Text approved by the Executive Committee on 18 March 2016

ISTITUTO ITALIANO
DI TECNOLOGIA

ORGANISATIONAL MODEL
MANAGEMENT AND CONTROL

(Pursuant to legislative Decree 231/2001)

GENERAL SECTION

INDEX

THE REGULATORY CONTEXT

1.1 LEGISLATIVE DECREE OF 8 JUNE 2001, N. 231

Legislative decree n 231 of 8 June 2001 (hereafter: "Decree") having as its subject the "Regulation of administrative responsibility of legal entities, companies and also associations without legal status", pursuant to article 11 of the Law of 29 September 2000, n. 300, has led to the introduction in our organisation of a new type of responsibility regarding Entities (Appendix n. 1).

It regards a particular form of administrative responsibility in criminal proceedings, for certain criminal offences committed by subjects belonging to company administration or by employees. The consequence is that in addition to the criminal responsibility of the actual person who has committed the criminal offence, there is also the responsibility of the organisation.

The dispositions of the present decree are applied, according to article 1 of the cited decree, to:

- organisations with legal status;
- companies and associations including those without legal status.

The responsibility of the Organisation is applicable in the case of the committing of criminal offences expressly provided for by the Decree and committed *in its interests* or *to its advantage* by subjects bound in various ways to the Organisation itself. With regards to this, article 5 of the Degree indicates the relative perpetrators of the criminal offence as:

a) "*persons who cover roles of representation, administration or direction of the Organisation or of one of its organisational units provided with financial and functional autonomy as well as the subjects who carry out, also de facto, the management and the control of the same"* (the so-called senior subjects);

b) *"persons subject to the direction or supervision of one of the subjects specified in section a)"* (the so-called subordinates).

On the specific request of the legislator, the Organisation will not be held responsible for criminal offences committed when the senior subjects or employees have acted "exclusively in their own interests or in the interests of third parties" (article 5 paragraph 2 of the Decree).

The responsibility of the Organisation can also be excluded when, before the committing of the criminal offence:

- organisational and managerial models suitable for the prevention of the commission of criminal offences provided for by the aforementioned Decree have been drawn up;
- a regulatory body, with powers of autonomous initiative, with the task of supervising the functioning of organisational and managerial models has been set up.

In the event of criminal offences committed by management, the responsibility of the Organisation is excluded when the latter can demonstrate that the criminal offence has been committed through the criminal evasion of existing models and that there has, also, been no case of omitted or insufficient control on the part of the Supervisory Bodies specifically charged with the supervision of the correct functioning and the effective observation of the organisational and managerial models.

In the case of criminal offences committed by subordinates, however, the exclusion of the Organisation's responsibility is subject to the adoption of behavioural protocols suited to the nature and type of activity carried out. Such protocols guarantee that the Organisation's activities are carried out in respect of the law and aid the timely discovery and elimination of situations of risk.

1.2 THE SANCTIONS PROVIDED FOR BY LEGISLATIVE DECREE 231/2001

Regardless of the eventual administrative responsibility of the Organisation, whoever commits one of the criminal offences specified in the appendixes (Appendix n. 2) will, in any case, be prosecutable for the illicit conduct which they have carried out.

Article 9, paragraph 1 indicates the sanctions which can be applied to the Organisation. In detail, they are:

- financial sanctions;
- bans;
  - a ban on the carrying out of business;
  - the suspension or withdrawal of authorisations, licences or concessions relative to the committing of the criminal offence;
  - a ban on the drawing up of contracts with Public Administration, save for the obtaining of a public service;
  - the exclusion from benefits, loans, contributions or subsidies and the eventual revocation of those already granted;
  - a ban on the advertising of goods or services;
- confiscation;
- the publication of the sentence.

1.3 LEGISLATIVE DECREE 231/2001 AND LAW 190/2012

Law n. 190 of 6 November 2012 *"Disposition for the prevention and the repression of corruption and illegality in public administration"* has introduced an organic system for the prevention of corruption which is more wide-ranging than that provided for by Legislative Decree 231/2001.

Despite the similarities between the two systems, significant differences exist between the measures provided for by Law n. 190 of 2012 and those of Legislative Decree n. 231 of 2001.

In particular, with regards to the type of criminal offence to be prevented, while Legislative Decree n. 231/2001 regards criminal offences committed in the interest or advantage of the Organisation or in any case committed also in the interests of the latter (article 5), Law 190/2012 is aimed at also preventing criminal offences committed to the detriment of the Organisation.

Regarding *"acts of corruption"*, Legislative Decree n. 231/2001 makes reference to criminal offences of corruption, extortion, illicit induction for the provision or promise of favours and to corruption between private individuals, all cases in which the Organisation gains an advantage or has an interest which regards them.

According to A.N.A.C, the Italian Anti-corruption Authority, Law 190/2012 refers to a *"more wide-ranging concept of corruption, which encompasses not only the entire range of criminal offences against the public administration disciplined by Title II of Book II of the penal code, but also cases of "bad administration", which includes all cases of significant deviation, behaviour and decisions, of the impartial care of public interest, or rather situations in which private interests inappropriately condition the actions of administration or organisations, both in the case that said conditioning is successful, and in the case that it remains an attempt".*

Therefore, according to A.N.A.C. *"along this line of reasoning regarding the measures for and the simplification of compliance, companies integrate the organisational and managerial model according to Legislative Decree n. 231 of 2001 with measures to also prevent the phenomenon of corruption and illegality within the company in line with the objectives of Law n. 190 of 2012. These measures must make reference to all activities carried out by the company and it is necessary that they are brought together in a single document which is equivalent to the Plan for the prevention of corruption, also directed at the evaluation of annual updates and the supervision of A.N.A.C. If brought together in a single document along with those measures adopted in the application of legislative Decree n. 231/2001, such measures are placed in a section which is dedicated and in any case clearly identifiable, bearing in mind that different forms of management and responsibility are correlated to such".*

In the light of the above considerations, the IIT, having already adopted the present organisational and managerial model, has voluntarily decided to provide for a special attached ***Addendum*** section regarding themes of anti-corruption and transparency pursuant to Law 190/2012.

THE ORGANISATIONAL AND MANAGERIAL MODEL OF THE ITALIAN INSTITUTE OF TECHNOLOGY

2.1 A BRIEF HISTORY OF THE FOUNDATION

The IIT - The Italian Institute of Technology Foundation (the "Foundation" or the "Institute") was established by the decree of 24 November 2003 n. 326.

The IIT is an international centre of excellence in the field of scientific and advanced technological research, with the aim of encouraging technological development and advanced training in the country pursuant to national policies in favour of science and technology, thus reinforcing the system of national production.

The IIT is a Foundation supervised by the Ministry for Education, Universities and Research, and the Ministry for the Economy and Finance, therefore established in order to promote excellence in fundamental and applied research, and in order to contribute to the economic development of the country.

Therefore both the creation and the dissemination of scientific knowledge and the strengthening of technological competitiveness in Italy are prime objectives for the IIT, also through collaboration with academic institutions, private organisations and Italy's principal research centres.

The Institute underwent an initial launch period of approximately two years, during which, in particular, the directional structure, the scientific organisation and the first training initiatives were defined.

Main activities

The mission of the IIT is characterised by research activity aimed at Technology Transfer, with notable scientific visibility on a national and international level; in these terms, the foundation forms relationships with similar organisations in Italy and insures contributions from Italian and foreign researchers working in foreign institutes of excellence.

The Foundation aims to promote technological development and advanced training in Italy, pursuant to national policies favouring science and technology, thus strengthening the system of national production.

To this end, the Foundation:

- facilitates and accelerates development, in the national system of research, of scientific and technological abilities suited to encouraging the transition of the national production system towards technologically advanced structures;
- develops innovative methods and abilities to facilitate the introduction of practices of excellence and positive mechanisms of competition in the field of national research;
- promotes and develops scientific and technological excellence both directly, through its multi-disciplinary research laboratories, and indirectly, through collaboration with national and international laboratories and research groups;
- promotes advanced training programmes as part of wider-ranging multi-disciplinary programmes and projects;
- encourages a culture based on the sharing and exploitation of results obtained to be used in order to improve production and social status, both within its own structure and as part of the entire national system of research;
- creates technological knowledge relative to components, methodology, processes and techniques to be used for the creation of products and services and relative aspects in sectors which have a strategic role in the competitiveness of the national system of production;
- attracts and unites researchers operating in diverse research institutes and generates connections with specialised centres of excellence;
- promotes interaction between areas of fundamental and applied research, encouraging experimental development;
- promotes transparent methods for the selection of researchers and projects, based on merit, pursuant to internationally recognised successful criteria.

2.2 INTERNAL ORGANISATION OF THE ITALIAN INSTITUTE OF TECHNOLOGY

The IIT has an organisational system of governance inspired by the functional models of the principal scientific institutions active on a world-wide level.

The model of governance has in fact been identified and structured through the study of international research centres of excellence with the precise objective of creating an operational model capable of facilitating scientific activity, thus optimising the yield of resources used and available financing.

The organisational and managerial model of the IIT is based on the following fundamental principles:

- the autonomy of research;
- clear and punctual definitions of responsibility;
- operational flexibility;
- constant evaluation of results obtained through independent monitoring bodies.

The positive functioning of the Foundation is guaranteed by a streamlined administrative system - proportional to the dimensions and the complexity of the organisation - which governs both managerial aspects and relations with the scientific world.

In accordance with article 6 of the Bylaws, the Foundation comprises the following authorities:

- the Board;
- the President;
- the scientific Director;
- the Executive committee ("Committee");
- the Board of Statutory Auditors.

The operative structures of the Foundation are:

- the Units and Centres of Research;
- the Technical Scientific Committee;
- the Administrative Offices;
- the Evaluation Committees.

The organisation of the foundation, the roles and the activities of the Authorities and the Operative structures are described in the "General operational regulations", to be consulted in their entirety.

2.3 OBJECTIVES OF THE ORGANISATIONAL AND MANAGERIAL MODEL

The choice of the Executive Committee of the IIT to adopt an organisational and managerial model (the "Model") is aimed at promoting and exploiting an ethical culture within the institute. This choice takes the form of operations and initiatives aimed at sensitising all those who collaborate with the Foundation with regards to the transparent and correct management of activities and respect for laws in force.
The Model is regularly updated in order to maintain its suitability in the prevention of categories of criminal offences regularly introduced as part of the various evolutions of the law.

The IIT's Model was adopted through deliberation of the Executive Committee on 25 January 2010.
The latest update of the present Model took place on 18 March 2016.
The approved Model, as well as the present "General Part", also includes a "Special Part", and all of the Appendixes for the same and the Addendum which includes the instruments for the prevention of corruption and for transparency.

The Executive Committee intends, through the adoption of the Model:

- to underline to all those who for various reasons collaborate with the IIT that the Foundation, in the most absolute manner, condemns any conduct which is contrary to laws and regulations, or any behaviour which violates internal regulations (policies, protocols and Codes of Scientific Behaviour and Conduct for the purposes of Legislative Decree 231/2001, and more generally, the sound and transparent principles for the management of activity to which the IIT aspires;
- to guarantee, as much as possible, the prevention of the committing of illicit activity in the framework of the activities carried out by the IIT through: *i)* the continuous monitoring of all of the areas of activity at risk; *ii)* the training of collaborators regarding the correct realisation of their tasks;
- to propagate and promote a culture of transparency and legality within the Foundation.

2.4 METHODOLOGY UTILISED IN THE DRAFTING OF THE FOUNDATION'S MODEL

The activities carried out for the drafting of the Model took place in the following phases:

Phase 1 - Preliminary analysis of processes and activities

Article 6, paragraph 2, point a) of the Decree indicates, among the requirements of the Model, the identification of processes and activities in which the criminal offences expressly referred to by the decree can be committed.

The aim of Phase 1 was therefore to identify the fields subject to intervention, and the preliminary identification of the processes and activities in which the criminal offences provided for by the Decree could in theory be committed.

Introductory to the identification of sensitive activities was the analysis of the governance and the organisational structure of the Foundation, aimed at an overall

understanding of activities carried out and of the organisation at the start of the project and for the identification of the fields subject to the operation.

The collection of the relevant documentation and the analysis of the same from both a technical-organisational and a legal point of view allowed for the identification of delicate processes/activities and a preliminary identification of the managers responsible for such processes/activities.

Phase 2 - Identification of the people responsible for the sensitive processes/activities.

The aim of Phase 2 was that of identifying the managers responsible for the sensitive processes/activities, or rather the people with an in-depth knowledge of the sensitive processes/activities.

In particular, through interviews carried out with department managers, a "preliminary map of sensitive processes/activities" was defined, with which to direct analytical activities.

Phase 3 - Mapping of sensitive activities and areas of risk

The objective of Phase 3 was to analyse, for each sensitive process/activity identified in Phases 1 and 2 the functions and the roles/responsibilities of both internal and external subjects involved, the elements of external control, the important quantitative and qualitative factors of the process (e.g. frequency, value of the underlying transactions, existence of past evidence of deviant behaviour, impact on company objectives, etc.), in order to verify in what areas/sectors of activity and in what way the criminal offences provided for by the Decree could eventually be committed.

Through interviews with department managers for the various functions, a document was drawn up which contained the map of the activities considered "at risk" which, in consideration of the specific content, could be exposed to the potential committing of the criminal offences mentioned by the Decree. This map, as per indications in the Guidelines produced by Confindustria, include the identification of company functions

involved, the eventual Public Administrations involved, the potential criminal offences which could be associated and the possible ways in which the criminal offences could be committed in the carrying out of said functions. To this end, it should be noted that, for the objectives of the mapping process, the single criminal offences were considered, in addition to their committed form, where possible, also in the form of an attempted criminal offence (article 26 of the Decree).

In particular, two different categories of activity at risk were examined in the document:

- the sensitive activities which present direct criminal risks with regards to the cited Decree;
- the instrumental activities which present risks of criminality only when, combined with the directly sensitive activity, they support the carrying out of the criminal offence, thus constituting the method of realisation. The framework of this second type also included the so-called "funded activities" which represent the channels through which occult funds can be created which are theoretically instrumental in criminal offences of corruption.

On the basis of the map of activities subject to the risk of criminal offence, in the "Special Part" of the present Model, specific behavioural protocols were also provided for to be integrated into the protective controls already in force.

Phase 4 - Definition of the Model

The aim of Phase 4 was to define the Model for the Foundation according to Legislative Decree n. 231/2001, both General Parts and Special Parts, articulated in all of its components according to the provisions of the Decree and the indications contained in the Guidelines provided by Confindustria.

The Model is regularly updated according to regulatory and organisational modifications with the methodology described in the preceding phases.

Phase 5 - Integration of the Model with instruments for the prevention of corruption.

The objective of Phase 5 was the integration - *voluntarily and within the limits of practicability* -, providing for the writing of a specific Addendum, the Model according to Legislative Decree 231/2001 with the prescriptions established by the principal Principles and international Guidelines for the prevention of corruption, the Guidelines of A.N.A.C., from the 2015 Update of the PNA (the National Anti corruption Programme) and Law n. 190/2012, on both active and passive fronts, also in relation to the type of activity carried out by the organisation.

2.5 ADDRESSEES

The Model is addressed to all subjects who collaborate with the Foundation, in particular to:

- members of the Bodies, Committees, Commissions or similar institutions within the Foundation;
- all of the managerial and non-managerial personnel who act in the name of and on behalf of the Foundation;
- collaborators;
- affiliates (Ph.D candidates and Researchers from organisations connected to the IIT).

The IIT also requests adhesion to the Model by all of the persons who collaborate, in various roles, with the foundation for the carrying out of statutory activity, as well as all third parties who represent the Foundation without ties of employment (e.g. consultants, suppliers), also through the eventual provision of contractual clauses which oblige external collaborators, consultants and suppliers to respect the principles contained in the Code of Scientific Behaviour and Conduct, for which the IIT provides for the withdrawal of the contract or the dissolution of the latter in the case of non-observance.

2.6 APPROVAL, MODIFICATION AND EXECUTION OF THE MODEL

The Model, according to that provided for by article 6, paragraph 1, point a) of the Decree, constitutes an act of issue by the managing body (Executive Committee).

On the proposal of the Supervisory Body, the Executive Committee will apply the eventual modifications and integrations necessary in order to guarantee the continuing compliance of the Model to the previsions of the Decree and to the eventual structural and/or organisational modifications of the Foundation.

The Executive Committee is responsible for the execution of the Model.

The supervision regarding the suitability and execution of the Model deliberated by the Executive Committee is guaranteed by the Supervisory Body. The Supervisory Body continuously reports the outcome of its work to the Executive Committee.

2.7 MAPPING OF THE ACTIVITIES AT RISK

Article 6 of the Decree requires, as a preliminary activity for the adoption of the Model, the identification of the activities carried out by the Organisation (the IIT) in the area of which criminal offences may be committed.

The mapping of the areas potentially exposed to the risk of criminal offence and to controls existing for the objectives of the Model, has been carried out on the basis of best practices regarding the analysis of risks and the Guidelines of Associations of the category. Such activity forms part of a process of evaluation carried out in order to activate a system of risk management, in line with the requirements imposed by the relative Guidelines.

The activity of evaluation has been carried out for the mapping of sensitive activities and for the surveying of existing protective controls, with reference to all of the criminal offences[1] provided for by the Decree. The mapping has been carried out through

[1] It is to be underlined that despite having considered in the reports the individual criminal offences solely as committed, the organisation can also be held responsible, pursuant to article 26 of the Legislative Decree 231/2001 in all cases in which the criminal offence is shown to be only attempted as per article 56 of the penal code.

analyses of documentation and interviews of control and risk self assessment conducted with the principle managers of the Foundation. The activity of control and risk self assessment was conducted for company processes and areas which are considered unanimously to be the most exposed to criminal offence, with the objective of identifying the sensitive activities in the various categories of criminal offence as provided for in the framework of Legislative Decree 231/2001.

For the detailed analysis of the Mapping of Risk, reference is made to the summary document (Mapping, Appendix n. 3) attached to the Model relating to the IIT.
It is underlined that, in carrying out the mapping of activities subject to the risk of criminal offence, different criteria were followed according to the particular criminal cases hypothesised and of the pertinence of such criteria to the case in question.
In fact, with the exclusion of the case of corruption between private parties pursuant to article 2635 of the Civil Code, it is felt that the discipline provided for with regards to company criminal offence (article 25 ter of Legislative Decree 231/2001) is not applicable to the foundation. As a preventative measure, however, it was considered opportune to proceed with the mapping, as well as with the already mentioned corruption between private parties, of the other relevant company criminal offences for the creation of the present Model inasmuch as the financial objectives in non-profit organisations originate from the necessity for transparency with regards to financing subjects, a requirement that the IIT wishes to guarantee in the carrying out of all of the activities which it puts into action.[2]
In the same prudent light the intention is to proceed also with reference to the mapping of the criminal offence specified in article 74 of the Decree of the President of the

[2] With regards to this, the doctrine maintains the "*the penal regulations provided for by the regulations in Title XI of book V of the civil code have been provided for companies subject to registration. They therefore include all the companies which, in associative form, exercise, according to the provisions of article 2195 of the civil code, the following activities: an industrial activity directed at the production of goods and services; an activity of transportation by land, sea and air; a banking or insurance activity; other activities which are auxiliary to those already indicated*". A law regarding banking foundations thus cites: *"It should be noted that, in light of the reserve for companies subject to registration of the incriminatory regulations from chapter I of title II of the civil code it is undeniable that a "foundation", albeit banking, is not de jure a commercial company, and therefore, by definition, in the case that the charges regard the finances of a foundation and not a company, the establishment of a criminal offence pursuant to article 2621 of the civil code is to be excluded".* (Musco, Company criminal law 1999, page 51 and successive).

Republic 309/90 regarding the theme of "Association for the purpose of illicit traffic of narcotic or psychotropic substances", referred to by Law 146/06 as a number of the departments of the Institute may use narcotics in the course of their experimental activity. The case in question is in fact considered to be only theoretically configurable, partially due to a lack of interest or advantage for the institute, considering, among other aspects, the reduced quantities of the active ingredient used.

In relation to the other categories of criminal offence, a preliminary theoretical analysis has been carried out. Following this analysis, the following categories of criminal offence have been considered inapplicable to the situation of the IIT inasmuch as:

- the criminal offences provided for by article 25 *bis* 1 (Crimes against industry and commerce), prove not to be feasible in the framework of the activity currently carried out by the Foundation.
- the criminal offences provided for by article 25 quater (Crimes with the objective of terrorism or the subversion of democratic order), in consideration of the activity carried out by the IIT, do not at the moment prove to be theoretically imaginable;
- the criminal offence of "Carrying out the mutilation of the female sexual organs" (also known as infibulation) pursuant to article 25 *quater* 1 is not applicable to the reality of the Foundation;
- in relation to the criminal offences pursuant to article 25 *quinquies* (Crimes against individual persons), it is felt that the specific activity carried out by the Foundation does not present risk profiles sufficient to render reasonably founded the possibility of their being committed in the interests or to the advantage of the same. Notwithstanding, it should be underlined that the Foundation has provided, in the Code of Behaviour and Scientific Conduct, for specific principles of behaviour in this regard;

- the criminal offences pursuant to article 25 *sexies* (Crimes of abuse of the market) do not currently result to be feasible inasmuch as the Foundation has adopted systems of control created for the prevention of such cases of illicit activity, such as, for example, the ban on making speculative investments.

In relation to the criminal offences pursuant to article 25 *undecies* it is considered inapplicable to the IIT:

- article 733 *bis* of the penal code "Destruction or damage of a habitat within a protected site", inasmuch as not applicable to the reality of the Foundation;
- cases relating to deliberate pollution provided for by articles 8 and 9 of the Legislative Decree 202/2007, inasmuch as not applicable to the reality of the Foundation.

2.8 ACTIVITIES ATTRIBUTABLE TO THE MANAGEMENT OF THE FOUNDATION

As anticipated in the premise of the present Model, criminal offences committed with the responsibility of the Organisation pursuant to the present Decree, can be carried out either by so-called senior subjects or by subordinates under their direction or supervision.

The Executive Committee of the Foundation is directly involved in the daily management of the Institute, and therefore it is difficult to imagine the existence of a division which exonerates it from responsibility.

The Decree, in the case of criminal offences committed by the management, provides for an inversion of the burden of proof. It is therefore the Foundation which must demonstrate the fraudulent evasion of the Model which was predisposed and effectively carried out.

Therefore, in the case of a criminal offence completed by the Executive Committee, it is not enough to demonstrate that it is a case of illicit behaviour committed by an "unfaithful" member, but it is also necessary to demonstrate that there is no case of omitted or insufficient control on the part of the Supervisory Body with respect to the Model.

The Executive Committee is the natural addressee of the incriminating regulatory previsions for which the responsibility pursuant to the Decree is configurable.

As an effect of such regulatory indications, it is considered necessary that the activity of control requested from the Supervisory Body also has as its objective the actions of the Executive Committee.

2.9 ELEMENTS OF CONTROL

General controls

The system of control finalised by the Foundation has been created by applying the principles of control, here below defined, to the individual sensitive activities.

- **Regulation**: the existence of internal dispositions suitable for the provision of principles of behaviour, operative methods for the carrying out of sensitive activities as well as methods for the archiving of relative documentation.
- **Traceability**: i) every operator connected to sensitive activity is, wherever possible, adequately registered, ii) the process of decisions, authorisations and the carrying out of sensitive activities is verifiable after the fact, also via dedicated supporting documentation.
- **Segregation of responsibility**: separation of activities between those who authorise, those who operate and those who control.
- **Proxies and delegations**: authorising powers and assigned signatures are: i) coherent with the organisational and managerial responsibilities assigned, providing, where required, for the indication of the limits of approval of expenses; ii) clearly defined and known within the Foundation. In particular, the Executive

Committee has approved a system of delegation and division of responsibility, attributing powers and obligations relative to the professional abilities possessed by each member.

Instruments for specific control

With regards to activities at risk, specific protocols and operative procedures have been identified in defence of the same which represent instruments of control forming an integral part of the Model. The list of these is supplied in an appendix to the Model (Appendix n. 4).

2.10 MANAGEMENT OF FINANCIAL RESOURCES

Article 6, paragraph 2, point c) of the Decree commands that the models provide for "methods of management of financial resources suitable for the prevention of criminal offences". The instruction finds its ratio in the verification that the majority of criminal offences considered by the Decree can also be committed via the financial resources of the Organisation (e.g.: the establishing of extra-accounts funds for the carrying out of acts of corruption).

In order to impede such conduct, the IIT has adopted mechanisms for the proceduralisation of decisions which, by rendering the various phases of the decision process documented and verifiable, impede the inappropriate management of the Institutes financial resources.

It is noted that the Foundation's flow of funds is generated by the activity, listed below, which is subject to regulation and control.

1. **Activity of financing of projects**
2. **Activity of procurement of goods and services**

3. **Employment of personnel**

4. **Predisposition of financial statements**: the activity of predisposition of financial statements is an activity carried out by the Executive Committee.

5. **Power of signature and expense**: the power of signature is recognised by the Executive Committee for the General Director, the Scientific Director, the Director of Research, the Administrative Managers, the Coordinators of the Network Centres, the Facility Managers, Researchers with Tenure and in Tenure Track, Senior Scientists and Administrative Managers not under the Department Manager.

2.11 THE SUPERVISORY BODY

The Supervisory Body

Article 6, paragraph 1, point b) of the Decree, among the requirements in order for the Organisation to be exonerated from responsibilities resulting for the committing of criminal offences listed herein, indicates the setting up of a Supervisory Body ("Body"), endowed with autonomous powers of initiative and control, with the task of supervising the functioning and the observation of the Model, handling its updating.

The requirements

The Body must be **internal** to the Organisation, collocated in a position of impartiality and independence with respect to the other Bodies in the Foundation and, in order to be able to efficiently carry out its functions, it must possess the following **requirements**:

- **autonomy and independence**: be without operative tasks and only have staff relations with the Executive Committee;

- **professionalism**: the members of the Supervisory Body must have specific knowledge regarding all useful techniques for the prevention of the committing of criminal offences, in order to discover those already committed and discover the cause, as well as verify the respecting of the Model by the members of the IIT Foundation;
- **continuity of action:** in order to guarantee the efficient execution of the Model, the presence of a structure dedicated exclusively to the activity of supervision is necessary.

The functions and powers of the Supervisory Body

The Body is called to carry out the following activities:

a) promote the knowledge and the understanding of the Model in the IIT Foundation;
b) supervise the observation of the Model within the Foundation;
c) collect, process and conserve all information relative to the objectives of verification regarding the observation of the Model;
d) supervise the efficiency of the Model over time, with particular attention to behaviour recorded in the context of the IIT;
e) promote the updating of the Model in the event that it becomes necessary and/or opportune to carry out corrections and adjustments of the same, in relation to changed organisational or legislative conditions;
f) quickly highlight any violation of the Model which is considered significant, which has come to attention through indications from staff or which has been identified by the Body itself. Anonymous reports will be evaluated under the discretion of the Body, bearing in mind the gravity of the violation reported and the indications contained;
g) communicate and report on a continuous basis to the Executive committee and, periodically, to the Board of Statutory Auditors regarding the activity carried out,

the reports received, the measures taken for correction and improvement of the Model and their state of progress. Transmit, every six months, a written report to the Executive Committee which contains the following elements:

- all of the activity carried out over the course of the year, also in relation to the programme elaborated;
- the necessary and/or opportune actions for the correction and improvement of the Model and their state of progress;

h) identify and evaluate the opportunity for the inclusion of termination or withdrawal clauses in contracts with consultants, collaborators and third parties who have relations with the Foundation, in the framework of the company's activities which are potentially exposed to the committing of criminal offences as specified by the aforementioned Decree;

i) promote the knowledge of the principles contained in the Code of Behaviour and Scientific Conduct and their translation into congruent behaviour on the part of various addressees, identifying the most opportune training and communicative activities in the framework of the relative annual programmes;

j) periodically verify and control the areas/operations at risk identified by the Model and carry out controls of the Foundation's activities with the aim of identifying areas at risk of criminal offence, and propose their updating and integration where the necessity is recognised.

k) set up specific "dedicated" channels of information, aimed at facilitating the flow of reports and information to the Body;

l) indicate to the Executive committee, on the basis of the activity carried out, the eventual elaboration of protocols, operational and control procedures which adequately regulate the carrying out of activities for the implementation of the Model.

For the carrying out of the listed acts of compliance in the preceding paragraph, the Body is attributed with the powers indicated below:

a) to issue internal dispositions aimed at regulating the activity of the Body. Such dispositions, which must be suitably motivated (e.g. dispositions dictated by situations of urgency or opportunity), will be issued in autonomy by the Body, but must not be in contrast with the regulations adopted by the Foundation for its operation;
b) to access all documentation belonging to the Foundation which is relevant for the carrying out of the functions attributed to the Supervisory Body pursuant to the Decree;
c) to make use of external consultants of documented professionalism in the case in which such action is rendered necessary for the completion of the Supervisory Body's activity;
d) to request that any employee, manager and/or collaborator for the Foundation supplies, in a timely fashion, information, data and/or news necessary for the identification of aspects relating to the various activities relevant pursuant to the Model, as well as for the verification of the effective execution of the same by the company's organisational structures;
e) to verify that the appointed structures have applied disciplinary proceedings in the case of violations identified by the Model and its integral elements.

For an improved and more efficient completion of the tasks and functions attributed to the Body, the latter may decide to delegate one or more specific compliances to individual members of the same Body, or rather may avail itself of a structure of the Foundation for the assigned function.
The Body will produce appropriate minutes of its meetings. The meetings must take place at least every three months.
Furthermore, the Supervisory Body can be convened at any moment by the Executive Committee and can, in turn, make a request in this sense, in order to report regarding the functioning of the Model or of specific situations.
Lastly, for the regulations relative to the functioning of the Body set up within the Institute, reference is made to the relative Bylaws (Appendix n. 5).

Information flows for the Supervisory Body

The Body will provide for the six-monthly publishing of a written report on the activity carried out, sending it to the Executive Committee.
The Body is the receiver of reports relating to eventual violations of the present Model. To this end, specific information channels have been created, aimed at forming a flow of reports and information towards the Body.
All of the employees and all of those operating for the pursuit of the objectives of the Foundation are held to inform the Supervisory Body in a timely fashion with regards to eventual violations of the Model and all other aspects which are potentially relevant to the application of the Decree.
In particular, information which principally concerns the following must be transmitted to the Supervisory Body in a timely fashion:

- proceedings and/or news originating from criminal investigation departments, or from any other authority, from which can be deduced the carrying out of investigative activity for the criminal offences contemplated by the Decree, also activated with regards to unknown persons;
- relations predisposed by those responsible for the functions in the framework of the activity of control, from which facts, actions, events or omission may emerge with critical profiles regarding the regulations of the Decree;
- communications relating to sanctions imposed (including proceedings against employees);
- all eventual modifications and/or integrations to the system of mandates and proxies;
- all eventual emissions, modifications and/or integrations to the operative procedures relative to the objectives of the Decree.

The Body is also the receiver of reports regarding the functioning and the updating of the Model, including the suitability of the principles of the Code of Behaviour and Scientific Conduct and the internal procedures/protocols of the Foundation. Such reports must be made in writing.

The Body, in any case, acts to safeguard the source of the report from any form of retaliation, discrimination or penalisation, furthermore ensuring their anonymity, save for legal obligations and the safeguarding of the rights of the Foundation. The Body will, in turn, provide for the reporting of the results of the activity carried out to the Executive Committee.

Reports can be sent to the Supervisory Body's e-mail address (organismodivigilanza@iit.it).

All of the reports received by the Supervisory Body must be collected and held in a dedicated archive of the Supervisory Body.

All information held by the members of the Body is treated in respect of the relative legislation in force and, in particular, of the Law regarding data protection, Legislative Decree 30 June 2003, n. 196.

Identification of the Supervisory Body within the Foundation

The Executive Committee identified and nominated the Supervisory Body of the Italian Institute of Technology in its current composition as a collective body via deliberation on 16 April 2015.

In confirmation of the professionalism of the components of the Supervisory Body, their curricula are attached to the present document (Appendix n. 6).

2.12 CODE OF BEHAVIOUR

The adoption of ethical principles relative to the objectives of the prevention of criminal offence pursuant to Legislative Decree 231/2001, as well as Law 190/2012, constitutes an essential element in the system of preventative control. Such principles find their natural collocation in the Code of Behaviour and Scientific Conduct (Appendix n. 7).
The Code of Behaviour and Scientific Conduct is, in fact, aimed at recommending, promoting or prohibiting certain behaviour to which sanctions may be connected, proportional to the seriousness of the eventual violation committed.

2.13 DISCIPLINARY SYSTEM

A qualifying point of the Model is constituted by the prevision of an adequate disciplinary System (Appendix n. 8) which sanctions the non-compliance with, and the violation of the regulations of the same Model and its components.
Such violations must be sanctioned in disciplinary proceedings, irrespective of the eventual establishment of a criminal trial, even in cases where the behaviour in question does not constitute a criminal offence.
With regards to relations with consultants, collaborators and third parties, the Institute may adopt a standard for contracts according to which, any behaviour in contrast with the Code of Behaviour and Scientific Conduct drawn up by the aforementioned subjects may lead to the immediate dissolution of the contractual relationship and the eventual request for damages in the case that such behaviour causes damage to the Foundation.

2.14 TRAINING AND INFORMING THE PERSONNEL OF THE FOUNDATION

The IIT, in accord with that provided for by the Decree, has set out a specific plan of communication and training aimed at disseminating and illustrating the Model to all of the personnel of the Foundation.

In particular, with regards to **communication**, an e-mail has been provided for, signed by the Scientific Director, to be sent to all those who, in whatever form, collaborate with the Foundation. The said communication makes mention of the effective adoption of the Model, inviting the receivers to respect the system of control provided for by the Model.

With regards to **training**, this is carried out through regular meetings with all of the personnel and collaborators in order to illustrate the Model, or through the use of e-learning tools.

In particular the following themes will be examined:

1. Legislative Decree 231/2001;
2. The consequences for the Foundation in the case of the eventual commission of criminal offences by subjects operating for it;
3. The Code of Behaviour and Scientific Conduct;
4. Fundamental characteristics of criminal offences provided for by the Decree;
5. The functions and content of the Model adopted by the Foundation;
6. Protocols and policies;
7. The system of sanctions;
8. The Supervisory Body;
9. The integration of the Model of the Foundation with regulations regarding anti-corruption and transparency.

Participation in the aforementioned training sessions is formalised through the request for a signature confirming presence (or the equivalent in the case of e-learning) and the insertion in the database of the Supervisory Body of the names of attendees. Furthermore, a questionnaire is given to attendees in order to evaluate their understanding of the principles of the Model.

2.15 LEGAL PRECEDENTS

A number of legal precedents have been analysed which, together with the indications of sector associations, have provided the guidelines for the drawing up of the Model.

Legal cases have underlined many aspects considered to be essential for the drawing up of a suitable Model, underlining that it must be a Model with a clear and specific validity, effectiveness and dynamism. In particular, in the preparation of the Model, particular attention must be paid to:

- mechanisms of non-registered funds;
- methodology for the preparing of accounts;
- methodology for the preparing of financial statements;
- methodology for the handling of tenders and the relative controls;
- execution of the analysis of possible methods for the carrying out of criminal offences bearing in mind the internal and external operational context in which the company operates;
- the taking into consideration of the history of the Organisation (past situations, including judicial situations);
- the provision of the segregation of roles in processes subject to risk;
- the attribution of powers of authoritative signature in line with organisational and managerial responsibilities;
- the creation of a system of monitoring which is suitable for the indication of critical situations;
- the adoption of instruments and mechanisms which render transparent the management of financial resources, hindering the creation of slush funds through the emission of invoices for non-existent operations, payments for consultancy not carried out or of a considerably lower value than that declared by the company;
- the provision for obligatory training regarding the Model for the personnel of the organisation;
- the creation of flows of information towards the Supervisory Body and the provision for disciplinary sanctions in the case of non-respect of the same.

Following the adoption of the Model, in order to render it suitable, the Organisation must provide for the setting up of specific training courses and activities for awareness aimed at ensuring sufficient knowledge, understanding and application of the Model by the employees and management.

In particular, an emblematic judicial ruling made in a court order issued by the investigating magistrate in July of 2007 is hereby highlighted[3].

This ruling ratified the suitability of the Model which had been subjected for her examination. The said model had not been considered sufficiently satisfactory inasmuch as lacking in certain essential elements. In particular, according to that provided for by the investigating magistrate, for a Model to be suitable for the prevention of criminal offence, it is necessary, having identified all of the sensitive areas, to establish for each one specific **protocols** for prevention which regulate as strictly and efficiently as possible dangerous activities. These must be subject to an efficient and constant process of control as well as safeguarded by specific and suitable sanctions for the prosecution of violations and to guarantee an effective execution of the entire organisational system thus prepared. This is in order to render the Model not a mere *façade*, with a solely formal value, but a solid and above all dynamic instrument, able to constantly adapt to the transformation of the operational and organisational situation of the legal entity.

When the perpetration of criminal offences by subjects placed in roles of top management in the legal entity appears highly probable, the **procedures** relative to the formation and execution of decisions which regard the activity considered as dangerous must be precisely determined. This requires a precise identification of the subjects charged with the making of decisions, the identification of parameters to adhere to in the choices to be made, the precise rules to apply for the documentation of contacts, the proposals and every single step of the deliberation and execution of the decision.

Furthermore a specific disciplinary system must be adopted both for the precept and for the sanction. The same must also provide for sanctions in the case of violations regarding obligations of information to the Supervisory Body. Training courses must be organised for all employees with obligation of participation and frequency.

[3] Trial Court of Naples - 26 June 2007 Investigating Magistrate Dr. R Saraceno

2.16 A BRIEF OUTLINE OF CRIMINAL LAW

A - Conspiracy (article 110 of the penal code)

Conspiracy is provided for by article 110 of the penal code, which maintains "*When more than one person takes part in a single criminal offence, each of these persons will be subject to the punishment established for this criminal offence, save for that established in the following articles".*

There are two types of conspiracy:

- one where two or more people participate in the committing of one or more criminal offences which can also theoretically be committed by only one single subject (for example fraud)
- the other when the incriminating regulation requires the presence of more than one subject for the constitution of the criminal offence (e.g. corruption)

If the nature of the personal contribution to the execution of the criminal offence is taken into consideration, there is a further distinction:

- when a subject personally takes part in a series of acts which lead to the material element of the criminal act
- when a subject provides the psychological input to the realisation of a crime which is materially committed by others. The psychological impulse can assume the form of determination, when one provokes criminal intent in others which did not previously exist, or the form of incitement, when one strengthens an already existing criminal intent.

A particular form of conspiracy is represented by **offences specific to certain classes of offender.**

This indicates a criminal act which can be committed exclusively by a subject with a specific subjective qualification, for example the crime of false accounting can be committed solely by subjects expressly indicated by articles 2621 and 2621 *bis* of the civil code, or rather by administrators, general directors, auditors and liquidators.

It is possible that in these specific offences committed by subjects with specific subjective qualifications (known as *intraneus*), other subjects without such qualifications

(known as *extraneus*) can participate. In this case the *extraneus* answers, on the grounds of participation, for the crime committed by the *intraneus* pursuant to article 117 of the penal code.

B - Offence of public office and common offence

A **common offence** is a criminal offence which can be committed by *anyone,* irrespective of their particular subjective characteristics, for example: fraud, improper receipt of public funds etc.

Offence of public office instead refers to a criminal offence which can be committed exclusively by a subject with a special subjective qualification, for example the offence of false accounting can be committed solely by subjects expressly indicated by articles 2621 and 2621 *bis* of the civil code, or rather by administrators, general directors, auditors and liquidators.

C - Attempted offence (article 56 of the penal code)

The criminal offence is committed only when all of the constitutive elements of the same have been carried out.

The figure of the attempted offence is applicable when the active subject wishes to commit an offence and acts to that end, without however committing the intended offence for reasons beyond their own will.

The wording of article 56 of the penal code is the following: *"Whoever commits relative acts, carried out in an unambiguous manner for the committing of an offence, will answer to the charge of attempted offence if the action is not carried out or the event does not take place..."*

On this point it is useful to remember that also with reference to the responsibility of the Organisation the legislator has provided for, in article 26 of Legislative Decree 231/2001 that: *"The financial sanctions and bans are reduced by from one third to one half in relation to the commission, in the form of attempt, of the offences indicated in the present chapter of the decree.*

The organisation is not held to answer when it voluntarily impedes the completion of the action or the realisation of the event".

D - Functionary charged with public service (articles 357 and 358 of the penal code)

Article 357 *Notions regarding functionaries*

The notion of Functionary is taken from article 357 of the penal code, which states: *"In accordance with criminal law, functionaries are those who carry out a* ***legislative, judicial or administrative role[4].*** *Also considered public is the administrative role governed by the* ***regulations for public law*** *and* ***by authoritative deeds*** *and characterised by the* ***formation and manifestation of the will of public administration*** *or by its taking place via* ***authoritative or certifying powers****".*

The status of functionary was traditionally tied to the formal role covered by a person within public administration, for example a government employee.

As already mentioned various times by the High court of Appeal, a relationship of subordination or employment with a public organisation is not necessarily a prerequisite for the attribution of the status of functionary. As a matter of fact, the role of functionary is considered valid for those who: *"participate as subsidiary or accessory in the execution of the objectives of public administration, with actions which cannot be isolated from the context of public function".*

After the passing of the law of 26 April 1990 n. 86, the title is attributed on the basis of the role actually carried out, as confirmed also by the ruling of the High court of Appeal, according to which: "the formal title of a person within administration is by now irrelevant".

The Court of Appeal has, in fact, underlined that the title is also recognised for those who, despite being private citizens, can exercise powers of authorisation, deliberation and certification, also considered individually. This being understood, it is always necessary to verify if the activity is governed by regulations of public law, inasmuch as "the title of functionary, pursuant to article 357 of the penal code, must be recognised

[4] Judicial and legislative functions are public as such, with the consequence that those who fulfil these roles are always quantifiable as a functionary. On the contrary, with reference to administrative roles, only those who carry out an administrative role characterised by the exercising of powers of deliberation, authorisation and certification can be considered functionaries.

to those subjects who, whether government employees or private citizens, can and must - whatever their subjective role - formulate and manifest, in the framework of an authority regulated by public law, the will of public administration, or rather exercise, independently from formal investiture, powers of authorisation, deliberation or certification, considered individually and not as a whole"[5].

In the light of the above, Functionaries are considered those who:

- collaborate to form the will of public administration;
- are invested with powers that are:
    - decisional;
    - of certification;
    - of attestation;
    - of duress[6];
    - of collaboration, also occasional[7].

Functionaries are subject to particular governance from a penal point of view, deriving from their status.

They can, therefore, only render themselves guilty of a number of offences against public administration (so-called offences of public office) such as:

- Abuse of power (article 323 of the penal code);
- Extortion (article 317 of the penal code);
- Direct bribery (article 319 of the penal code);
- Indirect bribery (article 318 of the penal code);
- Illicit induction to provide or promise acts (article 319-quater of the penal code);
- Embezzlement (article 314 of the penal code);
- Embezzlement through the profiting of the errors of others (article 316 of the penal code);
- Revelation of official secrets (article 326 of the penal code);

[5] Court of Appeal Joint Session 7958/1992.
[6] Court of Appeal Criminal Court VI 81/148796.
[7] Court of Appeal Criminal Court VI n. 84/166013.

- Refusal and omission of official acts (article 328 of the penal code).

Article 358 Notions regarding persons charged with public service

The notion of "charged with public service" is provided for by article 358 of the penal code which states *"in accordance with criminal law, those who, in whatever role,* ***provide a public service****, are charged with a public service.* ***Public service*** *refers to an activity which is governed in the same way as a public function, but characterised by the lack of powers typical to the latter, and with the exclusion of the carrying out of simple tasks and the provision of solely material work".*

From the wording of the regulation it is understood that public service is subject to the same discipline as civil service, but lacks the typical powers which characterise it (or rather those of deliberation, authorisation and certification) and requires activities which are not the simple execution of orders or instructions from others or the deployment of physical force. In fact the recognition of the title of public service requires a minimum of discretionary power which implicates, broadly speaking, the carrying out of "intellectual" tasks[8]:

Following the modifications made to the laws n. 86/90 and n. 181/92, article 358 of the penal code, as is the case with functionaries (article 357 of the penal code), the role of those charged with public service is no longer usually tied to formal roles covered by subjects within public administration, but rather revealing the public nature of the activity actually carried out by the same.

Both functionaries and those charged with public service are governed by the legal obligations provided for by article 331 of the penal code. "charges made by a functionary and those charged with public service".

This article in fact states that "*save for that established by article 347, functionaries and those charged with public service who, in the exercising of their role or due to their role or services, have information regarding criminal offences punishable by law, must submit a written charge, also without having identified the person to which the criminal offence is to be attributed. The charges are to be presented or transmitted without delay to the public prosecutor or to an official of the criminal police.*

[8] Court of Appeal n. 10138/1998; n. 467/1999.

When more than one person is obliged to make charges for the same deed, they may prepare and under-sign one single act. If, during civil or administrative proceedings, a fact emerges which could constitute a criminal offence punishable by law, the authorities which precede must prepare and transmit the charges to the public prosecutor without delay".

APPENDIXES

1 **Contents of the Legislative Decree 231/2001**

2 **List of criminal offences**

3 **Mapping of activities at risk**

4 **Protocols and Policies**

5 **Bylaws of the Supervisory Body**

6 **Curricula of the members of the Supervisory Body**

7 **Code of Behaviour and Scientific Conduct**

8 **Disciplinary System**

ADDENDUM

A1. Relevant criminal offences pursuant to Law 190/2012

A2. Mapping of the areas at risk

A3. Measures for the prevention of corruption and for transparency

A4. Protocols for the prevention of corruption and for transparency