ninety days after the entry into force of said decree.

Paragraph 6, on the other hand, indicates the parties to which the provisions of the above paragraphs do not apply.

#### **Offences provided for by Law no. 549 of 28 December 1993, in the matter of protecting the stratospheric ozone and the environment**

- violation of the provisions that call for ceasing and reducing the use (production, utilization, marketing, import, and export) of substances harmful to the ozone layer (art. 3, paragraph 6).

#### **Offences provided for by Legislative Decree no. 202 of 06 November 2007, in the matter of pollution of the marine environment caused by vessels**

- intentional spill of pollutants into the sea by vessels (art. 9, paragraphs 1 and 2);
- intentional spill of pollutants into the sea by vessels (art. 8, paragraphs 1 and 2).

The acts as per articles 8, paragraph 2, and 9, paragraph 2, are aggravated in the case where violation causes permanent or particularly serious damage to the quality of water, animal or plant species, or parts thereof.

### **11.2. Rai Cinema and the environment**

For the management of the sensitive activities, Rai Cinema has prepared the following documentation:

- “Integrated environment, health and safety Policy,” signed by the Employer;

- “Integrated management manual,” which defines the Rai Cinema management system in the matter of occupational health and safety and the environment;
- Form MOD SGI 4.2.0a “Internal distribution policy”;
- Form MOD SGI 4.2.0b “External distribution policy”;
- “Regulations on safety and the protection of health”;
- “Initial environmental analysis”, identifying the activities performed by Rai Cinema that have or may have a potential impact on the environment.

It is specified that the activities of ordinary and extraordinary maintenance of the buildings and plant serving the infrastructures (e.g. air conditioning systems, fire fighting equipment and systems, thermal plants, etc.) are regulated and defined on the basis of a contract between Rai Cinema and RAI, and are managed by RAI’s Purchasing Directorate.

### 11.3. Identification of sensitive areas and activities in the context of environmental offences

The analysis of corporate processes carried out during the Project<sup>24</sup>, allowed the activities to be identified in whose sphere the criminal offences referred to by art. 25-*undecies* of Legislative Decree no. 231/01 might in the abstract occur.

The following is a list of the examined processes:

1. **Planning:** the planning activity is aimed at setting objectives in line with corporate policy, establishing the processes needed to achieve the objectives, and defining and assigning resources.
2. **Implementation:** the Implementation activity is aimed at defining:
  - organizational structures and responsibilities;
  - training and communication procedures;
  - procedures for managing the document, document control and data system;
  - operative control procedures;
  - emergency management;
  - selection and monitoring of suppliers.

In particular, with reference to operative control, the identified sensitive activities are:

- management of produced waste, temporary deposit at the production site and conferral to third parties of waste for transport/elimination/recovery;
- management of assets containing substances harmful to the ozone.

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<sup>24</sup> In this regard, see paragraph 3.1 of the General Section.

3. **Control and corrective actions:** the control and corrective actions activity is aimed at implementing procedures for measuring and monitoring environmental performance.
4. **Management Review:** Corporate Management's periodic review is aimed at assessing whether the environmental management system has been completely developed, and whether it is sufficient for achieving the company's policy and objectives.

## 11.4 Principles of behaviour and of implementation of decision-making processes

### 11.4.1 Principles of behaviour

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts) to:

- implement, collaborate towards, or give cause to the behaviours that – considered individually or collectively – constitute, directly or indirectly, the criminal offenses included among those considered above (25-undecies of Legislative Decree no. 231/01);
- violate the principles and the corporate procedures provided for in this Special Section.

In particular, in the working activities and in carrying out all the operations, the Recipients must comply with the following:

- each action that may have an environmental impact must aim to reduce to a minimum the real or potential damage that may be caused to the environment;
- the materials must preferably be reused and recycled, putting off their transformation into waste for as long as possible;
- the waste must preferably be sent for recovery instead of disposed of, while diminishing as much as possible the total amount of waste produced;
- the temporary deposit and subsequent delivery of the waste must be carried out in conditions of safety and in compliance with the regulations in force;
- no waste of any kind may be thrown out or disposed of in areas other than those where its collection and delivery is prescribed; in particular the Company sees that the waste is always used, picked up, collected, and delivered in full compliance with the regulations and the authorizations established in this area, at any rate always seeing that said substances are not dispersed or spilled into the environment;
- activities related to waste processing, delivery, and transport must be seen to exclusively by parties possessing the knowledge necessary to ensure the proper performance of procedures, guaranteeing that the personnel is able to benefit from appropriate initial training, to then be supplemented with subsequent improvement of knowledge;

- in the event of contracted or subcontracted activities in which some works or phases of work are planned in areas subject to environmental protection, the Company, in addition to requiring rigorous compliance with the regulations provided for by Legislative Decree no. 152/2006 and, naturally, by Legislative Decree no. 231/01, shall see to informing the technical personnel and the workers employed in the works that the environment, as a whole, is to be protected and preserved, or at least may suffer the slightest impact possible, at any rate and always in compliance with the regulations and authorizations provided for in the area.

#### **11.4.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive Activities.

For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

##### **1. Planning**

For this activity, the regulations provide for:

**Policy:** the existence of a formalized Environment Policy that defines the framework of reference for establishing and re-examining the environmental goals and objectives that the company resolves to achieve, and that:

- is appropriate for the nature, size, and environmental impacts of the activities;
- contains the commitment to compliance with the applicable environmental laws in force, to continuous improvement, and to preventing pollution;
- is implemented and maintained active;
- is appropriately disseminated to employees and to the persons working on the organization's behalf;
- is made available to the public;
- is formally approved by the company's top management.

**Identification and assessment of environmental aspects:** the existence of corporate rules defining roles, responsibilities, and methodologies to be adopted for:

- identifying the environmental aspects of own activities, products, and services over which the organization may exercise an influence;
- assessing the significance of the environmental aspects, and taking them into consideration for the purposes of improving the environmental performance;
- traceability and updating of the process of identifying and assessing the environmental aspects.

The methodology for assessing the significance of the environmental aspects involves the regulatory criterion as an element to be subjected to assessment, and ensures that the relevant environmental aspects pursuant to Legislative Decree no. 231/01 are considered as significant in the Management System.

**Prescriptions of rules and authorizations:** the existence of corporate rules defining roles, responsibilities, and methodologies to be adopted for:

- identification of the regulatory prescriptions in force with regard to the environment, and of the prescriptions of authorizations, also through the preparation of schedules and regulatory records;
- identification of the corporate areas that come within the scope of applicability of the prescriptions, and of the actions that must be implemented;
- identification of the parties responsible for compliance with the prescriptions;
- dissemination of and accessibility to the prescriptions;
- the activity of periodic verification of regulatory updates.

**Goals and objectives:** the existence of goals and objectives for improving environmental performance, and the formalized programming thereof. In particular, the goals and objectives are:

- measurable (where possible);
- in line with the environmental Policy and established taking into consideration the significance of the environmental aspects of processes and activities, and the applicable legal prescriptions, for the purpose of guaranteeing compliance with the obligations of rules and authorizations;
- implemented and maintained active through programmes that clearly identify the responsibilities, deadlines, and means (financial, human) needed to achieve them;
- appropriately communicated within the organization.

Procedures and responsibilities are also established with regard to checking the programmes' progress, and responsibilities are established in the matter of approving, making, and reporting environment-related expenditures.

## 2. Implementation

For these activities, the regulations provide for:

**System of delegations:** the existence of a formalized system of delegations of functions in environmental matters prepared in accordance with the following principles developed by jurisprudence:

- effectiveness / existence and presence of the delegate's decision-making and financial autonomy;



- technical/professional suitability and experience of the delegate;
- supervision of the delegate's activity, non-acquiescence, non-interference;
- certainty, specificity, and awareness.

The formalized system of delegations of functions involves the existence of corporate rules that:

- i) provide for clearly identifying the delegation's sphere of operation;
- ii) guarantee verification of the traceability and permanence of the delegations, and the traceability of the express acceptance of the delegation by the delegates/sub-delegates;
- iii) explicitly indicate whether or not it is possible for the delegate to sub-delegate environmental functions;
- iv) involve the traceability of the criteria based on which the consistency between delegated functions and assigned decision-making and expenditure powers is determined;
- v) define control procedures as to the delegate's possessing the technical and professional prerequisites, a periodical plan for the delegate's professional and technical development and updating, and a periodic assessment system evaluating his or her technical/professional skills;
- vi) provide for a formalized continuous/periodic flow of information between the delegating and the delegated parties;
- vii) regulate a formalized supervision activity.

**Roles and responsibilities:** definition of roles and responsibilities for the application, maintenance, and improvement of the Environmental Management System and for the management of environmental issues.

The attribution of environmental responsibilities:

- is documented in a formalized way;
- is made known within the organization;
- is in line with the personnel's powers and organizational role;
- takes into consideration the skills needed to carry out the planned activities;
- takes into consideration the possession of any specific requirements provided for by the provisions of law in force governing the environment.

**Skills and training:** the existence of corporate rules governing the environmental training process, defining roles, responsibilities, and operative procedures. This regulations provides for:

- identifying all the personnel that carries out, for the organization or on its behalf, tasks that may cause significant environmental impacts;
- identifying, for each, the education, training, or experience acquired, and keeping the records thereof;
- identifying the training needs;
- preparing a "Training Plan" with subjects including at least the following:
  - importance of compliance with the Environmental Policy, the procedures, and the requirements of the Environmental Management System;
  - significant environmental aspects and their real or potential environmental impacts, associated with the working activity performed;
  - roles and responsibilities;
  - potential consequences of deviations from the specified procedures;
  - regulatory obligations and contents of the specific procedures aimed at guaranteeing compliance with the applicable obligations.
- keeping records on the training activity performed.

**Communication:** defining roles, responsibilities, and procedures for the management of internal and external communication (including communication and reporting to the control bodies).

With reference to internal communication, the existence of corporate rules to ensure communication between the organization's different levels and managements.

With reference to external communication and inspections, the existence of procedures defining roles, responsibilities, and procedures for the management of any inspections by the competent authorities, for the reception of requests originating from outside interested parties (including the Control Bodies), and for the management of complaints by third parties, the recording of these requests, and the traceability of responses and of the documents supplied by the organization.

**Documentation:** the existence of corporate rules governing roles, responsibilities, and procedures regarding the management and archiving of environment-related documentation.

In particular, these regulations report the procedures for the management (e.g.: approval, dissemination, updating, and control) and conservation/archiving of the document:

- defining the environment-related documents;
- defining the responsibilities for approving, reviewing, and, where necessary, updating these documents;
- defining the procedures implemented for the proper distribution of the documents and the correct use thereof (e.g.: ensuring that they remain legible and easily identifiable);

- defining the procedures for identifying obsolete documents and the procedures adopted for keeping expired or invalid documents from being involuntarily used.

In particular, the regulations govern the procedures for managing authorization documents, communications from and to the control bodies, and obligatory records.

**Operative control:** the existence of corporate rules to keep under control the significant environmental aspects associated with the Company's activity, with particular regard to the activities that may result in the commission of the environmental offences provided for in Legislative Decree no. 231/01.

**Generation of waste, temporary deposit at the production site and conferral to third parties of waste for transport/elimination/recovery:** the existence of corporate rules governing the activities of managing the waste produced by the organization, so that they may be performed in compliance with the requirements of the rules and authorizations in force. In particular, these corporate rules define roles, responsibilities, and operative procedures for:

- identifying all types of waste and assigning the EWC and any hazard characteristics, also through the use of laboratory analyses, while also establishing responsibilities and operative procedures for preparing the samples;
- compliance with the waste producer's obligations laid down by the regulations or by the authorization documents (e.g. registration with SISTRI);
- managing the collection and temporary deposit of waste in the place of production, for the purpose of guaranteeing compliance:
  - with the requirements for temporary deposit (e.g. limits on quantity and time, signage, labelling, containers, technical features of the deposit areas – e.g. waterproofing, coverage, drainage systems, construction standards);
  - with the prohibition against mixing hazardous with non-hazardous waste and with hazardous waste having different hazard characteristics, including the dilution of hazardous substances;
- making the initial and periodic verification that the registrations / communications / authorizations provided for by the waste management regulations are possessed by the third parties (intermediaries, transporters, recoverers, disposal companies) to which the waste is delivered (including verification of the vehicles' number plates);
- preparing and archiving the administrative documentation related to waste management (e.g. forms, loading and unloading record, single environmental declaration form or "MUD," analysis certificates, authorizations, registrations, communications);
- verifying reception of the fourth copy by the deadlines established by the regulations, and actions to be implemented in the event of non-reception;
- traceability of all waste-management-related activities.

**Management of assets containing substances harmful to the ozone:** the existence of corporate rules regulating the acquisition, installation, use, maintenance, and/or decommissioning of systems containing substances harmful to the ozone, in compliance with the regulatory requirements in force. In particular, the corporate rules define roles, responsibilities, and procedures operative for:

- identifying all the plant / machinery / equipment / devices that may potentially contain substances harmful to the ozone (*e.g. air conditioning and refrigeration systems, heat pumps, fire-fighting systems*) used in the context of the activities performed by the organization, and recording the type and quantities of the substances contained therein (*e.g. CFC, halon, HCFC, HBFC*);
- verifying that the substances that are present are not among those for which there are prohibitions/restrictions on use, and where applicable, decommissioning the assets and/or replacing the prohibited substances;
- periodically updating the census of the aforementioned assets;
- defining scheduled maintenance plans (*e.g. verifying gas leaks*) for the aforementioned assets, in compliance with the regulations in force (*half-yearly/yearly verifications, depending on the amounts of gas contained, use of gas leak detection instruments in compliance with the requirements*);
- traceability of all the activities related to managing assets containing substances harmful to the ozone.

**Selection of suppliers – third parties performing activities of importance from an environmental standpoint:** the existence of corporate rules for regulating the activities of selecting the suppliers and subsequently entrusting the contracts in such a way that the suppliers entrusted with activities of importance from an environmental standpoint are technically and professionally qualified and have suitable authorizations, and are contractually bound to compliance with the environmental regulations in force and the specific requirements established by the organization.

In particular, these corporate rules define roles, responsibilities, and procedures operative for:

- identifying the types of suppliers of importance from an environmental standpoint (*e.g. performing excavations, constructions, demolitions, draining, and cleaning of drains, maintenance, other activities that may entail the commission of an environmental offence*);
- performing the initial qualification and periodic requalification of the suppliers for verification of technical suitability, compliance with the regulatory requirements applicable to them, and their environmental performance (*e.g. technical suitability, possession of obligatory registrations / authorizations / qualifications, availability of suitable equipment from contractors, adoption of certified management systems*);

- defining technical specifications and contract clauses regarding issues related to compliance with applicable environmental laws (with particular reference to those connected with the environmental offences provided for by Legislative Decree no. 231/01) and assigning environmental responsibilities (e.g. responsibility in the matter of managing waste and defining the role of producer of waste that may be generated during the contracted activities, obligations in case of contamination events, obligation of periodic information to the customer, holding of any authorizations needed to perform the entrusted activity);
- defining the information that must be given to suppliers with regard to regulations and prescriptions that must be complied with in the context of performing their activities at the company's areas, or on behalf of the company (e.g. areas and procedures for managing hazardous substances and any waste that is produced, environmental emergency procedures);
- traceability of all activities related to the process of selecting and entrusting to third parties activities of importance from the environmental standpoint.

### **3. Control and corrective actions**

For these activities, the regulations provide for:

**Monitoring and measurement:** the existence of corporate rules that define:

- roles, responsibilities, and procedures for monitoring and measuring the environmental characteristics of own operations (e.g. emissions into the atmosphere, water discharges, seal of tanks and reservoirs, checks of leakage of gases harmful to ozone);
- procedures for recording and archiving information that allows performance trends and compliance with regulatory requirements and with the organization's environmental goals and objectives (e.g. analysis certificates, ongoing analysis reports, measurement reports, statements) to be monitored.

**Accidents and nonconformities:** the existence of corporate rules defining the procedures for detecting real or potential environmental nonconformities (NCs), and for identifying, recording, and implementing corrective actions (CAs) and preventive actions (PAs). In particular, the regulations define the requirements for:

- identifying and correcting the NCs and undertaking actions to mitigate their environmental impacts;
- examining the NCs, determining their causes, and undertaking actions to keep them from recurring;
- assessing the need for actions aimed at preventing NCs and implementing the appropriate actions identified to keep them from recurring;
- identifying the roles and responsibilities charged with implementing the actions and verifying they are appropriate;

- recording the results of the CAs and PAs undertaking, and reviewing their effectiveness.

**Records check:** the existence of corporate rules that define roles, responsibilities, and procedures for checking the environmental records that are prepared (identification, archiving, protection, retrievability, conservation, and elimination of records). In particular, these regulations provide for:

- identifying the types of records that must be kept (e.g.: analysis certificates, control and maintenance records, waste management records, audit and review records, environmental training records, etc.);
- defining responsibilities for collecting and keeping the records that are performed;
- defining procedures and times for collecting and keeping them;
- procedures to guarantee legibility, identifiability, and traceability of records.

**Internal audits:** the existence of corporate rules governing roles, responsibilities, and operative procedures of the activity of periodically verifying compliance with the defined environment-related procedures (Audits). In particular, these regulations define:

- the frequency of the audits and the timing for scheduling the activities;
- the skills necessary for the personnel involved in the auditing activities, in compliance with the principle of the auditor's independence with respect to the activity to be audited;
- the procedures for recording the audits;
- the procedures for identifying and applying corrective actions if deviations from what is prescribed by regulations and requirements are found;
- the procedures for announcing the results of the audit to the company's top management.

**Reporting:** the existence of corporate rules governing roles, responsibilities, and operative procedures of the activities of reporting to the Supervisory Board. This report must guarantee the traceability and availability of the data regarding the activities concerning the environmental management system, and in particular the periodic sending of information on:

- deviations between planned objectives and achieved results;
- results of the audits (including review reports and any communications/reports originating from outside interested parties, such as control bodies and third parties);

Moreover, the report must ensure that the Supervisory Board is informed as to modifications that may involve the need to update the mapping of the sensitive activities and the Model.

#### 4. Management Review

For this activity, the regulations provide for:

**Review:** the existence of corporate rules that define roles, responsibilities, and procedures for conducting the review process carried out by the company's top management, with regard to the company's management of environmental issues.

In particular, this regulation calls for carrying out the following activities, and the traceability/documentation of their performance:

- assessment of compliance with legal requirements and with the other requirements the company subscribes to;
- degree of achievement of goals and objectives, and analysis of any deviations between planned objectives and achieved results;
- analysis of the results of the Audits;
- analysis of the results of monitoring of environmental performance;
- the status of corrective and preventive actions, in addition to the progress of any improvement actions defined in the prior review;
- identification of improvement objectives for the subsequent period (taking into account the commitment to continuous improvement).

## **12. SPECIAL SECTION I – Offences of terrorism, crimes against the individual, transnational crimes, offences of organized crime, inducing someone not to testify or to make false statements to the judicial authority, employment of illegal aliens**

### **12.1 Relevant criminal offences (art. 24-ter, art. 25-quater, art. 25-quinquies, art. 25-decies, and art. 25-duodecies of Legislative Decree no. 231/01, articles.3 and 10 of law no. 146 of 16 March 2006)**

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

#### ***12.1.1 Criminal offences of organized crime referred to by art. 24-ter of Legislative Decree no. 231/01, of the crime of inducing someone not to testify or to make false statements to the judicial authority referred to by art. 25-decies of Legislative Decree no. 231/01, and the transnational crimes referred to by articles 3 and 10 of law no. 146 of 16 March 2006***

Art. 2, paragraph 29, of law no. 94 of 15 July 2009 introduced the administrative liability of entities, with the introduction of art. 24-ter, with regard to the following crimes of association:

- conspiracy (art. 416 of the criminal code), also aimed at committing crimes of child prostitution (*art. 600-bis*); child pornography (art. 600-ter), possession of pornographic material (art. 600-quater), virtual pornography (art. 600-quater.1), tourism initiatives aimed at exploiting child prostitution (art. 600-quinquies), sexual violence (art. 609-bis), sexual acts with minors (art. 609-quater), corruption of minors (art. 609-quinquies), group sexual violence (art. 609-octies), and solicitation of children (art. 609-undecies);
- conspiracy aimed at reducing to or maintaining in slavery or servitude, trafficking in persons, purchase and sale of slaves, and crimes concerning violations of the provisions on illegal immigration pursuant to art. 12 of Legislative Decree no. 286/1998 (art. 416, paragraph 6, of the criminal code)
- mafia-related conspiracy (art. 416-bis of the criminal code);
- offences committed by relying on the conditions provided for by article 416-bis of the criminal code for mafia-related conspiracies or for the purpose of facilitating the activity of these associations;
- mafia-related political election exchange (art. 416-ter of the criminal code);
- kidnapping for ransom (art. 630 of the criminal code);
- conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs (art. 74, D.P.R. no. 309 of 09 October 1990);



- unlawful manufacture, introduction into the State, placement for sale, transfer, possession and carrying in a public place or a place open to the public weapons of war or military-grade weapons, or parts thereof, explosives, clandestine weapons, as well as more common firearms, excluding those provided for by art. 2, paragraph 3, of Law no. 110 of 18 April 1975.

Art. 10 of Law no. 146 of 26 March 2006 had earlier introduced the administrative liability of entities with regard to the following crimes committed transnationally<sup>25</sup>:

- conspiracy (art. 416 of the criminal code);
- mafia-related conspiracy (art. 416-*bis* of the criminal code);
- conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs (art. 74, D.P.R. no. 309 of 09 October 1990);
- conspiracy aimed at the smuggling of foreign processed tobacco products (art. 291-*quater*, D.P.R. no. 43 of 23 January 1973);
- smuggling of migrants, for the offences pursuant to art. 12, paragraph 3, 3-*bis*, 3-*ter* and 5, of the Consolidated Law pursuant to Legislative Decree no. 286 of 25 July 1998,
- inducing someone not to testify or to make false statements to the judicial authority (art. 377-*bis* of the criminal code);
- aiding and abetting (art. 378 of the criminal code).

### ***Conspiracy (art. 416 of the criminal code)***

The criminal offence in question is committed when three or more persons conspire to commit a number of crimes. Art. 416 of the criminal code punishes those who promote or constitute or organize the conspiracy. Even the mere fact of taking part in the conspiracy is a crime. The leaders are subject to the same penalty established for promoters. The punishment is aggravated if the number of conspirators is ten or more.

Art. 416, first paragraph, of the criminal code, even before referring to the individual acts of promotion, constitution, leadership, organization, or mere participation, subordinates punishability to the moment that “three or more persons” have actually “conspired” to commit a number of crimes.

### ***Mafia-related conspiracy (art. 416-*bis* of the criminal code)***

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<sup>25</sup> In this regard, it is to be noted that transnational crime is that punishable generally by no less than four years' imprisonment, if an organized crime group is involved, and:

- a) It is committed in more than one State; or
- b) it is committed in one State, but a substantial part of its preparation, planning, direction, or control takes place in another State; or
- c) it is committed in one State, but it involves an organized crime group engaged in criminal activities in more than one State; or
- d) it is committed in one State, but has substantial effects in another State.

Conspiracy is mafia-related when those who are party to it rely on the force of intimidation of mafia membership, and on the condition of subjugation and the code of silence that derives therefrom, to commit offences, to directly or indirectly acquire management of or at any rate control over economic activities, concessions, authorizations, contracts, and public services, and to earn unfair profits or benefits for oneself or for others, or for the purpose of hindering or obstructing the free exercise of the vote, or of securing votes for oneself or others in elections.

***Conspiracy aimed at the smuggling of foreign tobacco products (art. 291-quater D.P.R. 43/73)***

Conspiracy aimed at the smuggling of tobacco products is committed when three or more persons conspire to commit a number of crimes among the criminal offences provided for by article 291-*bis* of the criminal code (which punishes those who introduce, sell, transport, purchase, or possess in the State's territory an amount of smuggled processed foreign tobacco exceeding ten conventional kilograms). Those who promote, constitute, lead, organize, or finance the conspiracy are punished – on this charge alone – by three to eight years' imprisonment.

***Conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs (art. 74, D.P.R. no. 309 of 09 October 1990)***

Conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs when three or more persons conspire to commit a number of crimes among the criminal offences provided for by art. 73 of D.P.R. no. 309/90 (unlawful production, trafficking, and possession of narcotics or psychotropic drugs). Those who promote, constitute, lead, organize, or finance the conspiracy are punished – on this charge alone – by no less than twenty years' imprisonment.

Crimes of conspiracy, and especially those pursuant to articles 416 and 416 *bis* of the criminal code, are characterized by the stable and permanent nature of the criminal agreement between the parties that constitute, take part in, promote, or organize the conspiracy.

Towards this end, the conspiracy requires a minimum organization that is stable in nature, designed to achieve the criminal aims and destined to persist even after carrying out – even only possibly – the offences actually planned. The conspiracy – which must be formed by at least three persons – is also by marked the indeterminacy of the criminal design pursued by the conspirators, who therefore must not be aiming to carry out a determined and defined number of offences.

The entity's liability emerges above all in the general figure of conspiracy, which is marked by the conspirators' mere aim to commit crimes: in this regard, it bears stressing that the target crimes of conspiracy may include any offence, such as for example fraud, tax crimes, environmental offences, money laundering, bribery, corporate offences, etc. The entity's punishability also now expressly extends to conspiracies that pursue the specific purpose of the illegal traffic of narcotics or psychotropic drugs, as well as the unlawful manufacture,

introduction into the State, offering for sale, transfer, possession, and carrying in a public place or a place open to the public weapons of war or military-grade weapons, or parts thereof, explosives, clandestine weapons, as well as more common firearms, or, transnationally, the smuggling of foreign processed tobacco products and the smuggling of migrants.

Given the special structure of the crimes in question, it bears pointing out that – in order to prevent undue extensions of the Decree’s sphere of application and in compliance with the principle of legality sanctioned by art. 2, the criteria of interest or advantage must refer to the crime of conspiracy and not to the target crimes of criminal association.

Moreover, as already pointed out, for the purposes of the existence of the offence, these offences do not necessarily have to be committed, as it is enough that they be merely included among the purposes of the conspiracy.

The entity is also punishable for the crime of mafia-related conspiracy that, pursuant to art. 416-*bis*, paragraph 3, exists when those who are party to it rely on the force of intimidation of mafia membership, and on the condition of subjugation and the code of silence that derives therefrom, to commit offences, to directly or indirectly acquire management of or at any rate control over economic activities, concessions, authorizations, contracts, and public services, and to earn unfair profits or benefits for oneself or for others, or for the purpose of hindering or obstructing the free exercise of the vote, or of securing votes for oneself or others in elections.

In this regard, it is to be pointed out that the entity’s punishability may also emerge – in addition to the participation of its senior parties or employees in the conspiracy as organizers, promoters, members, or leaders thereof – with regard to the case of “outside complicity,” which is to say when the natural person, although not actually belonging to the conspiracy and not having been party to the indeterminate and unlawful purposes it pursues, provides support to the organization, also with respect to its specific activities or interests.

It is also important to distinguish, for the purposes of the proper identification of the risk profiles connected with the crimes in question, that only in extreme and in fact particular cases may the entity be itself considered an authentic conspiracy aimed at a multitude of crimes – cases that, pursuant to art. 14, paragraph 4, result in permanent debarment from the activity. In this regard, the Report to the Decree, and art. 10, paragraph 4, of Law no. 146/2006 provide important elements of interpretation: this identification, in fact, is possible only in the case in which “the body or its organizational unit is used on a stable basis for the unique or prevalent purpose of allowing or facilitating the commission of the indicated offences.”

#### ***Mafia-related political election exchange (art. 416-ter of the criminal code)***

This criminal offence punishes the behaviour of anyone who accepts the promise of procuring votes, through the procedures pursuant to the third paragraph of article 416-*bis*, in exchange for the delivery or the promised delivery of money or of another benefit.

The penalty provided for by lawmakers is four to ten years' imprisonment. The same penalty is applied to those who promise to procure votes following the procedures as per the first paragraph.

***Kidnapping (art. 630 of the criminal code)***

This offence takes place in the case of kidnapping for the purpose of pursuing, for oneself or for others, undue profit as the price for freedom. The crime is aggravated in the event that the kidnapping results in the involuntary death of the kidnapped person.

***Provisions against illegal immigration (art. 12, paragraphs 3, 3-bis, 3-ter, and 5 of Legislative Decree no. 286/98)***

Art. 12 of the Consolidated Law pursuant to Legislative Decree no. 286/98 establishes above all the criminal offence known as facilitating illegal immigration, for anyone who "in violation of the provisions hereof commits acts aimed at achieving entry of a foreign national into the State's territory." The second criminal offence, contained in art. 12 and known as facilitating illegal emigration, is established for whoever "commits (...) acts aimed at achieving unlawful entry into another State of which the person is not a citizen and has no right of permanent residence."

Lawmakers have established a higher penalty when the facts of facilitating illegal immigration or of facilitating illegal emigration are implemented "for the purpose of drawing even indirect profit."

Paragraph 3-*bis* of art. 12 provides for increasing the penalties pursuant to the first and paragraphs, if:

- "the fact regards the entry or the illegal stay in the State's territory of five or more persons;
- to achieve entry or illegal stay, the person has been exposed to danger to his or her life or safety;
- to achieve entry or illegal stay, the person has been subjected to inhumane or degrading treatment;
- the crime is committed by three or more persons in complicity with one another, or using international transport services, or documents that are counterfeit or altered, or at any rate unlawfully obtained".

Paragraph 3-*ter* of art. 12 establishes that the penalties are also increased "if the crimes pursuant to the third paragraph are committed for the purpose of recruiting persons to be forced into prostitution or at any rate sexual exploitation, or regard the entry of minors to be employed in unlawful activities for the purpose of promoting their exploitation."

The fifth paragraph of art. 12 provides for another criminal offence, known as facilitating illegal stay, for those who "for the purpose of drawing undue profit from the condition of illegality of

the foreign national, or in the context of the activities punishable under this article, promote their stay in the State's territory in violation of the regulations of this Consolidation Law.”

***Aiding and abetting (art. 378 of the criminal code).***

Art. 378 of the criminal code punishes the behaviour of anyone who, after having committed an offence for which the law establishes imprisonment or life imprisonment, and outside of the cases of complicity therein, helps someone elude the investigations of the authorities, or to escape their searches. The provisions of this article also apply when the person being helped cannot be charged, or has not committed the offence.

For the crime to be committed, it is necessary for the aiding behaviour maintained by the abettor to be at least potentially harmful to the authorities' investigations.

***Inducing someone not to testify or to make false statements to the judicial authority (art. 377-bis of the criminal code).***

Art. 377-bis of the criminal code punishes the behaviour of those who, resorting to violent means, threats, or “offering or promising money or another benefit,” induces not to testify or to make false statements all those who are called before the judicial authority to make statements that can be used in a criminal proceeding, if they have the right to remain silent<sup>26</sup>.

The acts of inducement that may be identified in the structure of the offence pursuant to art. 377-bis of the criminal code lie in violence, threats, or the offer or promise of money or another benefit.

It is specified that the criminal offence, where established as a predicate offence also on the basis of art. 25-decies of the decree, was earlier punished with the entity's administrative liability – pursuant to art. 10 of law no. 146/2006 – only when characterized by transnationality.

***12.1.2. Crimes aimed at terrorism or the subversion of democracy referred to by article 25-quater of Legislative Decree no. 231/01***

The generic nature of the references made by art. 25-quater creates quite a few problems with reference to the exact identification of the criminal offences that may result in application of the discipline provided for by Legislative Decree no. 231/01. However, the following criminal offences may be identified as the main predicate offences of liability pursuant to Legislative Decree no. 231/01, with reference to the category of “*crimes aimed at terrorism or subversion of democracy provided for by the criminal code and by special laws*”:

A. as for the crimes provided for by the criminal code:

***Conspiracies for the purpose of terrorism, including international terrorism, or subversion of democracy (Art. 270-bis of the criminal code):*** “Whoever promotes,

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<sup>26</sup> The criminal offence in question was introduced into the criminal code, and in particular within the sphere of the crimes against the administration of justice, by art. 20 of law no. 63 of 2001.

constitutes, organizes, leads, or finances conspiracies that aim to commit acts of violence aimed at terrorism or subverting democracy is punished by seven to fifteen years' imprisonment. Whoever takes part in said conspiracies is punished by five to ten years' imprisonment. For the purposes of criminal law, there is also the purpose of terrorism when the acts of violence are aimed against a foreign State, an institution, or an international body. Against the convicted person, it is always obligatory to confiscate the things that were of use or were intended for committing the offence, and the things that were the price, product, or profit thereof, or that constituted the use thereof."

**Assistance to conspiracies (art. 270-ter of the criminal code):** "Whoever, outside cases of aiding or abetting, harbours or provides food, hospitality, means of transport, or instruments of communication to any of the persons indicated in articles 270 and 270-bis, is punished by up to four years' imprisonment."

**Recruitment with the purpose of terrorism, including international terrorism (art. 270-quater of the criminal code):** "Whoever, outside of the cases provided for by art. 270-bis, recruits one or more persons for the commission of acts of violence or of sabotage of essential public services, with the purpose of terrorism, even if aimed against a foreign State, an institution, or an international body, is punished by seven to fifteen years' imprisonment."

**Organization of travel for the purpose of terrorism (art. 270 quater.1 of the criminal code)**

Outside of the cases pursuant to articles 270-bis and 270-quater, whoever organizes, finances, or propagandizes promotes travel to foreign territory aimed at carrying out behaviour for the purpose of terrorism is punished pursuant to article 270-sexies.

**Training in activities with the purpose of terrorism, including international terrorism (art. 270-quinquies of the criminal code):** "Whoever, outside of the cases provided for by art. 270-bis, trains or at any rate provides instructions on preparing or using explosives, firearms or other weapons, chemical or bacteriological or noxious or hazardous substances, and any other technique or method for the commission of acts of violence or of sabotage of essential public services, with the purpose of terrorism, even if aimed against a foreign State, an institution, or an international body, is punished by five to ten years' imprisonment. The same penalty also applies to the trained person."

**Financing of behaviour for the purpose of terrorism (art. 270 quinquies 1 of the criminal code)**

This offence punishes whoever, outside of the cases pursuant to articles 270-bis and 270-quater.1, collects, delivers, or makes available goods or money, however earned, destined to be wholly or partially used to carry out behaviour for the purpose of terrorism pursuant to article 270-sexies, regardless of whether the funds are actually used for the commission of the aforementioned conduct.

Albeit with lighter penalties, the law also punishes whoever deposits or keeps the goods or money indicated in the first paragraph.

**Removal of goods or money subject to seizure (art. 270 quinquies 2 of the criminal code)**

This offence punishes whoever removes, destroys, consumes, suppresses, or deteriorates goods or money subject to seizure in order to prevent the financing of conduct for the purpose of terrorism pursuant to article 270-sexies.

**Behaviour with the purpose of terrorism (art. 270-sexies of the criminal code)**

Conduct is considered as having the purpose of terrorism that, by nature or context, may cause grave damage to a country or an international organization, and is committed for the purpose of intimidating the population or forcing public powers or an international organization to carry out or refrain from any act, or of destabilizing or destroying the fundamental constitutional, economic, and social structures of a country or an international organization, as well as the other acts defined as terrorist conduct or committed with the purpose of terrorism by conventions or other regulations of international law binding on Italy.

**Confiscation (art. 270 septies of the criminal code)**

In the event of conviction or application of the penalty pursuant to article 444 of the code of criminal procedure for any of the crimes committed for the purpose of terrorism pursuant to article 270-sexies, the confiscation of the items that served to commit or were destined for the commission of the offence, and of the items that constitute the price, product, or profit thereof, is always ordered, unless they belong to a person extraneous to the offence, or when confiscation of the goods available to the offender is not possible, for a value corresponding to said price, product, or profit.

**Attack for the purpose of terrorism or subversion (art. 280 of the criminal code):**

“Whoever, for the purpose of terrorism or subversion of democracy, makes an attempt on the life or safety of a person, is punished, in the first case, by no less than twenty years’ imprisonment and, in the second case, with no less than six years’ imprisonment. If the attack against a person’s safety gives rise to serious injury, a penalty of no less than eighteen years’ imprisonment is applied; if it gives rise to serious injury, a penalty of no less than twelve years’ imprisonment is applied. If the facts provided for in the above paragraphs are aimed against persons exercising judicial or penitentiary functions, or functions of public safety, in the exercise of or due to their functions, the penalties are increased by one third. If the facts as per the above paragraphs give rise to the person’s death, life imprisonment is applied in the case of an attempt on the person’s life, and, in the event of an attack on the person’s safety, the penalty of thirty years’ imprisonment is applied. The attenuating circumstances other than those provided for by articles 98 and 114, concurrent with the aggravating factors pursuant to the second and fourth paragraphs, cannot be deemed equivalent to or prevailing over them, and the reductions in the penalty are made on the amount of penalty resulting from the increase consequent to the aforementioned aggravating factors.”

**Act of terrorism with lethal or explosive devices (Art. 280-bis of the criminal code):**

“Unless the act constitutes a graver offence, whoever, for the purpose of terrorism, carries

out any act aimed at damaging movable or immovable things of others, through the use of explosive or at any rate lethal devices, is punished by two to five years' imprisonment. For the purposes of this article, the term "explosive or at any rate lethal devices" shall be understood as the weapons and like materials indicated in article 585, and designed to cause major material damage. Acts directed against the office of the President of the Republic, the Legislative Assemblies, the Constitutional Court, Government bodies, or at any rate bodies provided for by the Constitution or by constitutional laws are subject to the same penalty increased by up to one half. Acts giving rise to danger to public health or to serious damage to the national economy are subject to five to ten years' imprisonment. The attenuating circumstances other than those provided for by articles 98 and 114, concurrent with the aggravating factors pursuant to the third and fourth paragraphs, cannot be deemed equivalent to or prevailing over them, and the reductions in the penalty are made on the amount of penalty resulting from the increase consequent to the aforementioned aggravating factors."

**Acts of nuclear terrorism (art. 280-ter of the criminal code)**

This offence punishes whoever, with the purpose of terrorism pursuant to article 270-sexies:

- 1) solicits, for themselves or others, radioactive material;
- 2) creates or comes otherwise into possession of a nuclear device.

This offence also punishes whoever, for the purpose of terrorism pursuant to article 270-sexies:

- 1) uses radioactive material or a nuclear device;
- 2) uses or damages a nuclear plant in such a way as to result in, or raise the concrete danger of, the release of radioactive material.

The same penalties also apply when the conduct described here involves aggressive chemical or bacteriological materials.

**Kidnapping with the purpose of terrorism or subversion, art. 289-bis. of the criminal code):**

"Whoever, for the purpose of terrorism or subversion of democracy, kidnaps a person, is punished by twenty-five to thirty years' imprisonment. Kidnapping that results in the death, as a consequence undesired by the guilty party, of the kidnapped person, is punished by thirty years' imprisonment. If the guilty party causes the death of the kidnapped person, the penalty of life imprisonment is applied. The party to the offence who, disassociating him or herself from the others, acts in such a way that the victim reacquires his or her freedom, is punished by two to eight years' imprisonment; if the victim dies as a consequence of the kidnapping after being freed, the penalty is eight to eighteen years' imprisonment. When an attenuating circumstance occurs, the penalty provided for by the second paragraph is replaced by twenty to twenty-four years' imprisonment; the penalty provided for by the third paragraph is replaced by twenty-four to thirty years' imprisonment. If a number of attenuating circumstances occur, the penalty to be applied by effect of the reductions can be no less than



ten years in the case provided for by the second paragraph, and fifteen years in the case provided for by the third paragraph.”

***Incitement to commit any of the offences provided for by the first and second sections (art. 302 of the criminal code):*** “Whoever incites someone to commit one of the intentional offences provided for by the first and second sections of this chapter, for which the law establishes the death penalty or life imprisonment or imprisonment, is punished, if the incitement is unsuccessful, or if the incitement is successful but the offence is not committed, by one to eight years’ imprisonment. However, the penalty to be applied is always less than one half the penalty established for the offence to which the incitement refers.”

***Political conspiracy by agreement (art. 304 of the criminal code)***

This offence punishes whoever reaches agreement for the purpose of committing one of the crimes indicated in article 302, if the crime is not committed. For promoters, the penalty is increased. However, the penalty to be applied is always less than one half that established for the offence to which the agreement refers.

***Political conspiracy by association (art. 305 of the criminal code)***

This offence punishes whoever promotes, establishes, or organizes an association of three or more persons for the purpose of committing one of the crimes indicated in article 302.

The mere fact of participating in the association is also punished. The association’s leaders are subject to the same penalty established for promoters. Penalties are increased if the association is aimed at committing two of the crimes indicated above.

***Armed gang: formation and participation***

This offence punishes whoever promotes, establishes, or organizes an armed gang for the commission of one of the crimes indicated in article 302. It also punishes the mere fact of belonging to an armed gang.

The leaders or financing member of the armed gang are subject to the same penalty established for promoters.

***Assistance to participants in a conspiracy or armed gang (art. 307 of the criminal code):*** “Whoever, outside cases of aiding or abetting, harbours or provides food, hospitality, means of transport, or instruments of communication to any of the persons taking part in the conspiracy or the gang as indicated in the two previous articles [i.e.: political conspiracy; armed gang] is punished by up to two years’ imprisonment.”

B. as for the crimes provided for by special laws:

- **art. 1 of Law no. 15/1980** establishes an aggravating factor that is applied to any offence when committed for the purpose of terrorism or subversion of democracy;
- **Law no. 342/1976** punishes crimes against the safety of air navigation;

- **Law no.422/1989** punishes crimes against the safety of sea navigation and crimes against the safety of fixed installations on the intercontinental platform.

The activities of promoting, constituting, organizing, or leading unlawful conspiracies may also be carried out using the Internet, a tool that guarantees anonymity and the possibility of disseminating any kind of criminal message to multiple recipients. It must be stressed that art. 270-*bis* of the criminal code also expressly punishes the activity of financing conspiracies with the purpose of terrorism or subversion of democracy.

### **12.1.3. Criminal offences against individuals referred to by article 25-quinquies of Legislative Decree no. 231/01**

Art. 25-*quinquies* (Crimes against individuals) of the decree states:

*“With regard to the commission of the offences provided for by section I of chapter III of Title XII of book II of the criminal code, the entity is subjected to the following pecuniary sanctions:*

*a) for the offences pursuant to articles 600, 601, and 602, a pecuniary sanction of four hundred to one thousand shares;*

*b) for the offences pursuant to articles 600-bis, first paragraph, 600-ter, first and second paragraphs, also with regard to pornographic material pursuant to article 600-*quater*.1, and 600-*quinquies*, the pecuniary sanction of three hundred to eight hundred shares;*

*c) for the offences pursuant to articles 600-bis, second paragraph, 600-ter, third and fourth paragraphs, and 600-*quater*, also with regard to pornographic material pursuant to article 600-*quater*.1, and 600-*quinquies*, the pecuniary sanction of two hundred to seven hundred shares.*

*In cases of conviction for one of the offences indicated in paragraph 1, letters a) and b), the debarment sanctions provided for by article 9, paragraph 2 are applied for a duration of no less than one year.*

*If the entity or an organizational unit thereof is used on a stable basis for the sole or prevailing purpose of permitting or facilitating the commission of the offences indicated in paragraph 1, the penalty of is applied of being definitively barred from the exercise of the activity pursuant to article 16, paragraph 3.”*

Legislative Decree no. 39/2014 (art. 3) inserted into article 25-*quinquies* of Legislative Decree no. 231/01 a reference to article 609-*undecies* on the “Solicitation of minors,” thus including this criminal offence on the list of crimes ascribable to legal persons.

The following is a list of the crimes referred to by art. 25-*quinquies*:

#### **Reducing to or maintaining in slavery or servitude (art. 600 of the criminal code),**

*“Whoever exercises over a person powers corresponding to those of the right of ownership, or whoever reduces a person to or maintains a person in a condition of ongoing subjection,*

*forcing him or her to perform labour or sexual services, or into begging, or at any rate services that involve the exploitation of said person, is subject to eight to twenty years' imprisonment.*

*Reduction to or maintaining in a state of subjection takes place when the act is implemented by violence, threat, deception, abuse of authority, or taking advantage of a situation of physical or psychic inferiority or a situation of need, or by promising or giving sums of money or other benefits to those with authority over the person.*

*The penalty is increased by one third to one half if the offences pursuant to the first paragraph are committed to the detriment of a minor under eighteen years of age, or are aimed at the exploitation of prostitution or at the purpose of subjecting the injured party to organ removal."*

#### **Child prostitution (art. 600-bis of the criminal code)**

The crime consists of recruiting, or inducing, or fostering, exploiting, managing, organizing, or controlling the prostitution of a person under eighteen years of age, or drawing profits therefrom.

Moreover, the law punishes anyone, unless the act constitutes a graver offence, who performs sexual acts with a minor between fourteen and eighteen years of age, in exchange for a payment in money or another benefit, even if only promised.

#### **Child pornography (art. 600-ter of the criminal code)**

The offence is committed by whoever:

- a) using minors under eighteen years of age, stages pornographic exhibitions or shows, or produces pornographic material;
- b) recruits or induces minors under eighteen years of age to take part in pornographic exhibitions or shows, or otherwise draws profit from said shows;
- c) attends pornographic exhibitions or shows involving minors under eighteen years of age.

For the purposes of this article, the term "pornography" is to be understood as any representation, by any medium, of a minor under eighteen years of age involved in real or simulated explicit sexual activities, or any representation of the sexual organs of a minor under eighteen years of age for sexual purposes.

#### **Possession of or access to pornographic material produced by means of the sexual exploitation of minors (art. 600-quater of the criminal code)**

This offence is committed by anyone who, outside of the cases provided for by art. 600-ter of the criminal code, knowingly procures or possesses pornographic material produced using minors under eighteen years of age or through the use of the Internet or of other communication media or networks, intentionally and without justified reasons accesses pornographic material produced using minors under eighteen years of age.

#### **Virtual pornography (art. 600-quater.1 of the criminal code)**

*“The provisions pursuant to articles 600-ter and 600-quater also apply when the pornographic material represents images produced using images of minors under eighteen years of age or parts thereof, but the penalty is reduced by one third.*

*The term “virtual images” is to be understood as images produced by graphics processing techniques not associated in whole or in part with actual situations, whose quality of representation makes unreal situations appear real.”*

**Tourism initiatives aimed at exploiting child prostitution (art. 600-quinquies of the criminal code)**

The offence is committed by anyone who organizes or publicizes trips aimed at exploiting prostitution activities to the detriment of minors, or at any rate including this activity.

**Trafficking in persons (art. 601 of the criminal code)**

*“Whoever commits the offence of trafficking in persons, who is in the conditions pursuant to article 600, or, for the purpose of committing the offences pursuant to the first paragraph of that article, induces that person by deception or forces him or her by violence, threat, abuse of authority, or taking advantage of a situation of physical or psychic inferiority or a situation of need, or by promising or giving sums of money or other benefits to those with authority over the person, to enter or stay or to leave the territory of the State or to move within said State, is punished by eight to twenty years’ imprisonment.*

*The penalty is increased by one third to one half if the crimes pursuant to this article are committed to the detriment of a minor under eighteen years of age, or are aimed at the exploitation of prostitution or at the purpose of subjecting the injured party to organ removal.”*

**Purchase and sale of slaves (art. 602 of the criminal code)**

*“Whoever, outside of the cases indicated in article 601, purchases or sells or transfers a person who is in one of the conditions pursuant to article 600, is punished by eight to twenty years’ imprisonment.*

*The penalty is increased by one third to one half if the injured party is a minor under eighteen years of age or if the offences pursuant to the first paragraph are aimed at the exploitation of prostitution or at the purpose of subjecting the injured party to organ removal.”*

**Illegal intermediation and exploitation of labour (Art. 603-bis of the criminal code)**

*“whoever:*

- 1) recruits workers for the purpose of having them work for third parties under conditions of exploitation, while profiting from the workers’ state of need;*
- 2) uses, hires, or employs workers, also through the intermediation activity as per point 1) above, while subjecting workers to conditions of exploitation and profiting from their state of need.*

*is punishable by one to six years' imprisonment and a fine of € 500 to € 1,000 for each recruited worker. Crimes are committed by means of threat or violence are punishable by five to eight years' imprisonment and a fine of € 1,000 to € 2,000 for each recruited worker.*

*For the purposes of this article, the existence of one or more of the following conditions constitutes exploitation:*

- 1) repeated payment of wages in a manner clearly deviating from the national or territorial collective bargaining agreements executed by the most representative trade union organizations on a national level, or at any rate out of proportion to the quantity and quality of the work performed;*
- 2) repeated violation of the regulations governing work schedules, rest time, weekly rest, mandatory leave, and holidays;*
- 3) the existence of violations of the regulations governing occupational health and safety;*
- 4) submitting the worker to degrading working conditions, supervision methods, or housing situations*

*The following are specific aggravating circumstances that increase the penalty by one third to one half:*

- 1) the number of recruited workers being more than three in number;*
- 2) one or more of the recruited persons are minors under working age;*
- 3) the crime is committed while exposing exploited workers to situations of serious danger, in consideration of the characteristics of the services to be performed, and of the working conditions.”.*

### **Solicitation of minors (609-undecies)**

*“Whoever, for the purpose of committing the offences pursuant to articles 600, 600-bis, 600-ter, and 600-quater, also if regarding the pornographic material pursuant to article 600-quater.1, 600-quinquies, 609-bis, 609-quater, 609-quinquies, and 609-octies, solicits a minor under sixteen years of age, is punished, if the act does not constitute a graver offence, with one to three years' imprisonment. The term “solicitation” shall be understood as any act aimed at gaining the minor's trust through deception, flattery, or threats made also through the use of the Internet or other communications media or networks.”*

In most cases, the risk of committing the behaviours listed above is not connected with the specific activity performed, but lies in the manner of performance and in the very existence of work places (offices, newsrooms, recording studios, etc.) where these crimes might be perpetrated.

Moreover, in the “production and distribution process,” the type of programme might in the abstract facilitate the commission of one or more of these crimes. The use of Internet in the context of the “online broadcasting” process might also facilitate the commission of crimes against the person.

#### **12.1.4. Criminal offence of employing illegally-staying third-country nationals referred to by article 25-duodecies of Legislative Decree no. 231/01**

On 09 August 2012, Legislative Decree no. 109/2012 (published in *Gazzetta Ufficiale* no. 172 of 25 July 2012) entered force, introducing, into Legislative Decree no. 231/01, art. 25-duodecies, "Employment of illegally-staying third-country nationals."

In brief, the entity that employs foreign workers without residence permits, or whose permit has expired and renewal has not been applied for, is revoked, or cancelled, is subject to a pecuniary sanction of 100 to 200 shares, for a maximum of € 150,000, if the employed workers are (circumstances alternative to one another):

- more than three in number;
- minors not of working age;

exposed to situations of serious danger, with reference to the work to be performed and to the working conditions.

Law no. 161/2017 has supplemented, with two new offences, art. 25-duodecies ("Employment of illegal aliens") of Legislative Decree no. 231/2001, to wit:

- art. 12, paragraphs 3, 3-bis and 3-ter of Legislative Decree no. 286/1998, which is to say the conduct of whoever "*promotes, directs, organizes, finances, or carries out the transport of foreign nationals in the State's territory or performs the transport of foreign nationals in the State's territory or carries out other acts aimed at illegally obtaining their entry into the territory of the State of which said person is not a citizen or does not have permanent residence,*" including the related aggravating circumstances. For said conduct, the entity is subject to a pecuniary sanction of 400 to 1,000 shares;
- art. 12, paragraph 5 of Legislative Decree no. 286/1998, which is to say the conduct of whoever "*for the purpose of unfairly profiting from the illegal status of the foreign national, or in the context of the activities punishable pursuant to this article, promotes these persons' stay in the State's territory.*" For said conduct, the entity is subject to a pecuniary sanction of 100 to 200 shares. In addition to the pecuniary sanctions, in cases of conviction for the offences as per the above two points, disqualification sanctions (pursuant to art. 9) are also established for a duration of no less than one year.

#### **12.2 Identification of the sensitive areas and activities in the context of transnational criminal offences of organized crime, terrorism, crimes against the individual,**

**inducing someone not to testify or to make false statements to the judicial authority,  
employment of illegal aliens**

Analysis of the corporate processes, carried out during the Project<sup>27</sup>, made it possible to identify the activities in the context of which the following criminal offences might in the abstract be committed:

- A.** The criminal offences of organized crime referred to by art. 24-ter of Legislative Decree no. 231/01, of the crime of inducing someone not to testify or to make false statements to the judicial authority referred to by art. 25-decies of Legislative Decree no. 231/01, and the transnational crimes referred to by articles 3 and 10 of law no. 146 of 16 March 2006. The examined processes are listed hereunder:
- 1. Publishing areas of purchasing rights and film production:**
    - **Selecting and evaluating the product and supplier**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
  - 2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**
    - **Selecting and evaluating the product and supplier**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
  - 3. Sales, distribution, and marketing area:**
    - **Selecting and evaluating customers and distribution partners**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
    - **Selecting and managing agents (natural and legal persons)**
  - 4. Management of human resources:**
    - **Selecting employed personnel**
    - **Managing travel (advances, expense reimbursements, and credit cards)**
  - 5. Promotion and external relations:**
    - **Organizing and attending film festivals and events**
    - **Managing sponsorships and donations**

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<sup>27</sup> See in this regard paragraph 3.1 of the General Section.

- **Managing gifts, free items, and benefits**
6. **Preparation of financial statements, reports, or of other corporate communications provided for by law, addressed to the shareholder or the public**
- B. Crimes aimed at terrorism or the subversion of democracy referred to by article 25-*quater* of Legislative Decree no. 231/01:
1. **Publishing areas of purchasing rights and film production:**
    - **Selecting and evaluating the product and supplier**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
  2. **Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**
    - **Selecting and evaluating the product and supplier**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
  3. **Sales, distribution, and marketing area:**
    - **Selecting and evaluating customers and distribution partners**
    - **Negotiating and defining the contract**
    - **Carrying out the contract**
    - **Selecting and managing agents (natural and legal persons)**
  4. **Management of human resources:**
    - **Selecting employed personnel**
    - **Managing travel (advances, expense reimbursements, and credit cards)**
  5. **Promotion and external relations:**
    - **Organizing and attending film festivals and events**
    - **Managing sponsorships and donations**
    - **Managing gifts, free items, and benefits**
  6. **Preparation of financial statements, reports, or of other corporate communications provided for by law, addressed to the shareholder or the public**



C. Crimes against the individual referred to by article 25-quinquies of Legislative Decree no. 231/01:

**1. Publishing areas of purchasing rights and film production:**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

**2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

**3. Management of human resources:**

- **Selecting employed personnel**

**4. Promotion and external relations:**

- **Organizing and attending film festivals and events**
- **Managing sponsorships and donations**
- **Managing gifts, free items, and benefits**

**5. Preparation of financial statements, reports, or of other corporate communications provided for by law, addressed to the shareholder or the public**

D. Criminal offences against the person referred to by article 25-duodecies of Legislative Decree no. 231/01:

**6. Management of human resources:**

- **Selecting employed personnel**

## **12.3 Principles of behaviour and implementation of decision-making processes**

### **12.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators (limited respectively to the obligations contemplated in the specific procedures and codes of behaviour, and in the specific clauses inserted into the contracts in implementation of the following principles) to:

- implement, collaborate towards, or cause such behaviours that – when considered individually or collectively – constitute, directly or indirectly, the criminal offences included among those considered above (art. 24-ter, art. 25-quater, art. 25-quinquies, art. 25-decies, and art. 25-duodecies of Legislative Decree no. 231/01, articles 3 and 10 of law no. 146 of 16 March 2006);
- violate the principles and the corporate procedures provided for in this Special Section.

This Special Section thus forbids the above parties:

- to commit or adopt a behaviour that may constitute or be connected also to transnational crimes, concerning conspiracy, including mafia-related conspiracy, inducing someone not to testify or to make false statements to the judicial authority, aiding and abetting, as well as concerning conspiracy aimed at the smuggling of foreign processed tobacco products and the illegal traffic of narcotics or psychotropic drugs, or concerning possible violations of the provisions against illegal immigration; such as:
  - conspiring for the purpose of committing a number of crimes including, in particular, the smuggling of foreign processed tobacco products and the illegal traffic of narcotics or psychotropic drugs;
  - whatever the role played, belonging to mafia-related, Camorra-related, or at any rate unlawful conspiracies;
  - carrying out acts designed to secure entry of a foreign national into the State's territory in violation of the provisions of law, or designed to secure entry into another state of which the person is not a citizen or has no right of permanent residence;
  - carrying out the same behaviour as per the above point with the aim of recruiting persons to be destined for prostitution or at any rate for sexual exploitation, or that regard the entry of minors to be employed in unlawful activities for the purpose of fostering their exploitation;
  - facilitating the foreign national's stay in the State's territory for the purpose of drawing undue profit from his or her condition of illegality;
  - in any way inducing not to testify or to make false statements the person called before the judicial authority to make statements that can be used in a criminal proceeding, when the person has the right to remain silent;
  - helping someone elude the investigations of the authorities, or to escape their searches;

- to maintain relations, negotiate, and/or execute and/or implement contracts or documents with persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;
- to grant benefits to persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;
- to hire persons indicated in the Reference Lists regarding the financial struggle against terrorism (published by the Financial Information Unit established at Banca d'Italia) or belonging to organizations present therein, without prejudice to the formalized authorization of the CEO or the General Manager with respect to the attributed powers;
- to promote, constitute, organize, and direct the financing, even indirect, of conspiracies that take on the task – abroad or at any rate to the detriment of a foreign State, of an institution, or of international bodies – of carrying out acts of violence against persons or things, with the purpose of terrorism;
- to harbour or provide hospitality, means of transport, or instruments of communication to persons taking part in subversive conspiracies or conspiracies with the purpose of terrorism and subversion of the public order;
- to commit or adopt a conduct that knowingly accepts the risk that crimes against the individual may be committed, such as:
  - reducing a person to slavery or similar conditions;
  - trafficking and trading in slaves or persons in a condition similar to slavery;
  - selling and purchasing even a single person reduced to slavery;
  - persuading a minor to perform sexual acts in exchange for sums of money (child prostitution); adopting behaviours that facilitate the exercise of child prostitution, or involve the exploitation of anyone trading one's own body in order to earn part of the earnings;
- exploiting minors for the production of pornographic exhibitions or material, as well as the trade, sale, dissemination, and transmission, of said material even free of charge, or pornographic material that represents virtual images made using images of minors, or parts thereof;
- procuring or possessing pornographic material produced through the sexual exploitation of minors;

- organizing or promoting trips that have the purpose, even if not exclusive, of exploiting the activities of prostitution to the detriment of minors;
- to employ foreign workers entirely without a residence permits, or whose permit has expired and renewal has not been applied for, is revoked, or cancelled.

### **12.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities. For the activities performed in service by RAI, the service contract shall provide for compliance with the control standards identified below for the individual Sensitive activities.

#### **1. Publishing areas of purchasing rights and film production:**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **3. Sales, distribution, and marketing area:**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**
- **Selecting and managing agents (natural and legal persons)**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

#### **4. Management of human resources:**

- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**
- **Conferring collaboration and consulting assignments to natural persons**
- **Managing travel (advances, expense reimbursements, and credit cards)**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

Moreover, carrying out this activity provides for:

- the obligation to formalize the grounds for the decision to permit/request the entry of a person into the State’s territory;
- the attribution of responsibility for verifying:
  - the person’s entry in line with the adopted reasons;
  - compliance with the immigration regulations in the territory of the State of destination;
- surveying the persons for whom the Company procures entry into a State’s territory, indicating the date of exit therefrom, where provided for;
- filling out a specific request form to be sent to the prefecture in the event of hiring a non-EU citizen residing abroad;
- undertaking to guarantee the foreign worker the compensation and insurance provided for by the laws in force and by the applicable national collective bargaining agreements, and to make, by the legal deadlines, the mandatory communications with regard to the employment relationship;
- archiving in the employee’s file the contract to stay, and the clearance issued by the delegated entity;
- ascertainment, by the competent Office/Department, of the worker’s possession of the postal receipt of the residence permit issuance application, before the employment relationship begins.

**5. Promotion and external relations:**

- **Organizing and attending film festivals and events**
- **Managing sponsorships and donations**
- **Managing gifts, free items, and benefits**
- **Managing external communications**

The activity is carried out in compliance with the control standards provided for in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals,” to which reference is to be made.

### 13. SPECIAL SECTION L – Tax offences

The following are the regulatory references of the relevant crimes, and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

The category of tax offences has undergone a recent modification with the adoption of Legislative Decree no. 75 of 14 July 2020, which definitively implemented Directive (EU) 2017/1371 (the PFI Directive) of the European Parliament and of the Council of 05 July 2017, on the “fight against fraud to the Union's financial interests by means of criminal law.”

In particular, the aforementioned Decree introduced modifications concerning the criminal code, crimes of smuggling – raising the criminal sanctions for certain offences deemed particularly serious – and of agricultural fraud, the tax offences pursuant to Legislative Decree no. 74/2000, and entities' liability derived from crime pursuant to Legislative Decree no. 231/2001.

#### 13.1. Relevant offences in the matter of tax offences (art. 25 - quinquiesdecies of Legislative Decree no. 231/2001)

##### **Failure to submit a declaration (Art. 5, Legislative Decree no. 74, amended by Art. 39 of Law no. 124 of 26 October 2019 and introduced by Legislative Decree no. 75 of 14 July 2020)<sup>28</sup>**

Art.5 punishes the obligated individual or tax substitute that, in order to evade income tax or value added tax, fails to submit one of the declarations related to said taxes.

The crime is committed when, in order to evade income tax or value added tax, one of the declarations relating to said taxes is not submitted although there is the obligation to do so, when the evaded tax, with reference to any of the individual taxes, exceeds € 50,000.

The offence results in the entity's liability pursuant to Decree no. 231/01 only if committed in the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of no less than € 10 million. In this case, the entity is subject to pecuniary sanction of up to four hundred quotas.

If, following the commission of the crimes indicated in paragraphs 1 and 1-bis, the entity earned a profit of considerable size, the pecuniary sanction is increased by one third.

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<sup>28</sup> Art. 5 of Legislative Decree no. 74: “1. Whoever, in order to evade income tax or value added tax, fails to submit, although obligated to do so, one of the declarations relating to said taxes, is punished by two to five years' imprisonment when the evaded tax, with reference to any of the individual taxes, exceeds € 50,000. 1-bis. Whoever fails to submit, although obligated to do so, the tax substitute declaration, is punished by two to five years' imprisonment when the amount of the unpaid withholding exceeds € 50,000. 2. For the purpose of the measure as per paragraphs 1 and 1-bis, declarations that have been submitted within ninety days after the expiry of the deadline for submission, or have not been signed, or have not been drawn up on a form in compliance with the prescribed format, shall not be considered as unsubmitted.”

**False tax declaration (Art. 4, Legislative Decree no. 74, amended by Law no. 124 of 26 October 2019 and introduced by Legislative Decree no. 75 of 14 July 2020)<sup>29</sup>**

Art. 4 punishes anyone who, in order to evade income tax or value added tax, states on the yearly declaration different or non-existent assets or liabilities.

The crime is committed when, in order to evade income tax or value added tax, one of the yearly declarations relating to these taxes states assets for an amount less than the real one, or non-existent liabilities.

The offence results in the entity's liability pursuant to Decree no. 231/01 only if committed in the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of no less than € 10 million. In this case, the entity is subject to pecuniary sanction of up to three hundred quotas.

If, following the commission of the crimes indicated in paragraphs 1 and 1-bis, the entity earned a profit of considerable size, the pecuniary sanction is increased by one third.

**Unlawful compensation (Art. 10-quater of Legislative Decree no. 74, introduced by Legislative Decree no. 75 of 14 July 2020)<sup>30</sup>**

Art.10-quater punishes anyone who, claiming unowed tax receivables, uses them to offset the owed sums.

The crime is committed whenever the taxpayer avoids paying the owed sums by offsetting them with non-existent or unowed tax receivables, for amount exceeding € 50,000,00 per year. In particular, the expression "owed sums" refers to any payment to be made using the F24 form.

The offence results in the entity's liability pursuant to Decree no. 231/01 only if committed in the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of no less than € 10 million. In this case, the entity is subject to pecuniary sanction of up to four hundred quotas.

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<sup>29</sup> Art. 4 of Legislative Decree no. 74: "1. Outside of the cases provided for by articles 2 and 3, whoever, in order to evade income tax or value added tax, states in one of the yearly declarations relating to these taxes assets for an amount less than the real amount, or non-existent liabilities, is punished by two years' to four years and two months' imprisonment when, jointly: a) the evaded tax, with reference to any of the individual taxes, exceeds € 100,000; b) the total amount of the assets removed from taxation, also via the declaring of non-existent liabilities, exceeds by 10% or at any rate € 2 million the total amount of the assets stated in the declaration. 1-bis. For the purposes of application of the provisions of paragraph 1, no account is taken of the improper classification of the assessment of objectively existing assets or liabilities, with respect to which the criteria concretely applied were at any rate indicated in the financial statements or in other documentation of relevance for tax purposes, of the violation of the criteria for determining the exercise of competence, of the non-pertinence, and of the non-deductibility of real liabilities. 1-ter. Outside of the cases pursuant to paragraph 1-bis, assessments that, considered overall, differ by less than 10% from the correct ones, are not punishable offences. No account is taken of the amounts included in this percentage when verifying whether the thresholds of punishability established by paragraph 1, letters a) and b) have been exceeded).

<sup>30</sup> Art. 10-quater of Legislative Decree no. 74: "1. Whoever avoids paying owed sums by offsetting them, pursuant to article 17 of Legislative Decree no. 241 of 09 July 1997, with unowed tax receivables, for a yearly amount exceeding € 50,000, is punished by six months' to two years' imprisonment. 2. Whoever avoids paying owed sums, by offsetting them, pursuant to article 17 of Legislative Decree no. 241 of 09 July 1997, with non-existent tax receivables, for a yearly amount exceeding € 50,000, is punished by one year and six months' to six years' imprisonment".



If, following the commission of the crimes indicated in paragraphs 1 and 2, the entity earned a profit of considerable size, the pecuniary sanction is increased by one third.

**Fraudulent declaration using invoices or other documents for non-existent operations (art. 2, Legislative Decree no. 74/2000, paragraphs 1 and 2-bis)**

This crime is committed by anyone who, in order to evade income tax or value added tax, relying on invoices or other documents for non-existent operations, states fictitious liabilities on one of the declarations relating to these taxes. The offence is considered as such upon relying on invoices or other documents for non-existent operations when these invoices or documents are recorded in the mandatory accounting records, or are held for the purpose of providing evidence to the financial administration.

The entity is subject to the pecuniary sanction of up to four hundred quotas (paragraph 2-bis) or five hundred quotas (paragraph 1).

**Fraudulent declaration by other ploys (art. 3, Legislative Decree no. 74/2000)**

The law punishes anyone who, in order to evade income tax or value added tax, by carrying out objectively or subjectively sham operations or relying on false documents or other fraudulent means suitable for tampering verification and for leading the financial administration into error, states on one of the declarations relating to these taxes assets for an amount less than the real one, or fictitious liabilities or fictitious receivables and withholding, when, jointly:

- a) the evaded tax, with reference to any of the individual taxes, exceeds € 30,000;
- b) the total amount of the assets removed from taxation, also via the declaring of fictitious liabilities, exceeds by 5% or at any rate € 1,500,000 the total amount of the assets stated in the declaration, or if the total amount of the receivables and of the fictitious withholding diminishing the tax exceeds by 5% or € 30,000 the amount of said tax.

The offence is considered as such upon relying on false documents when said documents are recorded in the mandatory accounting records, or are held for the purpose of providing evidence to the financial administration.

The mere violation of the obligations of invoicing and of annotation of assets in the accounting records, or the mere indication in the invoices or in the annotation of assets less than real ones do not constitute fraudulent means.

The entity is subject to the pecuniary sanction of up to five hundred quotas.

**Issuance of invoices or other documents for non-existent operations (art. 8, Legislative Decree no. 74/2000, paragraphs 1 and 2-bis)**

The law punishes anyone who, in order to allow third parties to evade income tax or value added tax, issues or releases invoices or other documents for non-existent operations.

For the purposes of the application of the provisions, the issuance or release of several invoices or documents for non-existent operations during the same tax period is considered a single offence.

If the untruthful amount stated in the invoices or in the documents, for the tax period, is less than € 100,000, the penalty of one year and six months' to six years' imprisonment is applied.

The entity is subject to the pecuniary sanction of up to four hundred quotas (paragraph 2-bis) or five hundred quotas (paragraph 1).

#### **Concealment or destruction of accounting documents (art. 10, Legislative Decree no. 74/2000)**

Unless a graver offence is committed, the law punishes anyone who, in order to evade income tax or value added tax, or to allow third parties to evade said taxes, conceals or destroys, in whole or in part, the accounting records that the party is obligated to keep, in such a way as not to allow the income or turnover to be reconstructed.

The entity is subject to the pecuniary sanction of up to four hundred quotas.

#### **Fraudulent avoidance of payment of taxes (art. 11, Legislative Decree no. 74/2000)**

The law punishes anyone who, in order to avoid the payment of income tax or value added tax, or interest or administrative sanctions relating to said taxes, of an amount exceeding € 50,000, at the same time disposes of or carries out fraudulent acts with regard to his or her own or others' assets, with the purpose of rendering the forcible collection procedure ineffective, in whole or in part. If the amount of the taxes, penalties, and interest exceeds € 200,000, the offence is punishable by one to six years' imprisonment.

The law punishes with six months' to four years' imprisonment anyone who, in order to obtain for him or herself or for others, a partial payment of taxes and the related accessories, states in the documentation submitted for the purposes of the tax settlement procedure assets for an amount less than the real one, or liabilities for a total amount exceeding € 50,000. If the amount as per the above sentence exceeds € 200,000, the offence is punishable by one to six years' imprisonment.

The entity is subject to the pecuniary sanction of up to four hundred quotas.

### **13.2. Identification of sensitive processes and activities in the context of tax offences**

Upon the outcome of the analysis that is carried out, the activities in whose context the crimes referred to by art. 25-quinquiesdecies of Legislative Decree no. 231/2001 might be committed, directly or in instrumental fashion<sup>31</sup>, are as follows:

#### **1. Publishing areas of purchasing rights and film production:**

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<sup>31</sup> Deemed at "instrument" risk are those activities in the context of which the crimes taken into consideration cannot take place directly, but in which one of the predicate offences for the subsequent commission of the same crimes in activities at "direct" risk might take place.

- **Selecting and evaluating the product and supplier**
  - **Negotiating and defining the contract**
  - **Carrying out the contract**
2. **Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**
- **Selecting and evaluating the product and supplier**
  - **Negotiating and defining the contract**
  - **Carrying out the contract**
3. **Sales, distribution, and marketing area:**
- **Selecting and evaluating customers and distribution partners**
  - **Negotiating and defining the contract**
  - **Carrying out the contract**
  - **Selecting and managing agents (natural and legal persons)**
4. **Management of human resources:**
- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**
  - **Conferring collaboration and consulting assignments to natural persons**
5. **Promotion and external relations:**
- **Managing sponsorships and donations**
6. **Financial statements, administration, and finance area:**
- **Managing credit (including invoices receivable)**
  - **Managing debt (including invoices payable)**
  - **Treasury management (payments/collections)**
  - **Managing the activities of preparing the financial statements**
  - **Tax Management**

### **13.3 Principles of behaviour and of implementation of the decision-making processes**

#### **13.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees, and Outside Collaborators – limited to the obligations contemplated in the specific clauses inserted into the contracts in implementation of the following principles – to:

- implement, collaborate in, or give rise to the performance of conducts that – considered individually or collectively – result directly or indirectly in the offences included among those considered above (art 25-quinquiesdecies of Legislative Decree no. 231/2001);
- violate the corporate principles and provided for in this Special section.

Supplementing the above, this Special Section forbids the recipients of the organizational model to:

- implement any conduct that obstructs the control functions of the relevant corporate bodies, such as Shareholders, Auditors, and Statutory Auditors;
- represent or transmit for elaboration, in one of the declarations relating to income tax or value added tax, fictitious liabilities, for example by relying on invoices or other documents for non-existent operations;
- represent or transmit for elaboration, in the financial statements or other corporate communications, false, incomplete, or untruthful data on the company's economic situation, equity, and finances;
- represent or transmit false, incomplete, or untruthful data for elaboration in the accounts;
- carry out mock operations, objectively or subjectively or by relying on false documents or other fraudulent means suitable for obstructing verification and for leading the Financial Administration into error;
- issue or release invoices or other documents for non-existent operations;
- conceal or destroy, in whole or in part, the accounting records or the documents that are obligatory to keep;
- indicate in any document or declaration assets for an amount less than the real one, or fictitious liabilities;
- provide, in any form, untruthful or incomplete information to national or foreign Public Administration;
- sign acts or documents that have relevance outside the Company in the absence of formally attributed powers or exceeding the attributed powers;
- use cash as a means of payment and collection outside of the cases permitted by corporate rules and procedures, or at any rate in an improper fashion;
- issue bank or postal cheques that do not bear the name or the corporate name of the beneficiary, and the non-transferability clause;
- send wire transfers, including international wire transfers, without explicit indication of the counterparty;
- make payments or pay compensation to third parties without adequate contract justification, or that are at any rate inadequately documented, justified, and authorized;
- adopt any behaviour having as its object or purpose not to fulfil the tax obligations provided for by the applicable regulations.

At the same time, this Special Section involves, for all recipients of the organizational model, the obligation to maintain proper, transparent, and cooperative behaviour, in compliance with the regulations of law and of internal corporate procedures, in all the activities aimed at the formation of the documents established by tax regulations, with particular regard to the

declarations made to the Financial Administration, in order to provide the latter with truthful and correct information on the company's tax obligations and, more generally, real and reliable elements relating to the juridical tax relationship between the company and the treasury;

The corporate organization, through its own protocols and procedures, guarantees:

- regulation of the flow of information with the Board of Statutory Auditors and the auditing body, in order to allow them to perform the functions attributed by the civil code, as well as towards the Supervisory Board for the checks under its responsibility;
- the pre-determination of channels and timing for submitting the tax declarations to the company's legal representative;
- the traceability, supported support by IT systems, of the access profiles of the parties entering the data into the system, guaranteeing the separation of functions and consistency of authorization levels, within the context of the recording, transmission, and aggregation of accounting information aimed at the preparation not only of corporate communication, but of tax declarations as well;
- appropriate support in checking the routine and evaluative accounting records, which must be kept in an accurate, correct, and truthful fashion, and comply with the accounting standards of reference.

### **13.3.2 Principles of implementation of decision-making processes**

The following are the control standards identified for the Sensitive Activities recognized in this Special Section.

It is to be stated at the outset and taken into consideration that by virtue of the service contract between Rai Cinema and RAI, the latter carries out, on behalf of Rai Cinema, much of the activities of accounting, financial, and tax administration (specified in Attachment A of the Service contract, named "Administration, Finance, and Corporate Affairs Department").

The Company guarantees that, in the context of the aforementioned contractual relationship and of the responsibilities of each of its parts, respect for the control standards identified below for the individual sensitive activities are always ensured.

#### **7. Sales, distribution, and marketing area:**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**

The activity is carried out in compliance with the control standards provided for in "Special Section "A" – Offences against Public Administration and bribery among private individuals," to which reference is made.

To mitigate the risk of committing the predicate offences as per this Special Section, particular importance is taken on by the protocols (-) of segregation of roles and responsibilities, (-) of formalization of purchase requirements, (-) of generation of the purchase requests, (-) of purchase by way of exception / urgency, (-) of management of the register of suppliers, of assessment of the supplier and formalization of the decision-making path, (-) of authorization and formalization of the contract, (-) of management of subcontracts, (-) of management of the contract, (-) of recording budget commitments in the system, (-) of receiving and accepting the service, (-) of ascertaining the consistent supply of the service upstream of the payment authorization, (-) of traceability of the entire process.

**2. Area of purchase of works, goods, services, and supplies (also within the group) and consulting (by company):**

- **Selecting and evaluating the product and supplier**
- **Negotiating and defining the contract**
- **Carrying out the contract**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

To mitigate the risk of committing the predicate offences as per this Special Section, particular importance is taken on by the protocols (-) of segregation of roles and responsibilities, (-) of formalization of purchase requirements, (-) of generation of the purchase requests, (-) of purchase by way of exception / urgency, (-) of management of the register of suppliers, of assessment of the supplier and formalization of the decision-making path, (-) of authorization and formalization of the contract, (-) of management of subcontracts, (-) of management of the contract, (-) of recording budget commitments in the system, (-) of receiving and accepting the service, (-) of ascertaining the consistent supply of the service upstream of the payment authorization, (-) of traceability of the entire process.

**3. Sales, distribution, and marketing area:**

- **Selecting and evaluating customers and distribution partners**
- **Negotiating and defining the contract**
- **Carrying out the contract**
- **Selecting and managing agents (natural and legal persons)**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

To mitigate the risk of committing the predicate offences as per this Special Section, particular importance is taken on by the protocols (-) of segregation of roles and responsibilities, of

negotiation at market values, (-) of traceability of the decisions taken, (-) of assessment of the counterparties and of formalization of the decision-making path, (-) of authorization and formalization of the contract, (-) of starting activities only after the contract is executed, (-) of adequate verification of deliveries and of the activities obtained.

#### **4. Management of human resources:**

- **Managing employed personnel (payroll, career progress, bonuses, incentives, indemnities, raises, etc.)**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

- the obligation of proper recording of the data necessary to draw up the personnel’s pay envelopes, and their transfer to RAI SpA.;
- the obligation of verifying that the personnel’s pay envelopes correspond to the amounts actually paid;
- the obligation of verifying and reconciling the total amount of the cost of the work as indicated in the declarations in the tax books, with the corresponding amount resulting from the pay envelopes.

- **Conferring collaboration and consulting assignments to natural persons**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made. To mitigate the risk of committing the predicate offences as per this Special Section, particular importance is taken on by the protocols (-) of segregation of roles and responsibilities, (-) of selection of the collaborator or consultant, (-) of verification of the honorability of the third party, (-) of traceability of decisions, (-) of formalization of the decision-making path, (-) of authorization and formalization of the contract.

In addition, reference is made to further protocols (-) of recording budget commitments in the system, (-) of receiving and accepting the service, (-) of ascertaining the consistent supply of the service upstream of the payment authorization as established for the activities as per the above points (no. 1, 2, and 3 of this paragraph), to be considered as obligatory also as relates to the activity now examined.

#### **5. Promotion and external relations:**

- **Managing sponsorships and donations**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

#### **6. Financial statements, administration, and finance area:**

- **Managing credit (including invoices receivable) / Managing debt (including invoices payable)**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

- **Treasury management (payments/collections)**

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

- **Managing the activities of preparing the financial statements**

The main phases in which the activity in question is organized are:

- a. management of general accounting;
- b. assessing and estimating financial statement entries;
- c. drawing up the civil-law financial statements and the interim statements;

The activity is carried out in compliance with the control standards provided for in “Special Section “A” – Offences against Public Administration and bribery among private individuals,” to which reference is made.

In addition to these, this Special section establishes:

- that any modification to the accounting data can be done only by previously identified and authorized persons, and must be appropriately justified and supported by documentation subject to filing;
- the use of a system (also an IT system) for the transmission of data and information among the offices involved in the process in question, with specific procedures for access management, that allow individual passages to be traced, persons entering the data into the system to be identified, and unauthorized accesses to be detected;
- the holding of one or more meetings between the auditing company the Board of Statutory Auditors, and the Financial Statements, Administration and Finance Manager, also as Executive in Charge and Supervisory Board, prior to the Board of Directors session to approve the financial statements, regarding the assessment of any critical areas emerging in the performance of the auditing activity.

- **Tax management**

*With particular reference*

1. *to the preparation and submission of tax declarations;*
2. *to payment of the tax;*



3. *to fulfilment of the tax substitute obligations;*

4. *to relations with the Financial Administration and management of audits.*

The regulation of the activity establishes:

- the preparation of roles, responsibilities, and modes of operation in order to guarantee:
  - o the proper determination of taxes;
  - o the prevention of possible disputes with tax authorities, activating the instruments established for this purpose, including transparent and accurate tax compliance;
- that the activities relating to the tax process, including the modes of operation for using the services rendered by outside professionals, are carried out with diligence, professionalism, transparency, and fairness, and in compliance with all applicable laws and regulations, the Ethical Code, and Model 231;
- specific checks on the activities leading up to preparing the tax declarations, that include the performance of complementary checks by independent external and internal parties;
- the traceability of the activities and of the documents inherent to the process, ensuring their identification and the reconstruction of the sources, of the elements of information, and of the checks performed that support the activities and the storage of the pertinent documentation, in compliance with the law, and using dedicated information systems where available;
- the keeping of accounting records with criteria of order, systematicity, and timeliness;
- that accounting transparency for the purpose of ensuring that the facts related to the tax process are represented properly and in a timely fashion in the accounting records, and that they reflect what results from the support documentation;
- the regular and prompt fulfilment of the tax substitute obligations, upon verification of the proper rates to be applied and the completeness/intactness of the accompanying documentation;
- identification of a party responsible for managing relations with the Supervisory Authority in the event of inspections, specially delegated by corporate leadership;
- the formalization of directives enshrining the obligation of the utmost collaboration and transparency.

## 14. SPECIAL SECTION M – Offences in the matter of non-cash payment instruments and fraudulent transfer of securities

### 14.1 Relevant criminal offences (art. 25-octies.1)

Hereunder are the regulatory references of the relevant criminal offences and a brief description of some significant aspects for each of the predicate offences pursuant to Legislative Decree no. 231/01.

#### 14.1.1. The criminal Offences in the matter of non-cash payment instruments referred to by article 25-octies.1 of Legislative Decree no. 231/01

Legislative Decree no. 184 of 08 November 2021 brought changes to the Italian Criminal Code and Criminal Code, as well as to Legislative Decree. 231/01.

As for the former, the legislative reform determined:

- a) the enlargement due to integration of art. **493 ter of the Italian Criminal Code** with the punishable conduct relating not only to “credit/debit cards” but also any non-cash payment;
- b) the introduction of the new offence pursuant to art. **493 quater of the Italian Criminal Code**, aimed at punishing whoever, with a view to economic exploitation, produces, distributes, or makes available to third parties instruments and programs aimed at committing offences relating to non-cash payment instruments
- c) the extension of the offence of computer fraud pursuant to art. **640 ter**, through the establishment of an additional aggravating circumstance in the case in which the offence produces a transfer of money, of monetary value, or of virtual currency.

The term “non-cash payment instrument” is to be understood as any non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange.

In its turn, the term “protected device, object or record” is to be understood as any device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature.

Moreover, the term “digital means of exchange” is to be understood as any electronic money as defined in art. 1, paragraph 2, letter b ter of Legislative Decree no. 385/1993, and currency.

Lastly, the term “virtual currency” is to be understood as a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of a currency or money,

but is accepted by natural or legal persons as a means of exchange, and which can be transferred, stored and traded electronically.

As for the liability of entities, the reform introduced the aforementioned offences among the predicate offences, via the new art. 25-octies.1.

Most recently, Law no. 137/2023 introduced, among the predicate offences provided for by art. 25-octies.1 of Legislative Decree no. 231/01, the crime of “Fraudulent transfer of securities” as per art. 512-bis of the Italian Criminal Code.

The following is a description of the offences referred to by art. 25-octies.1 of Legislative Decree no. 231/01.

***Undue use and forgery of non-cash payment instruments (art. 493-ter of the Italian Criminal Code)***

Art. 493-ter of the Italian Criminal Code punishes anyone who “in order to draw profit therefrom for him or herself or for others, unduly uses, when not the holder thereof, credit or payment cards, or any other document that enables the withdrawal of cash or the purchase of goods or the rendering of services, or at any rate any other non-cash payment instrument,” or who “forges or alters [the above] instruments or documents or possesses, transfers, or acquires such instruments or documents of unlawful provenance or at any rate forged or altered, or payment orders produced with them.”

***Possession and dissemination of equipment, devices, or computer programs aimed at committing offences relating to non-cash payment instruments (art. 493-quater of the Italian Criminal Code)***

Unless a more serious offence is committed, this crime applies to anyone who “in order to use them or permit others to use them in the commission of offences involving non-cash payment instruments, produces, imports, exports, sells, transports, distributes, makes available, or in any way procures for him or herself or for others equipment, devices, or computer programs that, due to their technical/construction or design features, are built mainly to commit these offences, or are specially adapted to this purpose.”

***Computer fraud aggravated by the completion of a transfer of money, of monetary value, or of virtual currency (art. 640-ter of the Italian Criminal Code)***

This offence is committed by “anyone who, by altering the function of a computer or online system in any way or intervening, by any procedure, without being entitled to do so, on data, information, or programs contained in or pertaining to a computer or online system, procures unjust profit for him or herself or for others to the detriment of others.” The offence is punished pursuant to art. 25-octies.1 of Legislative Decree no. 231/01 for the entity, if it is committed

in its interest or to its benefit, in the case in which the offence is aggravated by the circumstance that the act produced a transfer of money, monetary value, or virtual currency.

***Other cases (art. 25-octies.1, Legislative Decree no. 231/01, second paragraph)***

The second paragraph of art. 25-octies.1 of Legislative Decree no. 231/01 contains a closing regulation that establishes that the entity may also be punished for the commission of any other offence against the public trust or against public property, or at any rate that offends the public property provided for by the Italian Criminal Code, when it has as its object non-cash payment instruments, unless the fact rises to being a more seriously penalized administrative offence.

This provision appears to introduce a significant exception to the closed number of predicate offences for 231 liability, since a rigorous interpretation of it might lead to this liability being raised for offences not included among the predicate offences, and would force entities to perform a compliance activity potentially extended to any possible crime. On this issue, clarity from case law or doctrine is pending.

***Fraudulent transfer of securities (art. 512-bis of the Italian Criminal Code)***

The regulation punishes the behaviour of those who fictitiously attribute to others the entitlement to hold or have at their disposal money, assets, or other benefits with the purpose of circumventing the provisions of law in the matter of asset protection or contraband, or of facilitating the commission of one of the offences pursuant to articles 648, 648-bis, and 648-ter, which is to say offences in the matter of money laundering. The sphere of punishability established by the measure may include, for example, the fictitious naming of a front man as director of a company, to hold the company's banking account, with the power to dispose of its resources, or the establishment of a new business activity exercised in corporate form with the same purpose referred to by the regulation. The offence in question is free-form, instantaneous with permanent effects, and is committed at the moment when the irregularity between formal and apparent entitlement is put into effect.

**14.2 Identification of the sensitive areas and activities in the context of crimes of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering**

It bears pointing out at the outset that the crimes pursuant to this Special Section are difficult to commit within healthy, legality-oriented corporate entities, and that their inclusion among the predicate offences for the liability of entities appears aimed at striking, more than anything

else, organizations oriented towards the commission of unlawful acts<sup>32</sup>, as well as enterprises whose core business is conserving and managing the capital of others or that deal with the making of equipment, devices, and computer systems that come into contact with non-cash payment instruments and that, by virtue of the activity performed, have access to data and information enabling the use of said instruments.

In the other cases, the offences in question may be charged only against the organization to which the acting natural person belongs, through the undue utilization of non-cash payment instruments that it is using (credit/debit cards, fuel cards, online payment systems, etc.).

However, from this standpoint, it must be taken into consideration that the entity cannot be charged with a 231/01 liability if no interest or benefit to it in relation to the committed crime can be found.

From this perspective, it is difficult to hypothesize that the commission of crimes like those considered under the offences indicated by art. 25-*octies*.1 of Legislative Decree no. 231/01 can bring a tangible benefit for the healthy enterprise, and this is the case not only when it is the party harmed by the improper use of non-cash payment instruments by its own personnel, but also when possible third parties with which the entity normally comes into contact (suppliers, customers) are harmed.

The only interest/benefit of a legal person that legitimates the commission of these offences might be that of increasing profit or reducing costs, characterizing a specific business policy carried out through the omission of appropriate measures to protect data and information relating to payment systems that the entity would have due to the exercise of its own economic activity.

However, once again, this situation leads back to those enterprises having, by virtue of the economic activity performed, the possibility of accessing or interfacing with computer systems for managing money and other, various payment instruments of a large or undetermined number of individuals who, in order to achieve expenditure savings, neglect to ensure the appropriate security measures, thereby allowing a party in their organization to perform illegal acts of transfer of money or securities to the detriment of the various parties with which they come into contact.

Moreover, in the case of Rai Cinema, consideration must be made of the fact that payments and treasury management is entrusted to RAI S.p.A. by virtue of a service contract and that the only non-cash payment instruments in use are credit cards (mostly prepaid) and fuel cards (which may also be likened to prepaid instruments).

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<sup>32</sup> This is particularly clear with reference to the offence pursuant to art. 493-quater of the Italian Criminal Code, in which the sanctioned crimes alternatively (producing, importing, exporting, selling, transporting, distributing, making available, or in any way procuring for him or herself or for others) have a specific and unique purpose, consisting of equipment, devices, or computer programs that, due to their technical/construction or design features, are originally (that is, from the moment of their construction) built mainly to commit offences using non-cash payment instruments, or are specially adapted to this purpose.

The specific risk therefore appears quite limited and, more than anything else, hypothetical, as well as sufficiently overseen via the procedures regulating the use of credit cards and the verification and accounting of the expenses.

As pertains specifically to the offence of fraudulent transfer of securities, it is unlikely that Rai Cinema might be charged with it, given the organizational characteristics derived from the Group relations with RAI. Moreover, since the offence requires specific criminal intent consisting of the purpose of circumventing the provisions of law in the matter of asset protection or contraband, or of facilitating the commission of the crimes of receiving stolen goods, money laundering, or reuse of money or other assets of unlawful provenance, the risk appears even slighter, and at any rate is sufficiently covered by the protocols established in the previous Special Sections, in the Articles of Association, and in the Ethical Code.

Having stated all this, the analysis of the corporate processes carried out during the Project<sup>33</sup> made it possible to identify the activities in whose context the offences referred to by art. 25-*octies.1* of Legislative Decree no. 231/01 might, in the abstract, take place:

**1. Management of human resources:**

- **Managing travel (advances, expense reimbursements, and credit cards)**

**2. Financial statements, administration, and finance area:**

- **Treasury management (payments/collections)**
- **Managing entertainment expenses (advances, expense reimbursements, and credit cards)**

## **14.3 Principles of behaviour and of implementation of the decision-making processes**

### **14.3.1 Principles of behaviour**

This Special Section expressly forbids the Corporate Bodies, Employees (directly) and Outside Collaborators, limited respectively to the obligations contemplated in the specific procedures and codes of behaviour and in the specific clauses inserted in the implementation contracts in implementation of the following principles, to:

- implement, collaborate towards, or give rise to the behaviours that – considered individually or collectively – constitute, directly or indirectly, the criminal offences include among those considered above;
- violate the corporate principles and procedures provided for in this Special Section.

This Special Section thus entails the prohibition for the aforementioned parties to:

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<sup>33</sup> In this regard, see paragraph 3.1 of the General Section.

- use corporate credit cards and the other non-cash payment instruments assigned to them or at any rate available to them, in a manner that deviates from that indicated in the corresponding internal procedure or from the instructions, however imparted, for proper use thereof, while refraining from transferring personal credentials to others, even momentarily;
- in any event, make undue use of credit or payment cards or at any rate of any other non-cash payment instrument, with this being understood as any non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange;
- forge or alter credit or payment cards or at any rate any other non-cash payment instrument, as defined above;
- hold, purchase, or transfer credit or payment cards or at any rate any other non-cash payment instrument that are of unlawful provenance or at any rate forged or altered;
- produce, import, export, sell, transport, distribute, make available, or in any way procure for him or herself or for others equipment, devices, or computer programs that, due to their technical/construction or design features, are built mainly to commit these offences using non-cash payment instruments, or are specially adapted to this purpose;
- alter in any way the function of a computer or online system in any way or intervening, by any procedure, without being entitled to do so, on data, information, or programs contained in or pertaining to a computer or online system

#### **14.3.2 Principles of implementation of decision-making processes**

The following is a list of the control standards identified for the individual Sensitive activities.

The CEO authorizes the assignments of credit cards to personnel in consideration of particular service conditions and of the specific operative requirements.

A specific corporate procedure regulates the criteria for assigning credit cards, the obligations of the holders (assignees) of the credit cards, the expense authorization and reporting procedures, as well as the corporate functions empowered to control the reporting, the traceability obligations, and the flows of information to the Supervisory Board.

For the service activities performed by RAI, the service contract shall provide for compliance with the control standards identified hereunder for the individual sensitive activities.

#### **2. Management of human resources:**

- **Managing travel (advances, expense reimbursements, and credit cards)**

The activity is performed in compliance with the established control standards reported in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals” to which reference should be made.

**2. Financial statements, administration, and finance area:**

- **Treasury management (payments/collections)**
- **Managing entertainment expenses (advances, expense reimbursements, and credit cards)**

The activity is performed in compliance with the established control standards reported in “Special Section A - Offences in relations with Public Administration and Bribery among private individuals” to which reference should be made.



## Principles of reference for the adoption of the Organization, Management, and Control Model pursuant to legislative decree no. 231/2001

### APPENDIX A

#### Regulatory framework of reference

##### 1.1. Introduction

Legislative Decree no. 231 of 08 June 2001 (hereinafter, “Legislative Decree no. 231/01” or the “Decree”), in execution of the enabling authority conferred to the Government with art. 11 of law no. 300 of 29 September 2000, regulates the “*liability of entities for the administrative offences resulting from crime,*” which applies to entities with legal personality and companies and associations, including those that lack legal personality<sup>34</sup>.

Legislative Decree no. 231/2001 had its primary genesis in some international and EC conventions ratified by Italy, which require establishing forms of the bodies’ liability for certain types of crimes: these entities, in fact, may be held “responsible” for certain committed or attempted crimes, in the interest or to the advantage of said entities, by their corporate leadership (“senior management”) and by those subject to their direction or oversight (art. 5, paragraph 1, of Legislative Decree no. 231/2001)<sup>35</sup>.

Legislative Decree no. 231/01 thus innovates the Italian legal system, in that entities are now, directly and autonomously, subject to both pecuniary sanctions and debarment for crimes charged to parties functionally connected with the bodies pursuant to art. 5 of the Decree<sup>36</sup>.

The entities’ administrative liability is independent of the criminal liability of the physical person who has committed the offence; it comes not in place of but in addition to the personal liability of the individual who has committed the crime.

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<sup>34</sup> This scope of application covers public undertakings and private entities that are concessionaires of a public service, while this application includes, beyond the state and the local Public Entities, the non-economic public undertakings that perform functions of constitutional importance.

<sup>35</sup> Art. 5, paragraph 1, of Legislative Decree no. 231/01: “Liability of the entity – The entity is liable for the crimes committed in its interest and to its advantage: a) by persons with positions of representation, administration, or management of the entity or of its organizational unit with financial and functional autonomy, as well as by persons who exercise the even de facto management and control thereof; b) by persons subject to the management or supervision of one of the parties as per letter a).”

<sup>36</sup> Based on art. 8 of Legislative Decree no. 231/01: “Autonomy of the entity’s liability – 1. the entity is liable when: a) the party committing the offence has not been identified or cannot be charged; b) the offence is struck down by amnesty. 2. Unless the law provides otherwise, the entity is not proceeded against when an amnesty is granted for an offence it is responsible for and the accused has waived application thereof. 3. The entity may waive amnesty.”

However, this liability is excluded if the entity involved has, among other things, adopted and effectively implemented, prior to the commission of the crimes, organization, management, and control models designed to prevent these crimes; these models may be adopted based on codes of behaviour (Guidelines) developed by associations representing companies, such as Confindustria, and made known to the Ministry of Justice.

Administrative liability is at any rate excluded if the senior persons and/or their subordinates have acted in the exclusive interest of themselves or of third parties<sup>37</sup>.

## 1.2. Nature of the liability

With reference to the nature of administrative liability pursuant to Legislative Decree no. 231/01, the decree's illustrative Report stresses the "*birth of a tertium genus that joins the essential features of the criminal law system to that of administrative law, in the attempt to strike a balance between the reasons of preventive effect with the even more essential ones of providing the maximum guarantee.*"

Legislative Decree no. 231/01 in fact introduced into our legal system an "administrative" type of liability of entities – in keeping with the dictates of art. 27, first paragraph, of our Constitution ("Criminal responsibility is personal") – but with numerous points of contact with a "criminal" type liability<sup>38</sup>.

## 1.3. Criteria for assigning liability

The commission of one of the crimes indicated by the Decree is prerequisite to the applicability of the regulation dictated by it.

The Decree establishes objective and subjective criteria for attributing liability (in the broad sense, as these are entities).

### Objective criteria for attributing liability

The first fundamental and essential criterion of objective attribution of liability is the condition that the crime – or the administrative offence – is committed "*in the entity's interest or to its advantage.*"

The entity's liability arises, then, if the unlawful act was committed in the entity's *interests* or *to benefit* the entity, without the actual and concrete achievement of the objective being in any way required. It is thus a criterion that takes substance in the *purpose* – and not

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<sup>37</sup> Art. 5, paragraph 2, of Legislative Decree no. 231/01: "Liability of the entity – *The entity is not liable if the persons indicated in paragraph 1 have acted in their own exclusive interest, or in the interest of third parties.*"

<sup>38</sup> In this sense, see, among the most significant, articles 2, 8, and 34 of Legislative Decree no. 231/01, where the first reaffirms the principle of legality typical of criminal law; the second affirms the independence of the entity's liability from the ascertaining of the liability of the natural person who has committed the criminal act; and the third provides for the circumstance that said liability, depending on the commission of an offence, is ascertained in a criminal proceeding, and is thus accompanied by the guarantees inherent to criminal trial. Consider also the punitive nature of the sanctions applicable to the entity.

necessarily the exclusive purpose – with which the unlawful act was carried out.

The criterion of advantage, on the other hand, pertains *to the positive result* that the entity has objectively drawn from the commission of the offence, regardless of the intent of whoever committed it.

The entity is not liable if the unlawful act was committed by one of the parties indicated by the Decree “*in its own exclusive interest or in that of third parties.*” This confirms that if the exclusive nature of the pursued interest keeps the entity’s liability from arising, liability conversely arises if the interest is *common* to the entity and the natural person, or may refer in part to one and in part to the other.

The second criterion for the objective attribution of liability is the party committing the unlawful act. As pointed out above, in fact, the entity is liable for the unlawful act committed in its interest or to its benefit only if it was carried out by one or more qualified subjects, which the Decree groups into two categories:

- 1) “*by persons with positions of representation, administration, or management of the entity or of its organizational unit with financial and functional autonomy,*” or by those that “*exercise the even de facto management and control*” of the entity, such as for example, the legal representative, the board member, the General Manager, or the manager of an office or branch, as well as the persons that exercise the *even de facto* management and control of the entity<sup>39</sup> (the so-called persons “in a senior position”; art. 5, paragraph 1, letter a), of Legislative Decree no. 231/01);
- 2) “*by persons subject to the management or supervision of one of the senior parties*” (the so-called parties subjected to management by others; art. 5, paragraph 1, letter b), of Legislative Decree no. 231/01). This category includes those who *execute* in the entity’s interest the decisions adopted by the leadership under the management and supervision of the senior parties. This category may also include, in addition to the entity’s employees, all those that act in its name, behalf, and interest, such as for example collaborators, semi-employed freelancers, and consultants.

If a number of parties cooperate towards committing the offence (giving rise to the *complicity persons in the crime*: art. 110 of the criminal code; in substance, the same holds true in the case of administrative offence), it is not necessary for the “qualified” party to implement, even in part, the typical action provided for by law. It is necessary and sufficient that this party make a conscious cause-and-effect contribution to carrying out the crime.

#### Subjective criteria for attributing liability

The Decree outlines the entity’s liability as a direct liability, by its own, conscious doing; the subjective criteria for attributing liability concern the profile of the entity’s guilt.

The entity is held responsible if it has not adopted or has failed to comply with standards

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<sup>39</sup> As the so-called “de facto administrator” (see art. 2639 of the civil code) or sovereign partner may be.

of control and good management relating to its organization and to conducting its business. The entity's *guilt*, and thus the possibility of reprimand, depends on finding an improper business policy or structural deficits in the corporate organization that failed to prevent the commission of one of the predicate offences.

The entity's liability is excluded if the entity – *prior to the commission of the crime* – has adopted and effectively implemented an organization and management model designed to prevent the commission of crimes, of the kind that has been developed.

#### **1.4. Exemption offered by Organization, management, and control models**

The Decree excludes the entity's liability in the case that, *prior to the commission of the crime*, the entity has developed and effectively implemented an "organization, management, and control model" (the model) designed to prevent the commission of crimes, of the kind that has been developed.

However, if the entity has eliminated the organizational shortcomings that led to the crime by adopting and implementing organizational models designed to prevent crimes, of the kind that has been developed, before declaring the opening of arguments at the court of first instance, this makes it possible to avoid application of debarment sanctions, pursuant to the provisions of art. 17 of the Decree.

Also, if the Model is drawn up after conviction and is accompanied by compensation for the damage and restitution of the profit, it will be possible to convert the disqualification sanction that may have been imposed into a pecuniary sanction, pursuant to art. 78 of the Decree.

The Model operates to provide exemption whether the predicate offence was committed by a senior party, or was committed by a party subjected to the management and supervision of a senior party.

##### *Offence committed by a senior party*

For the crimes committed by senior parties, the Decree introduces a sort of *presumption of the entity's liability*, given that its liability is excluded only if it demonstrates that<sup>40</sup>:

- a) *"the leadership body has adopted and effectively implemented, prior to the commission of the crimes, organization, management, and control models designed to prevent the commission of crimes, of the kind that has been developed"*;
- b) *"the task of supervising the function of and compliance with the models, and of seeing that they are updated, has been entrusted to a body of the entity with autonomous initiative and control powers"*;

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<sup>40</sup>Art. 6 of the DECREE.

- c) *“the persons have committed the crime by fraudulently avoiding the organization and management models”;*
- d) *“there was no lack of supervision, or insufficient supervision, by the body with autonomous initiative and control powers.”;*

The conditions now listed must, *all and jointly*, take place together for it to be possible to exclude the entity’s liability.

The company shall then demonstrate that it is extraneous to the acts charged to the senior party by proving the existence of the requirements listed above, concurrent with one another, and, consequently, the circumstance that the commission of the offence does not derive from its own “organizational fault.”<sup>41</sup>

*Offence committed by parties subject to the management or supervision of a senior party*

For the crimes committed by parties subject to the management or supervision of a senior party, the entity may be held accountable *only* if it is found that *“the commission of the offence was made possible by failure to comply with the obligations of management or supervision.”*

In other words, the entity’s liability is grounded upon default of the duties of management and supervision – duties attributed by law to Senior Management or transferred to other parties by virtue of valid delegations<sup>42</sup>.

In any event, violation of the obligations of management and supervision is excluded “if the entity, prior to the commission of the crime, has adopted and effectively implemented an organization and management model designed to prevent the commission of crimes, of the kind that has been developed.”

In the event of crime committed by a party subject to the management or supervision of a senior party, the burden of proof is inverted. The charge, in the case provided for by the aforementioned art. 7, must prove the failure to adopt and effectively implement an organization and management model designed to prevent the commission of crimes, of the kind that has been developed.

Legislative Decree no. 231/01 outlines the content of the organization and management model, providing that they, with regard to extending the delegated powers and to the risk of commission of the crimes, as specified by art. 6, paragraph 2, must:

- identify the activities in whose sphere crimes may be committed;

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<sup>41</sup> The Decree’s illustrative report expresses itself in this regard in these terms: *“For the purposes of the entity’s liability, it will then not only be necessary for the offence to be ascribable to it in objective terms (the conditions under which this takes place, as has been seen, are governed by article 5); moreover, the crime must also be an expression of the corporate policy, or at least derive from an organizational fault.”* Also: *“one starts with the (empirically grounded) presumption that, in the case of crime committed by someone in the top leadership, the “subjective” requirement of the entity’s liability [or the entity’s so-called “organizational fault”] is met when the member of the top leadership expresses and represents the entity’s policy; where this does not take place, it will have to be the company that demonstrates that it is extraneous to the offence, and will be able to do so only by proving the existence of a series of requirements concurring with one another.”*

<sup>42</sup> Art. 7, paragraph 1, of the Decree.

- establish specific protocols aimed at programming the formation and implementation of the entity's decisions with regard to the crimes to be prevented;
- identify procedures for managing financial resources suitable for preventing the commission of crimes;
- provide for obligations of providing information to the body charged with supervising that the models function and are complied with;
- introduce a regulatory system designed to sanction failure to comply with the measures indicated in the model.

Art. 7, paragraph 4, of Legislative Decree no. 231/01 also defines the requirements of effective implementation of the organizational models:

- periodic verification and, where necessary, modification of the model when significant breaches of its prescriptions are discovered, or when changes are made to the organization and business;
- a regulatory system designed to sanction failure to comply with the measures indicated in the model.

With reference to the health and safety offences which may give rise to the entity's administrative liability, Legislative Decree no. 81 of 09 April 2008 on the Consolidated Law on occupational health and safety, establishes that the Organizational and management Model must:

- also provide for appropriate systems for recording the performance of the aforementioned activities;
- in any case, to the extent required by the nature and size of the organization and the type of activity performed, provide for an organization of functions that ensures the technical skills and powers necessary for verifying, assessing, managing, and controlling risk, as well as a regulatory system designed to sanction failure to comply with the measures indicated in the model;
- also provide for a suitable system overseeing the implementation of said model and the maintenance over time of the conditions of suitability of the adopted measures. The review and any modification of the Organizational Model must be adopted when significant breaches of the occupational health and accident prevention regulations are discovered, or on the occasion of changes in the organization and activity in connection with scientific and technological progress.

### **1.5. Criminal offences and crimes**

Based on Legislative Decree no. 231/01, the entity may be held accountable only for the crimes expressly referred to by Legislative Decree no. 231/01, if committed in its interest or to its benefit by the qualified parties pursuant to art. 5, paragraph 1 of said Decree, or

in the case of specific legal provisions that make reference to the Decree, as in the case of art. 10 of law no. 146/2006.

For the sake of convenience, the criminal offences may be organized in the following categories:

- **crimes in relations with Public Administration.** This is the first group of crimes originally identified by Legislative Decree no. 231/01 (articles 24 and 25)<sup>43</sup>;
- **crimes against the public trust**, such as forgery of money, public credit cards, and stamp duties, as provided for by art. 25-*bis* of the Decree, introduced by art. 6 of Decree Law no. 350/2001, converted into law, with amendments, by art. 1 of law no. 409 of 23 November 2001, on “*Urgent provisions in view of the introduction of the Euro*”<sup>44</sup>;
- **corporate offences.** Art. 25-*ter* was introduced into Legislative Decree no. 231/01 by art. 3 of Legislative Decree no. 61 of 11 April 2002 which, in the sphere of reforming corporate law, extended companies’ administrative liability to certain corporate offences as well<sup>45</sup>;

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<sup>43</sup> These are the following crimes: embezzlement against the state or the European Union (art. 316-*bis* of the criminal code), misappropriation of payments against the state (art. 316-*ter* of the criminal code), fraud against the state or other public body (art. 640, paragraph 2, no. 1 of the criminal code), aggravated fraud for the purpose of obtaining public funds (art. 640-*bis* of the criminal code), computer fraud against the state or other public body (art. 640-*ter* of the criminal code), bribery for the exercise of the function or for an act contrary to official duties (articles. 318, 319, and 319-*bis* of the criminal code), malfeasance in office (art. 317 of the criminal code), corruption in judicial proceedings (art. 319-*ter* of the criminal code), bribery of a person charged with a public service (art. 320 of the criminal code), crimes of the bribe payer (art. 321 of the criminal code), incitement to corruption (art. 322 of the criminal code), Embezzlement, malfeasance in office, undue inducement to give or promise a benefit, corruption and incitement to corruption of members of the International Criminal Court or of the bodies of the European Communities and of officials of the European Communities and of foreign states (art. 322-*bis* of the criminal code), undue inducement to give or promise a benefit (art. 319-*quater* of the criminal code).

<sup>44</sup> These are the crimes of counterfeiting of money, spending and introduction into the state of counterfeit money, acting in concert (art. 453 of the criminal code), alteration of money (art. 454 of the criminal code), spending and introduction into the state of counterfeit money, without acting in concert (art. 455 of the criminal code), spending of counterfeit money received in good faith (art. 457 of the criminal code), forgery of stamps, introduction into the State, purchase, possession or putting in circulation of forged stamps (art. 459 of the criminal code), counterfeiting of watermarked paper used for the production of legal tender or stamps (art. 460 of the criminal code), production or possession of thread marks or instruments used to counterfeit money, official stamps or watermarked paper (art. 461 of the criminal code), use of counterfeit or altered stamps (art. 464 of the criminal code). Law no. 99 of 23 July 2009, on “Provisions for the development and internationalization of enterprises, and with regard to energy,” under art. 15 paragraph 7, modified art. 25-*bis* which now also punishes the counterfeiting and alteration of trademarks or distinctive marks (art.473 of the criminal code), as well as introducing into the State products with false marks (art. 474 of the criminal code).

<sup>45</sup> These are the crimes of false corporate communications (art. 2621 of the civil code, as amended by art. 30 of law no. 262 of 28 December 2005 and of law no. 69 of 27 May 2015) and minor offences (art. 2621 bis of the civil code, as amended by the second paragraph of art. 30 of law no. 262 of 28 December 2005), false corporate communications of listed Companies (art. 2622 of the civil code, as amended by Law 69/2015: the article’s earlier heading read “False corporate communications to the detriment of the company, the shareholders or the creditors), obstructed control (art. 2625, second paragraph, of the civil code), fictitious formation of capital (art. 2632 of the civil code), undue restitution of conferrals (art. 2626 of the civil code), Unlawful division of profits or reserves (art. 2627 of the civil code), unlawful operations on shares or stock of the company or of the parent company (art. 2628 of the civil code), transactions to the detriment of creditors (art. 2629 of the civil code), failure to announce conflict of interest (art. 2629-*bis* of the civil code, introduced by art. 31, first paragraph, of law no. 262 of 2005, which supplemented letter r) of art. 25-*ter* of Legislative Decree no. 231/2001), undue distribution of corporate assets by liquidators (art. 2633 of the civil code), Undue influence on the shareholders’ meeting (art. 2636 of the civil code), Stock manipulation (art. 2637 of the civil code), Obstructing the exercise of the function of the public supervisory authorities (art. 2638 of the civil code). Art. 37, paragraphs 34 and 35, Legislative Decree no. 39 of 27 January 2010, which implements the directive 2006/43/EC on statutory audits, in abrogating art. 2624 of the civil code, and in modifying art. 2625 of the civil code, did not coordinate with art. 25 *ter* of Legislative Decree no. 231/01: given the principle of legality in force in criminal law, the aforementioned criminal offences that were the object of the recent legislative intervention should therefore no longer be listed in the catalogue of predicate offences of the entity’s administrative liability.

- **crimes aimed at terrorism or the subversion of democracy** (referred to by art. 25-*quater* of Legislative Decree no. 231/01, introduced by art. 3 of law no. 7 of 14 January 2003). These are the “*crimes aimed at terrorism or subversion of democracy provided for by the criminal code and by special laws,*” as well as the crimes other than those indicated above, “*that are at any rate carried out in breach of the provisions of article 2 of the International Convention for the Suppression of the Financing of Terrorism done in New York on 09 December 1999*”<sup>46</sup>;
- **market abuse**, referred to by art. 25-*sexies* of the Decree<sup>47</sup>;
- **criminal offences against individuals**, provided for by art. 25-*quinquies*, introduced into the Decree by art. 5 of Law no. 228 of 11 August 2003, amended by Law no. 199/2016, such as child prostitution, child pornography, trafficking of persons, and reducing to or maintaining in slavery or servitude<sup>48</sup>;
- **transnational crimes**. Art. 10 of law no. 146 of 16 March 2006 establishes the entity’s administrative liability also with reference to the crimes specified by that law that have a transnational nature<sup>49</sup>;

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<sup>46</sup> The International Convention for the Suppression of the Financing of Terrorism done in New York on 09 December 1999 punishes anyone who, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (i) an act intended to cause death or serious bodily injury to a civilian, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act; (ii) an act that is a crime under the conventions in the matter of: safety of aviation and of navigation, the protection of nuclear material, protection of diplomatic agents, suppression of terrorist bombings. The category of “*crimes aimed at terrorism or subversion of democracy provided for by the criminal code and by special laws*” is mentioned by lawmakers generically, without indicating the specific regulations the violation of which would entail the application of this article. At any rate, the following may be indicated as the main predicate offences: art. 270-*bis* of the criminal code (*Conspiracies for the purpose of terrorism, including international terrorism, or subversion of democracy*), which punishes whoever promotes, constitutes, organizes, leads, or finances conspiracies that aim to commit acts of violence aimed at terrorism or subverting democracy, and art. 270-*ter* of the criminal code (*Assistance to conspiracies*), which punishes whoever harbours or provides food, hospitality, means of transport, or instruments of communication to any of the persons taking part in conspiracies for the purpose of terrorism, or subversion of democracy.

<sup>47</sup> Art. 25-*sexies*, introduced by art. 9 of law no. 62 of 18 April 2005 (“2004 EC Law”), establishes that the company may be held accountable for the crimes of misuse of privileged information (art. 184 of the Consolidated Financial Law) and of market manipulation (art. 185 of the Consolidated Financial Law). Based on art. 187-*quinquies* of the Consolidated Financial Law, the entity may also be held accountable for the payment of a sum equal to the amount of the administrative pecuniary sanction paid for the administrative offences of misuse of privileged information (art. 187-*bis* of the Consolidated Financial Law) and of market manipulation (art. 187-*ter* of the Consolidated Financial Law), if committed, in its interest or to its benefit, by persons that may be classified in the categories of “senior parties” and of “parties subject to management or supervision by others.”

<sup>48</sup> The sanctioned crimes are: reducing to or maintaining in slavery or servitude (art. 600 of the criminal code), trafficking in persons (art. 601 of the criminal code), purchase and sale of slaves (art. 602 of the criminal code), crimes connected with child prostitution and the exploitation thereof (art. 600-*bis* of the criminal code), with child pornography and the exploitation thereof (art. 600-*ter* of the criminal code), possession of pornographic material produced during the sexual exploitation of minors (art. 600-*quater* of the criminal code), tourism initiatives aimed at exploiting child prostitution (art. 600-*quinquies* of the criminal code), solicitation of minors (art. 609-*undecies* of the criminal code); Illegal intermediation and exploitation of labour (art. 603-*bis* of the criminal code). *Gazzetta Ufficiale* no. 235 of 08 October 2012 published law no. 172 of 01 October 2012, of “Ratification and execution of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,” adopted by the Committee of Ministers of the Council of Europe on 12 July 2007 and opened for signature on 25 October 2007 in Lanzarote. In ratifying the Council of Europe Convention, some changes to the criminal code were made, impacting the sphere of operativity of articles 24-*ter* and 25-*quinquies* of Legislative Decree no. 231/2001.

Legislative Decree no. 39/2014 (art. 3) inserted into article 25-*quinquies* of Legislative Decree no. 231/2001 a reference to article 609-*undecies* on “Solicitation of minors,” thus including in this criminal offense the list of crimes that may be ascribed to legal persons.

<sup>49</sup> The crimes indicated by the aforementioned art. 10 of law no. 146/2006 (conspiracy, mafia-related conspiracy, conspiracy aimed at the smuggling of foreign processed tobacco products, conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs, smuggling of migrants, inducing someone not to testify or to make false statements to the judicial authority, aiding and



- **crimes against individual life and safety.** Art. 25-*quater*.1 of the Decree, introduced by Law no. 7 of 9 January 2006, establishes, among the crimes for which the entity's administrative liability may be invoked, the practises of mutilation of female genital organs;
- **crimes of culpable homicide and serious or grievous involuntary personal injury, committed with violation of the regulations on the protection of occupational health and safety.** Art. 25-*septies* establishes the entity's administrative liability for the offences pursuant to articles 589 and 590, third paragraph, of the criminal code (culpable homicide and serious or grievous involuntary personal injury), committed with violation of the regulations on the protection of occupational health and safety<sup>50</sup>;
- **crimes of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as self laundering.** Art. 25-*octies*<sup>51</sup> of the Decree establishes extending the entity's liability also for the offences provided for by articles 648, 648-*bis*, 648-*ter*, and 648-*ter*<sup>1</sup> of the criminal code;
- **Offences in the matter of non-cash payment instruments and fraudulent transfer of securities** pursuant to art. 25-*octies*.1 introduced by Legislative Decree no. 184 of 08 November 2021<sup>52</sup> and supplemented by Law no. 137/2023;

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abetting) are considered transnational when the offence has been committed in more than one State, or, if committed in one State, a substantial part of its preparation, planning, direction, or control has taken place in another State, or it has involved an organized crime group engaged in criminal activities in more than one State. In this case, no additional provisions were introduced into the body of Legislative Decree no. 231/01. The liability derives from an autonomous provision contained in the aforementioned art. 10, which establishes the specific administrative sanctions applicable to the crimes listed above, providing that – by way of reference – in the final paragraph that “the administrative offences provided for by this article are subject to the provisions pursuant to Legislative Decree no. 231 of 08 June 2001.”

<sup>50</sup> The aforementioned article was introduced by art. 9, law no. 123 of 03 August 2007, and subsequently amended by art. 300 (Amendments to legislative decree no. 231 of 08 June 2001) of legislative decree no. 81 of 09 April 2008, on implementing art. 1 of law no. 123 of 03 August 2007 on occupational health and safety, published in *Gazzetta Ufficiale* no. 101 – S.O. no. 108/ *Gazzetta Ufficiale* of 30 April 2008.

<sup>51</sup> Art. 63, paragraph 3, of Legislative Decree no. 231 of 21 November 2007, published in *Gazzetta Ufficiale* 14 December 2007 no. 290, later amended by Law no. 186/2014 and by Legislative Decree no. 90/2017, on implementing Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of laundering the proceeds of criminal activities and activities financing terrorism, as well as Directive no. 2006/70/CE, which contains its enforcement measures, introduced the new article into legislative decree no. 231 of 08 June 2001, which in fact provides for the entity's administrative liability in the case of crimes of receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance. Art. 3, paragraph 3, of law no. 186 of 15 December 2014, published in *Gazzetta Ufficiale* 17 December 2014 in the matter of emersion and return of capital held abroad and self laundering, inserts into the criminal code, under art. 648 *ter* 1 [sentence is interrupted].

<sup>52</sup> Art. 25-*octies*.1 introduced by Legislative Decree no. 184 of 08 November 2021, states that the commission of the offences provided for by the Italian Criminal Code in the matter of non-cash payment instruments is subject to the following pecuniary sanctions:

- a) for the offence pursuant to article 493-*ter*, the pecuniary sanction of 300 to 800 shares;
- b) for the offence pursuant to article 493-*quater* and for the offence pursuant to article 640-*ter*, in the case aggravated by the completion of a transfer of money, of monetary value, or of virtual currency, a pecuniary sanction of up to 500 shares.

Unless the offence rises to becoming another administrative offence subject to more serious sanction, for the commission of any other crime against the public trust, against public property, or that at any rate offends the public property as provided for by the Italian Criminal Code, when it relates to non-cash payment instruments, the entity is subject to the following pecuniary sanctions:

- a) if the offence is punishable with less than ten years' imprisonment, a pecuniary sanction of up to 500 shares;
- b) if the offence is punishable with no less than ten years' imprisonment, the pecuniary sanction of 300 to 800 shares.

In relation to the commission of the offence pursuant to article 512-*bis* of the Italian Criminal Code, the entity shall be subject to a pecuniary sanction of 250 to 600 shares.

In the cases of conviction for one of the offences as per paragraphs 1 and 2, the entity shall be subject to the debarment sanctions provided for by article 9, paragraph 2.

- **computer crimes and unlawful processing of data.** Art. 24-*bis* of the Decree establishes new administrative offences depending on certain computer crimes and unlawful processing of data<sup>53</sup>;
- **offences against industry and trade,** referred to by art. 25-*bis* no. 1 of the Decree<sup>54</sup>;
- **offences of organized crime,** referred to by art. 24-*ter* of the Decree<sup>55</sup>;
- **criminal offences in the matter of copyright violations,** referred to by art. 25-*novies* of the Decree<sup>56</sup>;

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<sup>53</sup> Art. 24-*bis* was introduced into the text of Legislative Decree no. 231/01 by art. 7 of law no. 48 of 18 March 2008 on the Ratification and execution of the Convention of the Council of Europe on Cybercrime, done in Budapest on 23 November 2001, and regulations to adjust the entire legal system, published in *Gazzetta Ufficiale* no. 80 of 04 April 2008 – S.O. no. 79. the crimes giving rise to the entities' administrative liability are those as per articles 491-*bis* (Forgeries in electronic documents), 615-*ter* (Unlawful access to a computer or online system), 615-*quater* (Possession and unlawful circulation of access codes to computer or online systems), 615-*quinquies* (Circulation of equipment, devices, or computer programs aimed at damaging or interrupting a computer or online system), 617-*quater* (Installation of devices designed to intercept, hinder, or interrupt computer or online communications), 617-*quinquies* (Installation of devices designed to intercept, hinder, or interrupt computer or online communications), 635-*bis* (Damage to computer information, data, or programs), 635-*ter* (Damage to computer information, data, or programs used by the State or by another public entity, or at any rate of public utility), 635-*quater* (Damage to computer and online systems), 635-*quinquies* (Damage to computer and online systems of public utility) and 640-*quinquies* (Computer fraud by a party performing electronic signature certification services) of the criminal code.

<sup>54</sup> Art. 25 bis no.1 was added by art.15, paragraph 6, of Law no. 99 of 23 July 2009. The crimes giving rise to entities' administrative liability are: Disruption of freedom of industry or of trade (art. 513 of the criminal code), Fraud in the exercise of trade (art. 515 of the criminal code), Sale of non-genuine food items as genuine (art. 516 of the criminal code), Sale of industrial products with mendacious marks (art. 517 of the criminal code), Manufacture and trade of goods made by encroaching on industrial property rights (art. 517-*ter* of the criminal code); Counterfeiting of geographical indications or designations of origin of agricultural and food products (art. 517-*quater* of the criminal code), Unlawful competition with threats or violence (art. 513 *bis* of the criminal code), Fraud against national industries (art. 514 of the criminal code); violation of the rules in the matter of the national cybersecurity perimeter (art. 1, paragraph 11, of Legislative Decree no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019.

<sup>55</sup> Art. 24-*ter* was introduced by Law no. 94, of 15 July 2009, art. 2, paragraph 29. The crimes giving rise to entities' administrative liability are: Conspiracy (art. 416 of the criminal code including the modification introduced by Law no. 172 of 01 October 2012 ratifying the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse), except for the sixth paragraph); Conspiracy aimed (art. 416, sixth paragraph, of the criminal code): i) at reducing to or maintaining in slavery or servitude (art. 600 of the criminal code); ii) trafficking in persons (art. 601 of the criminal code); iii) the purchase and sale of slaves (art. 602 of the criminal code); iv) crimes concerning violations of the provisions on illegal immigration pursuant to art. 12 of Legislative Decree no. 286/1998; mafia-related conspiracy (art. 416-*bis* of the criminal code); mafia-related political election exchange (art. 416-*ter* of the criminal code); kidnapping for ransom (art. 630 of the criminal code); conspiracy aimed at the illegal traffic of narcotics or psychotropic drugs (art. 74 of DPR no. 309 of 09 October 1990); Unlawful manufacture, introduction into the State, placement for sale, transfer, possession and carrying in a public place or a place open to the public weapons of war or military-grade weapons, or parts thereof, explosives, clandestine weapons, as well as more common firearms (art. 407, paragraph 2, letter a), number 5), of the code of criminal procedure) (see law no. 110/1975). *Gazzetta Ufficiale* no. 235 of 08 October 2012 published Law no. 172 of 01 October 2012 of "Ratification and execution of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse," adopted by the Committee of Ministers of the Council of Europe on 12 July 2007 and opened for signature on 25 October 2007 in Lanzarote. In ratifying the Council of Europe Convention, some changes to the criminal code were made, impacting the sphere of operativity of articles 24-*ter* and 25-*quinquies* of Legislative Decree no. 231/2001.

<sup>56</sup> Art. 25-*novies* was introduced by Law no. 99 of 23 July 2009 and later amended with Law no. 93 of 14 July 2023: The crimes giving rise to entities' administrative liability are: making available to the public, in a system of online networks, through links of any kind, a work or part of a work of intellectual property protected by copyright (art. 171, Law no. 633/1941, paragraph 1 letter a) bis); crimes as per the above point, committed with regard to the work of another party not intended for publication, if the author's integrity or reputation is harmed (art. 171, Law no. 633/1941 paragraph 3); Unlawful duplication, to draw profit therefrom, of computer programs, importing, distribution, sale, and possession for commercial or other business purpose, or rental of programs contained on media not marked by SIAE; preparation of media to remove or avoid devices protecting computer programs (art. 171 bis Law no. 633/1941 paragraph 1); reproduction, transfer to another support, distribution, communication, presentation, or public demonstration of the content of a data bank; extraction or reuse of the data bank; distribution, sale, or rental of data banks (art. 171-bis Law no. 633/1941 paragraph 2); Unlawful duplication, reproduction, transmission, or broadcast in public, with any procedure, in whole or in part, of intellectual works intended for the television or film circuit, or that of sale or rental of discs, tapes or analog or other media containing sounds or images from musical works, films or similar audiovisual works or sequences of moving images; literary, theatrical, scientific, educational, musical, theatrical music or multimedia works,

- **inducing someone not to testify or to make false statements to the judicial authority** (art. 377-*bis* of the criminal code), referred to by art. 25-*decies* of the Decree<sup>57</sup>
- **environmental crimes**, referred to by art. 25-*undecies* of the Decree<sup>58</sup>;

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even when included in collective or composite works or databanks; reproduction, duplication, transmission or unlawful broadcast, sale or commerce, transfer under any title or unlawful importation of more than 50 copies or originals of works protected by copyright and related rights; introduction into a system of online networks, through connections of any kind, of an intellectual work protected by copyright, or part thereof (art. 171-ter Law no. 633/1941); Failure to communicate to SIAE the identification data of media for which the SIAE mark is not required or false declaration (art. 171-*septies* l. 633/1941); fraudulent manufacture, sale, importation, promotion, installation, modification and utilization for public or private use of devices or parts thereof designed to decode audiovisual broadcasts with conditional access over the air, by satellite or by cable, in analog or digital form (art. 171-*octies* l. 633/1941).

<sup>57</sup> Art.25-*decies* was added by Art.4 of Law no. 116/09, as replaced by art. 2, paragraph 1, of Legislative Decree no. 121 of 07 July 2011.

<sup>58</sup> Art.25-*undecies* introduced into Legislative Decree no. 231/01, extending the entity's liability to the mostly misdemeanour offences of:

- a) unauthorized discharge of industrial wastewater containing hazardous substances and discharge of said substances in violation of the requirements imposed with the authorization (articles. 137, paragraphs 2 and 3, of Legislative Decree no. 152 of 03 April 2006); discharge of industrial wastewater in violation of the established limits (art. 137, paragraph 5, first and second sentences, of Legislative Decree no. 152 of 03 April 2006); violation of the prohibitions of discharge onto the ground, into underground water, and in the subsoil (art. 137, paragraph 11, of Legislative Decree no. 152 of 03 April 2006); discharge into the sea by vessels or aircraft of substances or materials whose spillage is prohibited (art. 137, paragraph 13, of Legislative Decree no. 152 of 03 April 2006); collection, transport, recovery, disposal, trade, and intermediation of waste in the absence of the required authorization, registration, or communication (art. 256, paragraph 1, letters a) and b) of Legislative Decree no. 152 of 03 April 2006); developing or managing an unauthorized dump (art. 256, paragraph 3, first and second sentences, of Legislative Decree no. 152 of 03 April 2006); failure to comply with the provisions contained in the authorization to manage a dump, or for other activities concerning waste (art. 256, paragraph 4, of Legislative Decree no. 152 of 03 April 2006); prohibited mixing of waste (art. 256, paragraph 5, of Legislative Decree no. 152 of 03 April 2006); temporary deposit of hazardous medical waste at the place of production (art. 256, paragraph 6 of Legislative Decree no. 152 of 03 April 2006); pollution of the soil, of the subsoil, of surface water and of underground water, and failure to notify the competent entities (art. 257, paragraphs 1 and 2, of Legislative Decree no. 152 of 03 April 2006); falsification and use of false waste analysis certificates (art. 258, paragraph 4 and art. 260 *bis*, paragraphs 6 and 7, of Legislative Decree no. 152 of 03 April 2006); unlawful traffic of waste (art. 259, paragraph 1, of Legislative Decree no. 152 of 03 April 2006); organized activities for the unlawful traffic of waste (art. 260, of Legislative Decree no. 152 of 03 April 2006); violations of the waste traceability control system (art. 260 *bis*, paragraph 8, of Legislative Decree no. 152 of 03 April 2006); air pollution (art. 279, paragraph 5, of Legislative Decree no. 152 of 03 April 2006);
- b) unlawful importing, exporting, transport, and use of animal species and trade in artificially reproduced plants (art. 1, paragraphs 1 and 2, and art. 2, paragraphs 1 and 2, of Law no. 150 of 07 February 1992); falsification or alteration of certificates and permits, and use of false or altered certificates and permits for the importing of animals (art. 3 *bis* of Law no. 150 of 07 February 1992);
- c) violation of the provisions on the use of substances harmful to the ozone layer (art. 3, paragraph 6, of Law no. 549 of 28 December 1993);
- d) intentional spill of pollutants into the sea by vessels (art. 8, paragraphs 1 and 2, of Legislative Decree no. 6 November 2007, n. 202); intentional spill of pollutants into the sea by vessels (art. 9, paragraphs 1 and 2, of Legislative Decree no. 202 of 06 November 2007);
- e) killing, destroying, capturing, removing, possession of protected wild animal or plant species (art.727 *bis* of the criminal code);
- f) habitat destruction within a protected site (art. 733 *bis* of the criminal code).

Law no. 68 of 22 May 2015, published in *Gazzetta Ufficiale Serie Generale* no. 122 of 28 May 2015 "Provisions in the matter of environmental offences."

The regulation, as regards the administrative liability of bodies, amends article 25-*undecies*, paragraph 1, of Legislative Decree no. 231/01, adding three predicate offences:

- a) the offence of environmental pollution (violation of art. 452-*bis* of the criminal code), with the pecuniary sanction of two hundred and fifty to six hundred shares;
- b) the offence of environmental disaster (violation of art. 452-*quater* of the criminal code), with the pecuniary sanction of four hundred to eight hundred shares;
- c) unintentional environmental offences (with reference to articles 452 *bis* and *quater*, violation of art. 452-*quinquies* of the criminal code), with the pecuniary sanction of two hundred to five hundred shares;
- d) Crimes of association aggravated by being aimed (also concurrently) at the commission of the offences present in Title VI *bis* of the criminal code (art. 452-*octies*), with the pecuniary sanction of three hundred to one thousand shares;
- e) the offence of trafficking and abandoning highly radioactive material (violation of art. 452-*sexies*), with the pecuniary sanction of two hundred and fifty to six hundred shares;

Moreover, for the following offences, the originally established pecuniary sanctions are confirmed:

- 727-*bis* (Killing, destroying, capturing, removing, possession of protected wild animal or plant species) and
- 733-*bis* of the criminal code (Habitat destruction within a protected site).

- **criminal offence of employing illegally-staying third-country nationals**, referred to by art. 25-duodecies of the Decree<sup>59</sup>;
- **bribery among private individuals**, referred to by art. 25-ter letter s bis of the Decree<sup>60</sup>.
- **offences of racism and xenophobia**, referred to by art. 25-terdecies of the Decree<sup>61</sup>.

<sup>59</sup> Art. 25-duodecies of Legislative Decree no. 231/01 states: " 1. As to the commission of the offence pursuant to article 22, paragraph 12-bis, of Legislative Decree no. 28625 July 1998, the entity shall be assessed a pecuniary sanction of 100 to 200 shares, up to the limit of € 150,000. 1-bis. As to the commission of the offences pursuant to article 12, paragraphs 3, 3-bis and 3-ter of the consolidated law pursuant to Legislative Decree no. 286 of 25 July 1998 as amended, the entity shall be assessed a pecuniary sanction of four hundred to one thousand shares. 1-ter. As to the commission of the offences pursuant to article 12, paragraph 5, of the consolidated law pursuant to Legislative Decree no. 286 of 25 July 1998 as amended, the entity shall be assessed a pecuniary sanction of one hundred to two hundred shares. 1-quater. In cases conviction for the offences pursuant to paragraphs 1-bis and 1-ter of this article, the debarment sanctions provided for by article 9, paragraph 2 shall be applied, for a duration of no more than one year."

L'Art. 12 c. 3, Legislative Decree no. 22 July 1998, no. 286 (the "Consolidated Immigration Law"), Subordinate open- and closed-ended employment," referred to by art. 25-duodecies of Legislative Decree no. 231/01 "Employing illegally-staying third-country nationals" provides that: Unless the act constitutes a graver offence, whoever, in breach of the provisions of this consolidated law, promotes, directs, organizes, finances, or carries out the transport of foreign nationals in the State's territory, or carries out other acts aimed at illegally obtaining their entry into the territory of the State of which said person is not a citizen or does not have permanent residence, is punished with imprisonment (from six to sixteen years) and with a fine of € 15,000 per person, in the event that:

- a) the fact regards the entry or the illegal stay in the State's territory of five or more persons;
- b) to achieve entry or illegal stay, the person has been exposed to danger to his or her life or safety;
- c) to achieve entry or illegal stay, the person has been subjected to inhumane or degrading treatment;
- d) the crime is committed by three or more persons in complicity with one another, or using international transport services, or documents that are counterfeit or altered, or at any rate unlawfully obtained; (83)
- e) the perpetrators have weapons or explosive materials at their disposal.

Paragraph 3-bis states that: If the crimes pursuant to paragraph 3 are committed through reliance on two of the cases as per letters a), b), c), d), and e) of the same paragraph, the penalty provided for therein is increased.

Paragraph 3-ter establishes that: Imprisonment is increased by one third to one half, and the fine of € 25,000 shall be assessed for each person if the crimes as per paragraphs 1 and 3:

- a) are committed for the purpose of recruiting persons to be forced into prostitution or at any rate sexual or labour exploitation, or regard the entry of minors to be employed in unlawful activities for the purpose of promoting their exploitation;
- b) are committed for the purpose of drawing even indirect profit therefrom.

Art. 22, paragraph 12-bis, of Legislative Decree no. 286 of 22 July 1998, states that: The penalties for the act provided for by paragraph 12 (ed: or the act of the "employer employing foreign nationals without residence permit as provided for by this article, or whose permit has expired and renewal has not been applied for, is revoked, or cancelled") are increased by one third to one half:

- a) if the employed workers are more than three in number;
- b) if the employed workers are minors not of working age;
- c) if the employed workers are subjected to working conditions of particular exploitation as per the third paragraph of article 603-bis of the criminal code (ed: or "situations of serious danger, with reference to the characteristics of the work to be performed, and to the working conditions")."

Art. 603 bis of the Criminal code, third paragraph "Unlawful intermediation and exploitation of labour," provides that: "3.

The following circumstances are specific aggravating factors, with the result of increasing the penalty by one third to one half:

- 1) the number of recruited workers exceeds three in number;
- 2) one or more of the recruited parties are minors not of working age;
- 3) having committed the act while exposing the intermediated employees to situations of serious danger, with reference to the characteristics of the work to be performed, and to the working conditions."

<sup>60</sup> In particular, art. 25-ter, paragraph 1 of Legislative Decree no. 231/01 is to see the addition of letter s-bis), which refers to the new crime of bribery among private individuals, in the cases as per the new third paragraph of art. 2635 of the civil code. In essence, the new letter s-bis of art.25-ter, referring "to the cases provided for by the third paragraph of art. 2635 of the civil code," provides that pursuant to Legislative Decree no. 231/01, the company to which the bribing party belongs may be penalized, since only this company may benefit from the act of corruption. Conversely, the company to which the bribed party belongs, by regulatory definition, suffers damage as a result of the violation of the duties of office or loyalty.

<sup>61</sup> Law no. 167 of 20 November 2017, with "provisions for the fulfilment of the obligations derived from membership in the European Union – 2017 European Law" broadened the listing of predicate offences made in Legislative Decree no. 231/2001, inserting article 25-terdecies with the heading "racism and xenophobia," which states as follows:

"1. In relation to the commission of the offences pursuant to article 3, paragraph 3 bis, of law no. 654 of 13 October 1975, the entity is subject to a pecuniary sanction of two hundred to eight hundred shares.

- **offences of fraud in sporting competitions, unlawful exercise of gaming or wagering and gambling games carried out using prohibited equipment**, referred to by art. 25-*quaterdecies* of the Decree<sup>62</sup>, added by Law no. 39/2019;
- **tax offences**, referred to by art. 25-*quinquesdecies* of the Decree<sup>63</sup>.
- **smuggling offences**, referred to by art. 25-*sexiesdecies* of the decree<sup>64</sup>, added by Legislative Decree no. 75/2020;

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2. In the cases of conviction for the offences pursuant to paragraph 1 above, the entity is subject to the disqualification sanctions pursuant to article 9, paragraph 2, for a duration of no less than one year.

3. If the entity or an organizational unit thereof is permanently used for the sole or prevailing purpose of allowing or facilitating the commission of the offences indicated in paragraph 1, the penalty of permanent disqualification from the exercise of the activity pursuant to article 16, paragraph 3 is applied."

<sup>62</sup> Art. 25-*quaterdecies* of the Decree states that "The commission of the offences pursuant to articles 1 and 4 of Law no. 401 of 13 December 1989 are subject to the following pecuniary sanctions:

a) for offences, a pecuniary sanction of up to five hundred shares;

b) for misdemeanours, a pecuniary sanction of up to two hundred and sixty shares.

Cases of conviction for one or more of the offences indicated in paragraph 1, letter a), of this article shall be subject to the debarment sanctions provided for by article 9, paragraph 2, for a duration of no less than one year.

<sup>63</sup> Art. 25-*quinquesdecies* of the Decree, which was introduced by art. 39, paragraph 2, of Legislative Decree no. 124 of 26 October 2019, converted with amendments by Law no. 157 of 19 December 2019, and most recently amended by article 5, paragraph 1, letter c), numbers 1), 2), and 3) of Legislative Decree no. 75 of 14 July 2020. states that:

"1. In relation to the commission of the offences provided for by Legislative Decree no. 74 of 10 March 2000, the entity is subject to the following pecuniary sanctions:

a) for the offence of fraudulent declaration using invoices or other documents for non-existent operations established by article 2, paragraph 1, the pecuniary sanction of up to five hundred quotas;

b) for the offence of fraudulent declaration using invoices or other documents for non-existent operations established by article 2, paragraph 2-bis, the pecuniary sanction of up to four hundred quotas;

c) for the offence of fraudulent declaration by other ploys established by article 3, the pecuniary sanction of up to five hundred quotas;

d) for the offence of issuance of invoices or other documents for non-existent operations established by article 8, paragraph 1, the pecuniary sanction of up to five hundred quotas; e) for the issuance of invoices or other documents for non-existent operations established by article 8, paragraph 2-bis, the pecuniary sanction of up to four hundred quotas;

f) for the offence of concealment or destruction of accounting documents established by article 10, the pecuniary sanction of up to four hundred quotas;

g) for the offence of fraudulent avoidance of payment of taxes established by article 11, the pecuniary sanction of up to four hundred quotas;

1-bis.

a) for the offence of false tax declaration established by art. 4, the pecuniary sanction of up to three hundred quotas;

b) for the offence of non-declaration established by art. 5, the pecuniary sanction of up to four hundred quotas;

c) for the offence of unlawful compensation established by art. 10-*quater*, the pecuniary sanction of up to four hundred quotas; 2. If, following the commission of the crimes indicated in paragraphs 1, 1-bis, and 2, the entity earned a profit of considerable size, the pecuniary sanction is increased by one third.

3. In the cases established by paragraphs 1, 1-bis, and 2, the debarment sanctions pursuant to article 9, paragraph 2, letters c), d) and e) shall apply."

<sup>64</sup> Art. 25-*sexiesdecies* of the Decree states that "For the commission of the offences provided for by the decree of the President of the Republic no. 43 of 23 January 1973, the entity shall be subject to a pecuniary sanction of up to two hundred shares.

When the customs duties exceed € 100,000, the entity shall be subject to a pecuniary sanction of up to four hundred shares.

In the cases provided for by paragraphs 1 and 2, the entity shall be subject to the debarment sanctions provided for by article 9, paragraph 2, letters c), d), and e).

- **Crimes against the cultural heritage**, referred to by articles 25-septiesdecies<sup>65</sup> and 25-duodevicies<sup>66</sup> of the Decree, added by Law no. 22/2022

The categories listed above are soon to increase even further, due also to the legislative trend to broaden the Decree's scope of operation as it adjusts to obligations of an international and EU nature.

## 1.6. Sanctioning apparatus

Articles 9 – 23 of Legislative Decree no. 231/01 establish for the entity, as a consequence of the commission or attempted commission of the crimes discussed above, the following sanctions:

- pecuniary sanction (and precautionary seizure);
- debarment (also applicable as precautionary measure) of a duration of no less than three months and no more than two years (specifying that, pursuant to art. 14, paragraph 1, of Legislative Decree no. 231/01, "*The disqualification sanctions have as their object the specific activity to which the entity's offence refers*") which, in their turn, may consist of:
  - ban on engaging in business
  - suspension or revocation of authorizations, licenses, and concessions instrumental to the commission of the offence;
  - disqualification from contracting with Public Administration, except to obtain the performance of a public service;
  - exclusion from facilities, financing, contributions, or subsidies, and the revocation of those granted;
  - prohibition against advertising goods and services;
  - confiscation (and seizure as a precautionary measure);

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<sup>65</sup> Art. 25-septiesdecies of the Decree states that "For the commission of the offences provided for by article 518-novies of the Italian Criminal Code, the entity shall be subject to the pecuniary sanction of one hundred to four hundred shares. For the commission of the offences provided for by articles 518-ter, 518-decies and 518-undecies of the Italian Criminal Code, the entity shall be subject to the pecuniary sanction of two hundred to five hundred shares. For the commission of the offences provided for by articles 518-duodecies and 518-quaterdecies of the Italian Criminal Code, the entity shall be subject to the pecuniary sanction of three hundred to seven hundred shares. For the commission of the offences provided for by articles 518-bis, 518-quater, and 518-octies of the Italian Criminal Code, the entity shall be subject to the pecuniary sanction of four hundred to nine hundred shares. In the case of conviction for the offences as per paragraphs from 1 to 4, the entity shall be subject to the debarment sanctions provided for by article 9, paragraph 2, for a duration of no less than two years.

<sup>66</sup> Art. 25-duodevicies of the Decree establishes that for the commission of the offences provided for by articles 518-sexies and 518-terdecies of the Italian Criminal Code, the entity shall be subject to the pecuniary sanction of five hundred to one thousand shares.

If the entity or its organizational unit is used on a stable basis for the sole or prevailing purpose of permitting or facilitating the commission of the offences indicated under paragraph 1, the penalty of permanent debarment from the activity pursuant to article 16, paragraph 3 shall apply.

- advertising of the decision (in the event of application of a disqualification sanction).

The pecuniary sanction is determined by the criminal judge through a system based on “shares” in a number no less than one hundred and no more than one thousand, and of an amount varying between a minimum of € 258.22 and a maximum of € 1,549.37. In setting the pecuniary sanction, the judge determines:

- the number of shares, taking into account the seriousness of the act, the degree of the entity’s liability, and the activity performed, in order to eliminate or attenuate the consequences of the act and to prevent the commission of additional offences;
- the amount of the single share, based on the entity’s economic and financial conditions.

The entity is responsible for the obligation to pay the pecuniary sanction with its own assets or with the common fund (art. 27, paragraph 1, of the Decree)<sup>67</sup>.

Debarments, apply only to the crimes they are expressly provided for, and provided at least one of the following conditions is met:

- a) the entity has drawn a considerably sizable profit from the commission of the offence, and the offence was committed by parties in a senior position, or by parties subject to the management of others when, in the latter case, the commission of the crime was determined or facilitated by serious organizational shortcomings;
- b) in the event of repeat offences<sup>68</sup>.

Debarment sanctions are established for the commission of: crimes against Public Administration, certain crimes against the public trust, offences in the matter of terrorism and the subversion of democracy, crimes against the person, practises of mutilation of female genital organs, transnational crimes, crimes in the matter of health and safety, receipt of stolen goods, money laundering and use of money, goods, or benefits of unlawful provenance, as well as computer crimes and unlawful data processing, offences of organized crime, certain crimes against industry and trade, criminal offences in the matter of copyright violations, environmental crimes.

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<sup>67</sup> The notion of “assets” must refer to companies and entities with a legal personality, while the notion of “common fund” concerns unrecognized associations.

<sup>68</sup> Art. 13, paragraph 1, letters a) and b) of Legislative Decree no. 231/01. In this regard, see also art. 20 of Legislative Decree no. 231/01, according to which “A repeat offence occurs when the entity, already convicted by final ruling at least once of a criminal offence, commits another one in the five years following the final sentence.” As to the relationship between the regulations mentioned above, see De Marzo, *op. cit.*, 1315: “Alternatively, with regard to the requirements pursuant to letter a) [of art. 13, ed.], letter b) identifies, as a prerequisite for applying the debarment sanctions expressly provided for by lawmakers, repeat offences. Pursuant to art. 20, a repeat offence occurs when the entity, already convicted by final ruling at least once of a criminal offence, commits another one in the five years following the final sentence. In this case, the commission of the crimes despite the intervening sentence that has irrevocably sanctioned the prior violation of law demonstrates the indicated propensity towards or tolerance of the commission of the crimes, without it being necessary to dwell on the size of the profit earned and on analyzing the adopted organizational models. What emerges in any event is the awareness that the ordinary pecuniary sanctioning apparatus (and also any debarment sanctioning apparatus, if, on the occasion of the prior offences, the conditions had already occurred as per letters a) or b) of art. 13, paragraph 1) was unable to act as an effective deterrent to an action that fails to comply with the fundamental principle of legality.”

The judge determines the type and duration of the debarment, taking into account the suitability of the individual sanctions to prevent offences that may be likened to the one committed, and, if necessary, may apply them jointly (art. 14, paragraph 1 and paragraph 3, Legislative Decree no. 231/01).

The sanctions of the ban on engaging in business, the prohibition on contracting with Public Administration, and prohibition against advertising goods and services may, in more serious cases, be applied permanently<sup>69</sup>.

The judge may allow the entity's activity to continue (instead of ordering debarment), pursuant to and under the conditions as per art. 15 of the Decree, appointing a commissioner for this purpose, for a period equal to the duration of the debarment sanction<sup>70</sup>.

### 1.7. Attempted offence

In the case of commission, in the form of attempt, of the offences sanctioned on the basis of Legislative Decree no. 231/01, the pecuniary sanctions (in terms of amount) and the debarment sanctions (in terms of duration) are reduced by one third to one half.

No sanctions are laid down in cases where the entity voluntarily prevents the act or keeps the event from occurring (art. 26, Legislative Decree no. 231/01). The exclusion of sanctions, in this case, is justified by virtue of the interruption of any relationship of identification between the entity and the parties that presume to act in its name and on its behalf.

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<sup>69</sup> See in this regard art. 16 of Legislative Decree no. 231/01, according to which: "1. Definitive debarment from conducting business may be ordered if the entity has drawn a considerably sizable profit and has already been sentenced, at least three times in the last seven years, to a temporary ban on engaging in business. 2. The judge may apply to the entity, on a permanent basis, the sanction of prohibition from contracting with Public Administration or prohibition from advertising goods and services when the entity has already been sentenced to the same sanction at least three times in the last seven years. 3. If the entity or its organizational unit is used on a steady basis for the sole or prevalent purpose of permitting or facilitating the commission of crimes for which its liability is established, the definitive ban from conducting business is always ordered, and the provisions established by article 17 do not apply."

<sup>70</sup> Art. 15 Legislative Decree no. 231/01: "Judicial commissioner— If the prerequisites exist for applying the debarment sanction that results in interruption of the entity's business, the judge, in place of applying the sanction, orders the work to be continued by a commissioner for a period equal to the duration of the debarment penalty that would have been applied, when at least one of the following conditions is met: a) the entity performs a public service or a service of public necessity, whose interruption may seriously harm society as a whole; b) the interruption of the activity may, taking into account its size and the economic conditions of the territory where it is located, cause considerable repercussions on employment. With the decision ordering the business to continue, the judge indicates the commissioner's duties and powers, taking into account the specific activity in which the offence was carried out by the entity. As part of his or her duties and powers indicated by the judge, the commissioner sees to the adoption and actual implementation of the organization and control models designed to prevent crimes of the kind that took place. The commissioner cannot carry out acts of extraordinary administration without the judge's authorization. The profit derived from the continuation of the business is confiscated. The continuation of the business by the commissioner cannot be ordered when the interruption of the business follows the final application of a debarment sanction."



### 1.8. Events modifying the entity

Articles 28-33 of Legislative Decree no. 231/01 govern the impact on the entity's financial liability of the modification events connected with operations of transformation, merger, split, and transfer of business<sup>71</sup>.

In the event of transformation (in line with the nature of this institution, which entails a simple change of the type of company, without resulting in the extinguishing of the original legal entity), the entity's liability remains in force for the crimes committed prior to the date when the transformation has taken effect (art. 28, Legislative Decree no. 231/01).

In the event of merger, the entity resulting from the merger (also by incorporation) is accountable for the crimes for which the bodies that are parties to the merger are responsible (art. 29 of Legislative Decree no. 231/01).

Art. 30 of Legislative Decree no. 231/01 provides that, in the event of a split, the split company remains accountable for the crimes committed prior to the date when the split took effect.

The entities benefitting from the split (whether total or partial) are jointly and severally obligated to pay the financial sanctions owed by the split entity for the crimes committed prior to the date when the split took effect, within the limit of the actual value of the net equity transferred to the individual entity.

This limit does not apply to the beneficiary companies to which, even in part, the branch of business in which the crime was committed has been transferred.

The debarment sanctions regarding the crimes committed prior to the date when the split took effect apply to the entities with the branch of business in which the crime was committed has remained or has been transferred.

Art. 31 of Legislative Decree no. 231/01 lays down provisions common to merger and split, concerning the determination of the sanctions in the event said extraordinary operations have taken place prior to the conclusion of the judicial proceedings. The judge must commensurate the pecuniary sanction, in accordance with the criteria established by art. 11, paragraph 2 of Legislative Decree no. 231/01<sup>72</sup>, making reference in any event to the

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<sup>71</sup> Lawmakers have taken two opposing needs into account: on the one hand, the need to keep these operations from becoming an instrument to conveniently circumvent the entity's administrative liability, and on the other, the need not to penalize re-organizations done without the intent of avoidance. The Report illustrating the Decree states "*The general criterion in this regard that is followed has been that of governing the outcome of financial sanctions in line with the principles dictated by the civil code in the matter of the general scope of the other debts of the original entity, while conversely keeping the disbarment sanctions linked to the branch of business in which the crime was committed.*"

<sup>72</sup> Art. 11 of Legislative Decree no. 231/01: "Commensuration criteria of the pecuniary sanction - 1. *In commensurating the pecuniary sanction, the judge determines the number of shares, taking into account the seriousness of the act, the entity's degree of liability, and the activity carried out to eliminate or attenuate the consequences of the act and to prevent the commission of additional offences.* 2. *The amount of the share is fixed on the basis of the entity's economic and financial conditions for the purpose of ensuring the effectiveness of the sanction.(...)*".

economic and financial conditions of the entity originally responsible, and not to those of the entity that should be sanctioned following the merger or split.

In the event of debarment, the entity that will be held liable following the merger or split may ask the judge to convert the debarment into a pecuniary sanction, provided that: (i) the organizational fault that made it possible to commit the crime has been eliminated, and (ii) the entity has seen to paying the damages, and has made available (for confiscation) the portion of profit it may have earned therefrom. Art. 32 of Legislative Decree no. 231/01 allows the judge to take into account the sentences already pronounced against the entities that are party to the merger, or against the split entity, in order to decide as to repeat offence, pursuant to art. 20 of Legislative Decree no. 231/01, for offences of the entity resulting from the merger or that is beneficiary of the split, as regards crimes subsequently committed<sup>73</sup>. For the cases of transfer and conferral of business, there is a single regulation (art. 33 of Legislative Decree no. 231/01)<sup>74</sup>; the transferee, in the case of transfer of business in which the crime was committed, is under joint obligation to pay the pecuniary sanction levied against the transferor, with the following limitations:

- (i) the above is without prejudice to the benefit of prior discussion of the transferor;
- (ii) the transferee's liability is limited to the value of the transferred business and to the financial sanctions as resulting from the obligatory accounting books, or owed for administrative offences it had at any rate been aware of.

To the contrary, the debarment sanctions inflicted upon the transferor do not extend to the transferee.

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<sup>73</sup> Art. 32 of Legislative Decree no. 231/01: "Importance of the merger or split for the purposes of repeat offence - 1. In the cases of liability of the entity resulting from the merger or split committed after the date when the merger or split has taken effect, the judge may hold that there was a repeat offence, pursuant to article 20, also for sentences pronounced against entities taking part in the merger or against the split entity for crimes committed prior to that date. 2. Towards this end, the judge takes into account the nature of the violations and of the activity in which they were committed, as well as the characteristics of the merger or of the split. 3. As for the entities benefitting from the split, there may be a repeat offence, pursuant to paragraphs 1 and 2 above, only if the branch of business in which the crime for which the sentence was pronounced against the split entity was transferred to them, even in part." The Report illustrating Legislative Decree no. 231/01 explains that "In this case, there is no automatic repeat offence, but the matter is the subject to the judge's discretionary assessment, with regard to the actual circumstances. With regard to the entities benefitting from the split, repeat offence may be invoked only when it is a matter of entity to which the branch of business in which the prior crime was committed was transferred, even in part."

<sup>74</sup> Art. 33 of Legislative Decree no. 231/01: "Transfer of business. - 1. In the case of transfer of the business in which the crime was committed, the transferee is under joint obligation, without prejudice to the benefit of prior discussion of the transferring entity, and within the limits of the business's value, to pay the pecuniary sanction. 2. The transferee's obligation is limited to the financial sanctions as resulting from the obligatory accounting books, or owed for administrative offences it had at any rate been aware of. 3. The provisions of this article also apply in the case of conferral of business." On the point, the Report illustrating Legislative Decree no. 231/01 explains: "It is understood that said operations are also susceptible to liability-evading manoeuvres, and, nonetheless, compared to them, the opposing needs of safeguarding trust in and the safety of the legal process are weightier, given that this is an area of scenarios of selective succession to title that leave the identity (and liability) of the transferor unaltered."

### 1.9. Crimes committed abroad

The entity may be called upon to respond in Italy for the crimes – contemplated by Legislative Decree no. 231/01 – committed abroad (art. 4, Legislative Decree no. 231/01)<sup>75</sup>.

The presumptions on which the entity's liability for crimes committed abroad is based are:

- (i) the crime must be committed by a party functionally linked to the entity, pursuant to art. 5, paragraph 1, of Legislative Decree no. 231/01;
- (ii) the must have its main office in the territory of the Italian state;
- (iii) the entity may be held liable only in the cases and under the conditions provided for by articles 7, 8, 9, and 10 of the criminal code (in the cases where the law establishes that the guilty party – natural person – be punished at the request of the Ministry of Justice, action is taken against the entity only if the request is formulated against the entity itself)<sup>76</sup> and, also in keeping with the principle of legality pursuant to art. 2 of Legislative Decree no. 231/01, only for the crimes for which its liability is provided for by an ad hoc legislative measure;

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<sup>75</sup> The Report illustrating Legislative Decree no. 231/01 highlights the need not to allow a frequently occurring crime situation to go unsanctioned, also for the purpose of preventing easy circumvention of the entire regulatory system in question. Art. 4 of Legislative Decree no. 231/01 provides as follows: "1. In the cases and under the conditions provided for by articles 7, 8, 9, and 10 of the criminal code, the entities that have their main office in the State's territory are also liable for crimes committed abroad, provided that the State where the crime was committed has not taken action against them. 2. In the cases where the law establishes that the guilty party is punished at the request of the Ministry of Justice, action is taken against the entity only if the request is also formulated against it."

<sup>76</sup> Art. 7 of the criminal code: "Crimes committed abroad - The citizen or foreign national who commits, in foreign territory, any of the crimes is punished in accordance with Italian law: 1) crimes against the person of the Italian State; 2) crimes of counterfeiting the State seal and use of said counterfeit seal; 3) crimes of forgery of money that is legal tender in the State's territory, or of stamp duties or of in public credit cards; 4) crimes committed by public officials in the State's service, by abusing powers or violating the duties inherent to their offices; 5) any other crime for which special provisions of law or international convention establish the applicability of Italian criminal law." Art. 8 of the criminal code: "Political crime committed abroad – the citizen or foreign national who commits in foreign territory a political crime not included among those indicated in number 1 of the previous article, is punished in accordance with Italian law, at the request of the Ministry of Justice. If it is a crime punishable at the complaint of the injured party, the complaint is needed in addition to this request. For the purposes of criminal law, a political crime is any crime that offends a political interest of the State, or a political crime of the citizen. Also considered a political crime is the common crime determined, in whole or in part, by political motives." Art. 9 of the criminal code: "Common crime of the citizen abroad – The citizen who, outside of the cases indicated in the previous two articles, commits in foreign territory a crime for which Italian law establishes life imprisonment, or imprisonment of no less than a minimum of three years, is punished in accordance with said law, provided that the person is in the State's territory. If it is a crime for which a penalty restricting personal freedom for a shorter period of time is established, the guilty party is punished at the request of the Ministry of Justice or at the petition or complaint of the injured party. In the cases provided for by the above measures, if it is a crime committed to the detriment of the European Communities, of a foreign State, or of a foreigner, the guilty party is punished at the request of the Ministry of Justice, provided that his or her extradition has not been granted, or has not been accepted by the Government of the State where he or she committed the crime." Art. 10 of the criminal code: "Common crime of the foreigner abroad – The foreigner who, outside of the cases indicated in articles 7 and 8, commits in foreign territory, to the detriment of the State or of a citizen, a crime for which Italian law establishes life imprisonment, or imprisonment of no less than a minimum of one year, is punished in accordance with said law, provided that the person is in the State's territory, and there is a request by the Ministry of Justice, or a petition or complaint by the injured party. If the crime is committed to the detriment of the European Communities, of a foreign State, or of a foreigner, the guilty party is punished at the request of the Ministry of Justice, provided that: 1) the person is in the State's territory; 2) it is a crime punished by life imprisonment or by imprisonment of no less than a minimum of three years; 3) extradition of the person has not been granted, or has not been accepted by the Government of the State where he or she committed the crime, or by that of the State to which he or she belongs."

- (iv) where there are the cases and conditions pursuant to the aforementioned articles of the criminal code, the State of the place where the crime was committed does not proceed against the entity.

### 1.10. Proceedings to ascertain the offence

Liability of administrative offence derived from crime is ascertained in criminal proceedings. In this regard, art. 36 of Legislative Decree no. 231/01 provides for *“The responsibility for learning of the entity’s administrative offences belongs to the criminal court judge with competence for the crimes on which these offences depend. For the proceedings to ascertain the entity’s administrative offence, the provisions on the composition of the court and the related trial provisions concerning the crimes on which the administrative offence depends are complied with.”*

Another rule, inspired by considerations of trial economy, uniformity, and effectiveness, is that of the obligatory consolidation of proceedings: the trial against the entity shall, to the extent possible, remain connected with the criminal trial brought against the natural person responsible for the predicate offence of the entity’s liability (art. 38 of Legislative Decree no. 231/01). This rule finds a balance in the dictates of art. 38, paragraph 2, of Legislative Decree no. 231/01 which, conversely, regulates the cases in which there are separate proceedings for administrative offence<sup>77</sup>. The entity takes part in the criminal proceedings with its own legal representative, unless it is charged with the crime on which the administrative offence depends; when the legal representative does not appear, the summoned entity is represented by a defender (art. 39, paragraphs 1 and 4, of Legislative Decree no. 231/01).

### 1.11. Codes of Behaviour prepared by the associations representing the entities

Art. 6, paragraph 3, of Legislative Decree no. 231/01 states that *“The organization and management models may be adopted, guaranteeing the needs pursuant to paragraph 2, on the basis of codes of behaviour drawn up by the associations representing the entities, made known by the Ministry of Justice which, in concert with the competent ministries, may formulate, within thirty days, observations on the models’ fitness for preventing the crimes.”*

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<sup>77</sup> Art. 38, paragraph 2, Legislative Decree no. 231/01: *“The entity is separately proceeded against for administrative offence only when: a) the proceedings were ordered suspended pursuant to article 71 of the code of criminal procedure [suspension of proceedings due to incapacity of the accused, ed.]; b) the proceedings were defined with the abbreviated judgment or application of the punishment pursuant to article 444 of the code of criminal procedure [application of the plea bargain, ed.], or the criminal prosecution decree was issued; c) compliance with the trial performs necessitates this.”* For the sake of completeness, see also art. 37 of Legislative Decree no. 231/01, according to which *“No proceedings are brought to ascertain the entity’s administrative offence when the criminal action cannot be brought or continued against the party who committed the crime due to the lack of a condition of prosecutability”* (which is to say those provided for by Title III of Book V of the code of criminal procedure: complaint, petition for proceedings, request for proceedings or authorization to proceed, pursuant to, respectively articles 336, 341, 342, and 343 of the code of criminal procedure).

Confindustria has put out *Linee Guida per la costruzione dei modelli di organizzazione, gestione e controllo ex d.lgs. 231/2001* (“Guidelines for creating organization, management, and control models pursuant to Legislative Decree no. 231/2001”), disseminated on 07 March 2002, supplemented on 03 October 2002 with an appendix regarding the so-called “corporate offences” (introduced into Legislative Decree no. 231/01 with Legislative Decree no. 61/2002), updated on 24 May 2004 and delivered to the Ministry of Justice on 18 February 2008 for the adjustments aimed at providing indications as to the measures design to prevent the commission of the new underlying crimes in the matter of market abuses, practises of mutilation of female genital organs, transnational organized crime, occupational health and safety and money laundering (update to 31 March 2008). On 02 April 2008, the Ministry of Justice announced the conclusion of the proceedings examining the new version of the “Confindustria Guidelines for the construction of the organization, management, and control models pursuant to Legislative Decree no. 231/01” (hereinafter, “Confindustria Guidelines”). The Confindustria Guidelines provide, among other things, methodological indications for identifying the risk areas (sector/activity in the context of which crimes may be committed), the design of a control system (the so-called “protocols for planning the formation and implementation of the entity’s decisions”), and the content of the organization, management, and control model.

Upon the outcome of a broad and in-depth review work, in 2014 Confindustria completed the works to update the Guidelines.

The new version updates the previous 2008 text to the developments in legislation, case law, and applicative practice that have taken place in the meantime. The document was submitted for the scrutiny of the Ministry of Justice, which on 21 July 2014 announced its final approval.

In particular, the Confindustria Guidelines suggest to associated companies that they utilize risk assessment and risk management processes, and establish the following phases for defining the model:

- identifying the risks and the protocols;
- adopting some general instruments, chief among which are an Ethical Code with reference to the crimes pursuant to Legislative Decree no. 231/01, and a disciplinary system;
- identifying the criteria for choosing the Supervisory Board, indicating its requirements, tasks, and powers, and information obligations.

An additional update of the guidelines took place most recently in the month of June 2021.

### 1.12. Assessment of suitability

The verification activity performed by the criminal judge as to possible cases of the company's administrative liability concerns two profiles: on the one hand, verification as to the commission of a crime that comes within the Decree's field of application, and on the other the "assessment of suitability" regarding any Organizational Model adopted by the company.

The judge's assessment as to the Organizational Model's abstract suitability for preventing the crimes pursuant to Legislative Decree no. 231/01 is carried out in accordance with the criterion referred to as "retroactive prognosis."

The judgment of suitability is made in accordance with a substantially *ex ante* criterion, for which the judge imagines him or herself in the corporate situation at the moment when the offence took place, in order to assay the fitness of the adopted Model.

In other words, the Organizational Model that, prior to the commission of the crime, could and should be deemed such as to eliminate or at least minimize, with reasonable certainty, the risk of committing the crime that subsequently took place, is judged "suitable for preventing crimes."