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ISTITUTO ITALIANO DI TECNOLOGIA

# ORGANISATION, MANAGEMENT AND CONTROL MODEL

**(pursuant to Legislative Decree 231/2001)**

## GENERAL PART

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## THE REGULATORY CONTEXT

## LEGISLATIVE DECREE N° 231 OF 8 JUNE 2001

Legislative Decree n° 231 of 8 June 2001 (hereinafter referred to as the "**Decree**") concerning the *"Regulations on the administrative liability of legal persons, companies, and associations, including those without legal personality*", pursuant to Article 11 of Law n° 300 of 29 September 2000, introduced a new type of liability of entities into our legal system (Attachment n° 1).

This is a particular form of administrative liability in criminal proceedings, for certain offences perpetrated by senior management or employees. It follows that in addition to the criminal liability of the individual perpetrator of the offence, there is also that of the entity.

The provisions *of* the Decree, pursuant to article 11, apply to the following entities (hereinafter also referred to as the "**Entity**" or the "**Entities**"):

- entities with legal personality;
- companies and associations, including those without legal personality.

The Entity's liability emerges when the offences expressly specified in the Decree are perpetrated, *in its interest* or *to its advantage* by persons linked to the Entity in various ways. In this respect, Article 5 of the Decree indicates as offenders:

a) "persons who *hold positions of representation, administration or management at the Entity or at one of its organisational units with financial and functional independence, as well as persons who exercise, also de facto, the management and control of said Entity and units*" (so-called senior persons);

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

By the legislators' specific determination, the Entity is not liable for the offence committed if senior persons or subordinates have acted *"in their own exclusive interest or in the interest of third parties"* (Article 5, paragraph 2 of the Decree).

The Entity's liability, pursuant to Article 6 of the Decree, may also be excluded when, prior to the perpetration of the act:

- organisational and management models suitable for preventing the perpetration of the offences provided for in the aforementioned Decree are prepared and implemented;

- a supervisory body is established, with powers of autonomous initiative, with the task of auditing the functioning of the organisation and management models (hereinafter also referred to as the "**Supervisory Board**", the "**Board**" or the "**SB**").

*In the event of offences committed by senior management*, the Entity's liability is excluded if the Entity also proves that the offence was committed by fraudulently circumventing the existing models and that monitoring by the Supervisory Board, which is specifically charged with overseeing the proper functioning of, and compliance with, the Organisation and Management Model, was not absent or insufficient.

*In the case of offences committed by subordinates,* on the other hand, the exclusion of the Entity's liability is also subject to the adoption of behavioural protocols appropriate to the nature and type of activity performed. These protocols ensure that the Entity's activities are performed in compliance with the law and facilitate the detection and timely elimination of risk situations.

**PENALTIES SPECIFIED BY LEGISLATIVE DECREE 231/2001**

Beyond the Entity's administrative liability, any person who commits one of the offences specified in the Decree and described in Attachment n° 2 will, in any case, be liable to prosecution for the unlawful conduct that said person has been engaged in.

Article 9, paragraph 1, identifies the penalties that may be imposed on the Entity. Precisely, these are:

- monetary penalties;
- interdictory penalties:
  - prohibition on performing activities;
  - suspension or revocation of authorisations, licences or concessions directly involved in the perpetration of the offence;
  - prohibition on negotiating contracts with the Public Administration, except for obtaining a public service;
  - exclusion from benefits, funding, grants or subsidies and the possible revocation of those already conferred;
  - prohibition on advertising goods or services;
- confiscation;

- publication of the judgement.

**LEGISLATIVE DECREE 231/2001 AND LAW 190/2012**

Law n° 190 of 6 November 2012, *"Provisions for the prevention and repression of corruption and illegality in the public administration",* introduced a more comprehensive system for preventing corruption than that provided for by the Decree.

Despite the similarity of the two systems, there are significant differences between the measures specified by Law n° 190 of 2012 and those of the Decree.

More specifically, regarding the type of offences to be prevented, while the Decree concerns offences committed to the benefit of the Entity, or which are perpetrated in the interest of persons that include the Entity (Article 5 of the Decree), Law 190/2012 is also aimed at preventing offences committed to the detriment of the Entity.

With regard to *"acts of corruption"*, the Decree refers to the offences of corruption, extortion, undue inducement to give or promise benefits, and corruption between private individuals, from all of which the Entity must derive an advantage, or have an interest, in order to be liable. In the opinion of the National Anti-Corruption Authority (A.N.AC.), however, Law 190/2012 refers to *"a broader concept of corruption, which includes not only the entire range of offences against the Public Administration governed by Title II of Book II of the Criminal Code, but also situations of 'maladministration', which include all cases of significant deviation of behaviour and decisions from the impartial government of the public interest, in other words situations in which private interests improperly condition the action of administrations or entities, both in the case that such conditioning was successful, or that it does not proceed beyond the level of attempt"*.

Therefore, according to the National Anti-Corruption Authority, *"in an approach of coordinating measures and simplifying fulfilments, companies shall supplement the Organisation and Management Model pursuant to Legislative Decree n° 231 of 2001 with measures that are also suitable for preventing the phenomena of corruption and illegality within companies in compliance with the objectives of Law n° 190, 2012. These measures must refer to all the activities performed by the company and must be consolidated into a unitary document that takes the place of the Corruption Prevention Plan, also as regards the assessment of the annual update and supervision by the National Anti-Corruption Authority. If combined into a single document, together with the measures adopted for the implementation of Legislative*

*Decree n° 231/2001, such measures are placed in a special section and are therefore clearly identifiable, taking into account the fact that they are in relation to different forms of management and responsibilities".*

Lastly, it should be noted that with Legislative Decree n° 75/2020, the legislators extended the administrative liability of entities as per Legislative Decree n° 231/2001 to also include the offences of embezzlement, embezzlement by profiting from the error of others, and abuse of office, described respectively in Articles 314, 316 and 323 of the Criminal Code. These cases, in particular, represent specific offences, whose perpetration necessarily requires the direct participation of a public official or a person in charge of a public service. The amendment makes the analogy between the two systems of prevention even closer.

In light of the above considerations, IIT, having already adopted this Organisation and Management Model, has decided, on a voluntary basis, to provide an attached section comprising specific ***Addenda*** on anti-corruption and transparency pursuant to Law 190/2012; this decision was adopted in accordance with the ruling of the National Anti-Corruption Authority in its Determination n° 8/2015 with its subsequent amendments (Determination n° 1134/2017) in order to coordinate the provisions of Law n° 190/2012 for the plans for the prevention of corruption, with the provisions of Legislative Decree n° 231/2001, in terms of extending risk mapping – which in the Model refers to those connected with predicate offences as per Decree 231 – to all corruption offences perpetrated to the detriment of the Foundation, in respect of which the above-mentioned Addenda contain the relevant analyses, the audits envisaged and the responsibilities assigned to the functions expressly dedicated to verifying that such measures are concretely implemented. These additional items therefore include higher levels of attention and specific anti-corruption measures expressly adopted pursuant to Law 190/2012.

# ISTITUTO ITALIANO DI TECNOLOGIA, ORGANISATION AND MANAGEMENT MODEL

## 2.1 BRIEF HISTORY OF THE FOUNDATION

IIT - Fondazione Istituto Italiano di Tecnologia (hereinafter the "**Foundation**", the "**Institute**" or "**IIT**") - was established by Law n° 326 of 24 November 2003.

IIT is an international centre of excellence in scientific research and advanced technology. Its aim is to encourage the country's technological development and advanced training in accordance with national science and technology policies, thereby further empowering the

national manufacturing system.

IIT is a Foundation under the auspices of the Ministry of Education, Universities and Research and the Ministry of Economy and Finance, established to promote excellence in fundamental and applied research, and to contribute to the country's economic development.

IIT's primary objectives are therefore both the creation and dissemination of scientific knowledge and increasing Italy's technological competitiveness, by means that include collaboration with academic institutions, private companies and the country's principal research centres.

The Institute went through an initial launch period of about two years during which, in particular, the management structure, the scientific plan and the initial training projects were defined.

***Main activities***

IIT's mission is hallmarked by research activities aimed at Technology Transfer, with a high scientific profile at national and international level; in these terms, the Foundation establishes relations with counterpart organisations in Italy and ensures the contribution of Italian and foreign researchers working at prestigious international institutes.

The Foundation aims at promoting technological development and advanced training in the country, in accordance with national science and technology policies, thus reinforcing the national manufacturing system.

To this end, the Foundation:

- facilitates and accelerates the development, in the national research system, of the appropriate scientific and technological capabilities to foster the transition of the national production system towards technologically advanced approaches;
- develops innovative methods and skills to facilitate the introduction of best practice and positive competition mechanisms in the field of national research;
- promotes and develops scientific and technological excellence both directly, through its multidisciplinary research laboratories, and indirectly, through collaboration with national and international laboratories and research groups;

- runs advanced training programmes as part of broader multidisciplinary programmes and projects;
- encourages a culture based on sharing and enhancing the results obtained, to be used for improving manufacturing and company success, both internally and at the level of the entire national research system;
- creates technological knowledge, regarding components, methods, processes and techniques to be used for the creation of products and services and their interconnections, in strategic sectors for the competitiveness of the national manufacturing system;
- attracts and groups researchers working in different research institutes and generates links with specialist centres of excellence;
- promotes interaction between areas of fundamental and applied research and encourages their experimental development;
- disseminates transparent mechanisms for the selection of researchers and projects, based on merit, in accordance with criteria that are globally accepted and consolidated.

## 2.2 ISTITUTO ITALIANO DI TECNOLOGIA'S INTERNAL ORGANISATION

IIT has adopted an organisational and governance system based on the operating models of the most important scientific institutions working at international level.

In fact, the model of governance was selected and structured through the study of international research centres of excellence with the specific aim of creating an operational model capable of facilitating the implementation of scientific activities while optimising returns on the resources employed and the funding available.

IIT's Organisation and Management Model is based on the following basic principles:

- the independence of research;
- a clear and precise definition of responsibilities;
- operational flexibility;
- constant assessment of the results obtained by means of independent auditing organisations.

The Foundation's smooth operation is ensured by a lean administrative system – in relation to the organisation's size and complexity – which is responsible for both management aspects and relations with the scientific world.

Pursuant to Article 6 of the Statute, the Foundation's organs (hereinafter "**Organs**") are as follows:

- Board;
- Chairperson;
- Scientific Director;
- Executive Committee (hereinafter the "**Committee**");
- Board of Auditors.

The Foundation's operational structures (hereinafter "**Operational structures**") are as follows:

- Research Lines and Centres;
- Technical Scientific Committee;
- Administrative Offices;
- Assessment Committees.

The Foundation's organisation and the Organs' and Operating Structures' roles and activities are described in the "General Operating Regulations", which can be used for reference throughout.

## 2.3 PURPOSES OF THE ORGANISATION AND MANAGEMENT MODEL

The IIT Committee's decision to provide the Foundation with an Organisation and Management Model (hereinafter the "**Model**") was taken with the objective of promoting and enhancing an ethical culture within the Institute. This decision takes the form of actions and operations designed to heighten the awareness of all the staff who work with the Foundation as regards the transparent and correct management of activities and the respect of current legislation.

The Model is progressively updated in order to render it appropriate for preventing the perpetration of the categories of offence introduced during the course of the various regulatory developments.

The IIT Model was adopted by a Committee resolution on 25 January 2010. This Model was last updated on 21 December 2022.

The approved Model comprises, in addition to this "General Section", a "Special Section", all the attachments thereto and the Addendum containing the instruments for the prevention of corruption and transparency pursuant to Law 190/2012.

By adopting the Model, the Committee intends:

- to inform all those who collaborate in any way with IIT that the Foundation wholly condemns conduct contrary to laws, regulations, or conduct that violates internal regulations (policy, protocols, and the Code of Conduct and Scientific Integrity pursuant to Legislative Decree 231/2001) and more generally the principles of sound and transparent management of the activities that underpin IIT's operations;
- to prevent, as far as is possible, the perpetration of offences, within the framework of the activities performed by IIT by means of: *i)* continuous auditing of all the areas of activity subject to risk; *ii)* training employees to ensure the correct implementation of their duties;

- to circulate and promote an approach within the Foundation based on transparency and legality.

## 2.4 METHODOLOGY ADOPTED FOR THE COMPILATION OF THE FOUNDATION'S MODEL

The activity performed for the compilation of the Model comprised the following phases:

**Phase 1 - Preliminary analysis of processes and activities**

Article 6, paragraph 2, letter a) of the Decree states that one of the requirements of the Model is the identification of the processes and activities within which the offences expressly specified in the Decree may be perpetrated.

The purpose of Phase 1 was therefore the identification of the areas covered by the operation and the preliminary identification of the processes and activities within which the types of offence envisaged by the Decree could in abstract terms be present.

A preparatory activity preceding the identification of sensitive activities was an analysis of the Foundation's governance and organisational structure, in order to achieve an overview of the activities performed and the organisation at the time of the project's launch, and to identify the areas involved in the operation.

The collection of the respective documentation and its analysis from both technical-organisational and legal points of view enabled the identification of sensitive processes/activities and a preliminary identification of the roles responsible for these processes/activities.

**Phase 2 - Identification of persons responsible for sensitive processes/activities**

The objective of Phase 2 was to identify the individuals responsible for sensitive processes/activities, namely individuals with in-depth knowledge of said matters.

More specifically, a "preliminary mapping of sensitive processes/activities", the area for which analytical work was necessary, was performed by means of interviews conducted with the function supervisors.

**Phase 3 – Mapping of sensitive activities and risk areas**

The objective of Phase 3 was to analyse, for each sensitive process/activity identified in

Phases 1 and 2, the functions and roles/responsibilities of the internal and external parties involved, the existing elements of supervision, the significant quantitative and qualitative factors in the process (for example, frequency, value of the underlying transactions, existence of historical evidence of deviant behaviour, impact on corporate objectives, etc.), in order to verify in which areas/sectors of activity and in what ways the types of offences specified by the Decree could theoretically be perpetrated.

By means of interviews with the heads of functions, a document was created containing the mapping of so-called "risk" activities that, in view of their specific contents, could be liable to the potential perpetration of the offences referred to in the Decree. This mapping, in accordance with the indications contained in Confindustria (General Confederation of Italian Industry) Guidelines, included the identification of the corporate functions concerned, the P.A.s that could be involved, the potential offences that could be related and the possible ways in which such offences could be committed in the course of performing said corporate functions. In this regard, it should be noted that, for the purposes of this mapping process, the individual offences were taken into account not only in their perpetrated form, but also, where thus considered, in the form of attempted perpetration (Article 26 of the Decree).

More specifically, two different categories of activities subject to risk were identified in the document:

- sensitive activities, which present direct risks of criminal relevance with respect to the aforementioned Decree;
- instrumental activities, which present risks of criminal relevance only when, combined with directly sensitive activities, they enable the perpetration of the offence, thus constituting its mode of implementation. This second category also includes the so-called "funding activities", which represent channels by means of which concealed funds, generally instrumental for corruption offences, could be created.

On the basis of the mapping of activities at risk of offence, the "Special Section" of this Model also envisages specific behavioural protocols to supplement the existing measures of appraisal.

**Phase 4 – Definition of the Model**

The purpose of Phase 4 was to define the Foundation's Model pursuant to Legislative Decree n° 231/2001, General Part and Special Part, subdivided into all its component parts according to the provisions of the Decree and the indications contained in the Guidelines prepared by Confindustria.

The Model is periodically updated in accordance with regulatory and organisational developments using the methodology described in the previous steps.

**Phase 5 - Consolidation of the Model with corruption prevention tools**

The purpose of Phase 5 was to consolidate - *voluntarily and within the limits of applicability* - envisaging the drafting of a specific Addendum, the Model with the indications provided by the main international anti-corruption Principles and Guidelines, the A.N.AC. (National Anti-Corruption Authority) Guidelines, the 2015 Update to the National Anti-corruption Plan) and Law n° 190/2012, considering both active and passive aspects, including consideration of the type of activity performed by the Entity.

**Phase 6 - Alignment of the Model with the new regulatory provisions on Whistleblowing pursuant to paragraph 2-bis of Article 6 of Legislative Decree 231/2001.**

The purpose of Phase 6 was to adapt the Model following the introduction of Law 179/2017, which added a new provision to Article 6 of Legislative Decree 231/2001 concerning, within the scope of said decree, the measures linked to the submission and management of reports of unlawful conduct relevant to the purposes of the Decree. More specifically, an alternative reporting channel was introduced to ensure, by computerised means, the confidentiality of the informant's identity.

## 2.5 RECIPIENTS

The Model is addressed to all those who work with the Foundation, and more specifically to:

- members of Organs, Committees, Commissions or similar established by the

Foundation;

- all managerial and non-managerial staff working in the name and on behalf of the Foundation;
- collaborators;
- affiliates (PhD students and Researchers from organisations affiliated to IIT).

IIT also requires compliance with the Model by all the people who collaborate in various ways with the Foundation in performing its statutory activities, as well as by all the third parties who represent the Foundation without employment contracts of any form (for example, consultants, suppliers), by methods that may include contractual clauses obliging external collaborators, consultants and suppliers to comply with the principles contained in the Code of Conduct and Scientific Integrity; failure to comply with these clauses gives IIT the possibility of withdrawing from or terminating the contract.

## 2.6 APPROVAL, MODIFICATION AND IMPLEMENTATION OF THE MODEL

In accordance with Article 6, paragraph 1, letter a) of the Decree, the Model constitutes an act issued by the management body (Committee).
On proposal by the Supervisory Board, the Committee shall implement any amendments and additions that are necessary to ensure the Model's continued compliance with the provisions of the Decree and with any structural and/or organisational changes in the Foundation.
The Committee is responsible for the implementation of the Model.

Supervision of the adequacy and implementation of the Model decided by the Committee is ensured by the Supervisory Board. The Supervisory Board reports continuously on the outcome of its work to the Committee.

## 2.7 ACTIVITIES REGARDING THE FOUNDATION'S TOP MANAGEMENT

As mentioned in the introduction to this Model, the offences from which the liability of

the Entity may arise in relation to this Decree may be committed both by the so-called top-level persons, and by persons subject to their direction or supervision.
The Foundation's Committee is directly involved in the Institute's ordinary and extraordinary management, so it is difficult to assume the existence of a form of separation exempting it from responsibility.
In the case of an offence committed by senior management, the Decree requires an inversion of the burden of proof: therefore the Foundation is required to prove the fraudulent evasion of the Model that has been prepared and effectively implemented.
Therefore, in the case of an offence committed by the Committee, it is not sufficient to prove that it is an offence perpetrated by an "unfaithful" member, and rather it is necessary to demonstrate that there was no omission or lack of control by the Supervisory Board regarding compliance with the Model. The Committee is the natural recipient of the incriminating regulatory provisions for which liability under the Decree can be configured.
As a result of this regulatory indication, it is deemed necessary that the auditing activities entrusted to the Supervisory Board also apply to the Committee's work.

## 2.8 ELEMENTS REGARDING VERIFICATION

***General checks***

The verification system developed by the Foundation was implemented by applying the monitoring principles, defined below, to the specific sensitive activities.

- **Regulations**: the existence of internal provisions providing principles of conduct, operating methods for performing sensitive activities, as well as methods for archiving relevant documentation.
- **Traceability:** i) each operation relating to the sensitive activity is, wherever possible, adequately documented; ii) the process of decision, authorisation and implementation of the sensitive activity is verifiable *ex post*, by means that include appropriate documentary support.
- **Separation of tasks**: separation of activities between those in charge of authorisation, those dealing with implementation and those who perform verification.
- **Powers of attorney and proxies**: the powers of authorisation and signature

assigned are: i) consistent with the organisational and management responsibilities assigned, providing, where required, an indication of expenditure approval thresholds; ii) clearly defined and familiar within the Foundation. In particular, the Committee has approved a system of proxies and division of responsibilities, assigning powers and duties in relation to the professional skills possessed by every individual.

***Specific monitoring tools***

Specific protocols and operating procedures have been identified to protect activities at risk; these represent monitoring tools in relation to the Model's purposes and are part of it to all intents and purposes. A list of these is attached to the Model (Attachment n° 4).

## 2.9 MANAGEMENT OF FINANCIAL RESOURCES

Article 6, paragraph 2, letter c) of the Decree stipulates that the models must provide for "methods of managing financial resources suitable for preventing the perpetration of offences". The logic behind this provision can be found in the observation that most of the offences covered by the Decree can also be perpetrated using the Entity's financial resources (for example, constituting funds outside the company accounts aimed at acts of corruption).

To prevent such conduct, the IIT has adopted mechanisms regulating the procedures of decisions that, by documenting the various stages of the decision-making process and making them verifiable, prevent mismanagement of the Institute's financial resources.

It should be noted that the Foundation's financial flows are generated by the activities, listed below, which are subject to regulation and control.

1. **Project Funding Activities**

2. **Procurement of goods and services**

3. **Staff recruitment**

4. **Preparation of the Financial Statement**: preparing the Financial Statement is an

activity performed by the Committee.

5. **Signatory and spending powers:** signatory powers are assigned by the Committee to the Director General, Scientific Director, Research Directors, Administrative Managers, Network Centre Coordinators, Facility Managers, Tenured and Tenure Track researchers, Principal Investigators and Administrative Managers not employed by Function Managers.

## 2.10 THE SUPERVISORY BOARD

***The Supervisory Board***

As part of the requisites allowing the Entity to be exonerated from liability resulting from the perpetration of the offences listed in the Decree, Article 6, paragraph 1, letter b) of said Decree specifies the establishment of a Supervisory Board, endowed with independent powers of decision and audit, entrusted the task of supervising the operation of, and compliance with, the Model, and ensuring that the latter is updated.

*Requirements*

The Board must be **internal** to the Entity, endowed with a position of third party status and independence from the other organs of the Foundation; in order to effectively perform its functions, it must meet the following **requirements**:

• **autonomy and independence**: it should have no operational tasks, and should have purely staff relations with the Executive Committee;

- **professionalism**: the members of the Supervisory Board must have specific knowledge regarding whatever techniques could be useful for preventing the perpetration of offences, for discovering those that have already been perpetrated and identifying their causes, and for verifying compliance with the Model by members of the IIT Foundation;
- **continuity of operation:** in order to ensure the effective implementation of the Model, the presence of a structure dedicated exclusively to supervisory activities is necessary.

*The functions and powers of the Supervisory Board*

The Board is required to perform the following activities:

a) promote awareness and understanding of the Model at the IIT Foundation;
b) monitor compliance with the Model at the Foundation;
c) collect, process and store any information relevant to the verification of compliance with the Model;
d) monitor the effectiveness of the Model over time, with specific reference to the conduct observed at IIT;
e) promote the updating of the Model in the event that it becomes necessary and/or appropriate to make corrections and adjustments, in relation to changed organisational and/or legislative conditions;
f) promptly report any breach of the Model deemed significant, which has come to its knowledge as a result of reports by employees or that has been ascertained by the Board itself. Anonymous reports shall be assessed at the Board's discretion, taking the gravity of the breach reported and the information contained therein into account. Reports will be taken into consideration only if they are based on precise and concordant factual elements, and are relevant with respect to the Decree;
g) communicate and report on an ongoing basis to the Committee and, periodically, to the Board of Auditors, on the activities performed, the reports received, the Model's corrective and improvement measures and their status of implementation. The Board is required to send a written report, on a six-monthly basis, to the Committee, containing the following elements:
    - the overall activity performed during the year, also regarding the programme compiled in precedence;
    - the necessary and/or recommended corrective and improvement actions for the Model and their status of implementation;
h) identify and assess the possibility of inserting termination or cancellation clauses in contracts with consultants, collaborators and third parties who have relations with the Foundation, in the context of company activities that are potentially exposed to the perpetration of the offences described in the aforementioned Decree;

i) promote the knowledge of the principles contained in the Code of Conduct and Scientific Integrity and their transposition into consistent behaviour by the various recipients by identifying the most appropriate training and communication measures within the respective annual plans;
j) periodically check and monitor the areas/operations at risk identified in the Model and perform a review of the Foundation's activities with the aim of identifying the areas at risk of offence and proposing their updating and integration, if the need arises;
k) set up specific "dedicated" information channels aimed at facilitating the flow of reports and information to the Board;
l) report to the Executive Committee, on the basis of the activity performed, the possible drafting of protocols, operating and verification procedures that adequately regulate the performance of activities, in order to implement the Model.

For the purposes of performing the duties listed in the preceding paragraph, the Board is vested with the powers listed below:

a) issue of internal provisions aimed at regulating the Board's activity. Such provisions, which must be adequately justified (for example, provisions rendered necessary by situations of urgency or expediency), shall be issued independently by the Board, but they must not come into conflict with the rules adopted by the Foundation for its own operation;
b) access to any document of the Foundation regarding the implementation of the functions assigned to the Supervisory Board in compliance with the Decree;
c) avail of external consultants of proven professional skill in cases where this is necessary for the performance of activities within its area of responsibility;
d) require that any Foundation employee, manager and/or collaborator promptly provides information, data and/or reports pertinent to the identification of aspects linked to the various relevant activities pursuant to the Model, as well as for verifying the latter's efficacious implementation by the company's organisational structures;
e) verify that the respective structures have applied disciplinary measures in the event

of ascertained violations of the Model and its constituent parts.

For the purposes of a better and more effective performance of the tasks and functions assigned to the Board, the latter may decide to delegate one or more specific tasks to the individual members of the Board itself, or it may make use of a Foundation structure appointed for this purpose.

The Board shall draw up minutes of its meetings. Meetings shall be held at least quarterly.

Furthermore, the Supervisory Board may be convened at any time by the Committee and may, in turn, submit a request to that effect, in order to report on the Model's functioning or in regard to specific situations.

Lastly, as regards the rules on the functioning of the Board set up at the Institute, its Statute can be used as a reference (Attachment n° 5).

***The Supervisory Board and its flows of information***

The Board shall draw up a written report on its activities every six months and send it to the Executive Committee.

The Board receives reports on possible violations of this Model. To this end, specific information channels have been set up, aimed at establishing a flow of reports and information towards said Board.

All employees and all those who cooperate in the pursuit of the Foundation's objectives are required to promptly inform the Supervisory Board of any violations of the Model and of any other aspect potentially relevant to the application of the Decree.

In particular, the Supervisory Board should be promptly sent the information that principally concerns:

- measures and/or information from judicial police organisations, or from any other authorities, from which it can be inferred that investigations have been performed for offences covered by the Decree, including those against unknown persons;
- reports prepared by the heads of the functions within the framework of the verification activities performed, from which facts, actions, events or omissions may emerge with profiles of criticality with respect to the rules of the Decree;
- communications concerning the penalties imposed (including measures taken against employees);

- any amendments and/or additions that may be made to the system of delegated and proxy powers;
- any issue, amendment and/or addition to the operating procedures of significance for the purposes of the Decree.

The Board is also the recipient of reports concerning the functioning and updating of the Model, including the adequacy of the principles of the Code of Conduct and Scientific Integrity and of the Foundation's internal procedures/protocols. Such reports must be made in writing.

In any case, the Board acts in such a way as to offer whistleblowers protection from any form of retaliation, discrimination or penalisation, also ensuring the confidentiality of the whistleblower's identity, while complying with legal obligations and the protection of the Foundation's rights. The Board will, in turn, report the results of its work to the Committee.

Reports may be sent to the Supervisory Board's e-mail address (organismodivigilanza@iit.it) or by means of the dedicated web platform, accessible at https//iit.segnalazioni.net, set up as an alternative reporting channel, provided for by the legislation on Whistleblowing, capable of guaranteeing the confidentiality of the informant's identity by means of computerised methods.

All reports received by the Supervisory Board must be collected and kept in a special archive by the Supervisory Board.

All the information in the possession of the Board members is treated in accordance with current data protection legislation.

***Identification of the Supervisory Board within the Foundation***

The Committee identified and appointed the Institute's Supervisory Board, in its current composition in collegiate form, with a resolution dated 26 April 2018.

In order to document the professional qualifications of the members of the Supervisory Board, their CVs are attached to this Model (Attachment n° 6).

## 2.11 CODE OF CONDUCT

The adoption of ethical principles relevant to the prevention of offences pertaining to the Decree, as well as to Law 190/2012, constitutes an essential element of the preventive monitoring system. These principles are logically part of the Code of Conduct and Scientific Integrity (Attachment n° 7).

The objective of the Code of Conduct and Scientific Integrity is to recommend, promote or prohibit certain forms of behaviour to which penalties proportionate to the gravity of any infringements committed may be attached.

## 2.12 DISCIPLINARY SYSTEM

An important part of the Model is constituted by the provision of an adequate Disciplinary System (Attachment n° 8) to penalise non-compliance and violation of the rules of the Model and its constituent parts.

Such violations must be sanctioned by disciplinary action, regardless of whether criminal proceedings are brought, even in cases where the conduct does not constitute a criminal offence.

With regard to relations with consultants, collaborators and third parties, the Institute may adopt a contractual standard according to which any conduct in contrast with the Code of Conduct and Scientific Integrity by the above-mentioned subjects may result in the immediate termination of the contractual relationship and a possible claim for compensation, should such conduct cause damage to the Foundation.

## 2.13 TRAINING AND INFORMATION FOR PEOPLE IN THE FOUNDATION

In compliance with the Decree's provisions, IIT has defined a specific communication and training plan for circulating and illustrating the Model to all the Foundation's people.

More specifically, with regard to **communication**, an e-mail signed by the Scientific Director was sent to all those who, in any capacity, collaborate with the Foundation. In this communication, the adoption of the Model was acknowledged, inviting the recipients to comply with the control system envisaged by the Model itself.

As regards **training**, this is performed by means of periodical meetings with all employees and collaborators in order to illustrate the Model or through the use of e-learning tools.

In particular, the following topics are addressed:

1. Legislative Decree 231/2001;
2. Consequences for the Foundation in the event of the possible perpetration of offences by persons working for it;
3. Code of Conduct and Scientific Integrity;
4. Essential characteristics of the offences mentioned in the Decree;
5. Function and contents of the Model adopted by the Foundation;
6. Protocols and policies;
7. Penalty system;
8. Supervisory Board;
9. The consolidation of the Foundation's Model with anti-corruption and transparency regulations.

Participation in the training sessions described above is documented by requesting the signature of attendance (or equivalent modes in the case of e-learning) and entering the names of those present in the Supervisory Board's database. In addition, a questionnaire assessing satisfactory learning of the Model's principles is submitted to participants.

## 2.14 CASE-LAW PRECEDENTS

A number of case-law precedents were analysed, which, together with the indications of trade associations, constituted the guidelines for drafting the Model. Jurisprudential decisions have highlighted many aspects considered essential for the drafting of a suitable Model, highlighting the fact that it must be a Model endowed with concrete and specific efficacy, practicality and dynamism. In particular, in drafting it, particular attention must be paid to:

- mechanisms of funds not documented in company accounts;
- the method of compiling the accounts;
- the method of compiling the financial statements;
- procurement procedures and respective audits;
- the implementation of an analysis of the possible ways in which offences could be committed, taking into account the company's internal and external operational context;
- considering the history of the entity (past events, including judicial episodes);

- ensuring the segregation of functions in processes subject to risk;
- assigning signatory powers for authorisation, consistent with organisational and management responsibilities;
- creating an appropriate auditing system capable of revealing critical situations;
- adopting instruments and mechanisms that make the management of financial resources transparent, preventing the creation of slush funds through the issuance of invoices for non-existent transactions, payments for consultancy services that were never performed or whose value is significantly lower than that declared by the company;
- providing compulsory training on the Model for the Entity's people;
- establishing flows of information to the Supervisory Board and providing for relevant disciplinary penalties in the event of non-compliance.

Following the adoption of the Model, in order for it to be suitable, the Entity must organise specific training courses and awareness-raising activities aimed at ensuring adequate knowledge, understanding and application of the Model by employees and managers.

More specifically, an emblematic ruling of jurisprudence is worth mentioning, in this case, an order issued by the Examining Magistrate of Naples in July 2007.[1]

This ruling found that the Model submitted was unsuitable. It was found not to be sufficiently satisfactory as it lacked certain essential elements. In particular, according to the provisions of the Examining Magistrate in the order, for a Model to be suitable for preventing offences, it is necessary, having identified all sensitive areas, to establish specific prevention **protocols** for each of them that regulate activities liable to danger in the most stringent and effective manner possible. These must be subjected to an effective and constant auditing activity, and specific and adequate penalties must be included to prosecute violations and to ensure effective implementation of the entire organisational system thus prepared. This is in order to make the Model a tool that is not just for show, endowed with purely formal value, but a concrete and above all dynamic instrument, capable of constantly conforming to the changing operational and organisational reality of the legal entity.

[1] Order of the Court of Naples - 26 June 2007 Examining Magistrate Dr. R. Saraceno

When it appears highly probable that offences have been committed by the persons in charge of the management of the legal entity, the nature of the **procedures** regarding training and the implementation of the decisions regarding activities deemed hazardous must be precisely determined. This entails an exact identification of the subjects to whom the adoption of decisions, the identification of the parameters to be adhered to in the choices to be made, the precise rules to be applied for the documentation of contacts, proposals and every single phase of the deliberative and executive moment of the decision, are entrusted.

A specific disciplinary system must also be adopted, both in terms of precepts and sanctions. This system must also provide for sanctions in the event of breach of the obligations to inform the Supervisory Board.

Training courses must be organised for all employees with compulsory attendance and participation.

## 2.15 BRIEF OVERVIEW OF CRIMINAL LAW

**A - The concurrence of persons in the offence (Article 110 of the criminal code)**

The concurrence of persons in the offence is provided for in Article 110 of the criminal code, which states: "*When several persons concur in the same offence, each of them shall be subject to the penalty established for that offence, without prejudice to the provisions of the following articles*".

There are two types of concurrence of persons:

- "*possible concurrence*" that occurs when two or more persons take part in the perpetration of one or more offences that could also be abstractly perpetrated by a single person (for example, fraud);
- "*necessary concurrence*" that occurs when, according to law, the respective criminal offence requires the presence of several persons to be perpetrated (for example, corruption).

If, on the other hand, the nature of the personal contribution to the perpetration of the offence is considered, a further distinction can be made:

- *"material concurrence*" when the subject personally intervenes in the series of acts that give rise to the material element of the offence;
- "*moral complicity"* when the subject provides a psychological impulse to carry out a crime materially committed by others. The psychological impulse may take the form of determination, when it gives rise in others to a previously non-existent criminal intent, or the form of instigation, when it reinforces an already existing criminal intent.

A particular form of concurrence of persons is **concurrence in "reato proprio" (individual offence).**

The term "individual offence" refers to a criminal offence that can only be committed by a person with a specific subjective qualification. For example, the offence of false corporate communications can only be committed by the persons expressly indicated by Articles 2621 and 2621 bis of the Civil Code, namely by directors, general managers, auditors and liquidators; or the offence of embezzlement, which can only be committed by the persons expressly indicated by Article 314 of the Criminal Code, namely by a public official or a person in charge of a public service.

In the individual offence committed by persons with the specific subjective qualification (so-called *intraneus,* insider), other persons who lack that subjective qualification (so-called *extraneus,* non-insider) may participate. In this case, the *extraneus* is liable, as an accomplice, for the offence committed by the *intraneus* pursuant to Article 117 of the criminal code.

**B - Individual and common offence**

**A "common offence"** is defined as an offence that can be committed by *anyone*, irrespective of particular subjective characteristics, for example, fraud, misappropriation of public funds, etc.

The term "**individual offence**" refers, on the other hand, to a criminal offence that can only be committed by a person with a specific subjective qualification; for example the offence of false corporate communications can only be committed by the persons expressly indicated by Articles 2621 and 2621 bis of the Civil Code, namely by directors, general managers, auditors and liquidators; or the offence of embezzlement can only be committed by the persons expressly indicated by Article 314 of the Criminal Code, namely by a public official or a person in charge of a public service.

**C - Attempted crime (Article 56 of the criminal code)**

The offence is only consummated when all its constituent elements are fulfilled.

Attempted crime occurs when the active subject wishes to commit an offence and takes steps to do so, but does not carry out the criminal intent for reasons beyond his or her control.

The text of Article 56 of the Criminal Code is as follows: "*Whoever performs certain actions, unequivocally aimed at committing an offence, shall be liable for attempted offence, if the action is not performed or the event does not occur*...". On this point it is worth recalling that, also referring to the Entity's liability, in Article 26 of Legislative Decree 231/2001 the legislators state that: *"Monetary and interdictory penalties are reduced by one half instead of one third in relation to the perpetration, in the form of attempt, of the offences indicated in this point of the Decree.*

*The entity is not liable when it voluntarily prevents the implementation of the action or the realisation of the event."*

**D - Public official and person in charge of a public service (Articles 357 and 358 of the Criminal Code)**

**Article 357** ***Notion of public official***

The notion of Public Official is derived from Article 357 of the Criminal Code, which states: *"For the purposes of criminal law, public officials are those who exercise a* ***legislative, judicial or administrative public function.***[2] *In the same sense, an administrative function governed by* ***rules of public law*** *and* ***by acts of authorisation*** *and hallmarked by the* ***formation and manifestation of the will of the public administration*** *or by its implementation by means of* ***authorising or certifying powers,*** *is public".*

The status of *public official* was traditionally linked to the formal role held by a person within the public administration, such as a civil servant.

As has been reiterated on several occasions by the Supreme Court of Cassation, a subordinate or dependent relationship with a public Entity is not necessarily a prerequisite for the attribution of the status of public official. In fact, a person who *"contributes in a subsidiary or accessory manner to the implementation of the purposes of the public administration, with actions that cannot be isolated from the context of public functions"* should also be regarded as a public official.

After Law n° 86 of 26 April 1990, this role is now attributed on the basis of the function concretely taken on, as additionally confirmed by the jurisprudence of the Supreme Court of Cassation, according to which: "the formal qualification of the person within the administration is now irrelevant".

The Supreme Court has, therefore, confirmed that the role must also be attributed to anyone who, although a private citizen, has powers of authorisation, deliberation or certification, which may also be considered as applying separately. However, without prejudice to this, it is always necessary to verify whether the activity is governed by rules of public law, since "the qualification of public official, as pertaining to Article 357 of the Criminal Code, must be recognised to those persons who, whether public servants or mere

[2] Judicial and legislative functions are public as such, with the consequence that the person exercising them is always classifiable as a public official. On the contrary, with reference to the administrative function, only the person who performs an administrative activity characterised by the exercise of powers of deliberation, authorisation and certification, adopts the qualification of public official.

private individuals, can and must – whatever their subjective position – represent and manifest, within the scope of a power governed by public law, the will of the public administration, in other words exercise, independently of formal investitures, powers of authorisation, deliberation or certification, separately and not cumulatively considered".[3]

In the light of the above, those who

- contribute to determining the will of a public administration;
- are vested with powers of:
    - decision-making;
    - certification;
    - attestation;
    - coercion[4] ;
    - collaboration, even on an occasional basis,[5]

should be considered as being public officials.

Public officials are subject to a specific discipline under criminal law, arising from their status.

They can therefore only be guilty of certain typical offences against the public administration (so-called "individual offences") such as:

- Abuse of office (Article 323 of the Criminal Code);
- Extortion (Article 317 of the Criminal Code);
- Proper corruption (Article 319 of the Criminal Code);
- Corruption in the exercise of an improper function (Article 318 of the Criminal Code);
- Undue inducement to give or promise benefits (Article 319-*quater* of the Criminal Code);
- Embezzlement (Article 314 of the Criminal Code);
- Embezzlement by profiting from another person's error (Article 316 of the Criminal Code);

[3] Joint session 7958/1992 of the Court of Cassation.
[4] Criminal section VI 81/148796 of the Court of Cassation.
[5] Criminal section VI n° 84/166013 of the Court of Cassation.

- Revelation of official secrets (Article 326 of the Criminal Code);
- Refusal and omission to perform official acts (Article 328 of the Criminal Code).

***Art. 358 Concept of person in charge of a public service***

The notion of "person in charge of a public service" is specified by Article 358 of the Criminal Code, which states*: "For the purposes of criminal law, persons in charge of a public service are those who, for whatever reason,* ***perform a public service*****.** ***Public service*** *can be considered as an activity governed in the same manner as the public function, but that is characterised by the lack of the powers typical of the latter, and with the exclusion of the performance of simple executive tasks and the performance of merely material work".*

From the wording of the rule it emerges that a public service is subject to the same discipline inherent to the public function, lacking, however, the typical powers that characterise it (namely powers of deliberation, authorisation and certification) and requiring an activity that does not end with the mere execution of orders or the instructions of others, or the deployment of physical force. In recognising the status of public service appointee, in fact, a minimum of discretionary power is required, involving the performance of "intellectual" tasks in the broader sense.[6.]

Following the amendment brought by Laws n° 86/90 and n° 181/92 to Article 358 of the Criminal Code, similarly to what occurred for public officials (Article 357 of the Criminal Code), the qualification of the person in charge of a public service is no longer traditionally linked to the formal role played by the person within the public administration, but rather to the public nature of the activity actually performed by that person.

Both public officials and persons in charge of a public service are subject to the legal obligation laid down in Article 331 of the Criminal Code, "Reporting by public officials and persons in charge of a public service".

This Article states that *"Without prejudice to the provisions of Article 347, public officials and persons in charge of a public service who, in the performance of or by reason of their duties or service, become aware of an offence indictable ex officio, shall report it in writing, even when the person to whom the offence is attributed cannot be identified. The report shall be made or forwarded without delay to the public prosecutor*

[6] Court of Cassation, n° 10138/1998; n° 467/1999.

*or a judicial police officer. Where several persons are obliged to report the same fact, they may draw up and sign a single document. If, in the course of civil or administrative proceedings, an act emerges in which an indictable offence may be identified, the prosecuting authority shall draw up and forward the report to the public prosecutor without delay".*

**ATTACHMENTS**

1 **Text of Legislative Decree 231/2001**

2 **List of offences**

3 **Mapping of activities at risk**

4 **Protocols and Policies**

5 **Statute of the Supervisory Board**

6 **Curricula of the members of the Supervisory Board**

7 **Code of Conduct and of Scientific Integrity**

8 **Disciplinary system**

**ADDENDA**

**A1. Significant offences in terms of Law 190/2012**

**A2. Mapping of areas at risk**

**A3. Principles for the prevention of corruption and for transparency**

**A4. Protocols for the Prevention of Corruption and for Transparency**