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ORGANISATION, MANAGEMENT AND CONTROL MODEL
(Legislative Decree no. 231/2001)

CONTENTS "MODEL pursuant to Legislative Decree 231/2001"

CHAPTER 1
DESCRIPTION OF THE REGULATORY FRAMEWORK

1.1 Introduction

Legislative Decree of June 8, 2001 no. 231 (hereinafter, "Legislative Decree 231/2001"), implementing the delegation conferred on the Government by art. 11 of Law of September 29, 2000, no. 300[1] laid down the regime of "*responsibility of entities for administrative offences based on the commission of a crime/offence*".

In particular, this regime applies to entities with legal personality and companies and associations, including those not having legal personality.

Decree 231/2001 owes its origin primarily to a number of international and EU conventions ratified by Italy which require provision to be made for forms of responsibility for collective entities in respect of certain offences.

According to the regime introduced by Legislative Decree 231/2001, in fact, companies may be held "responsible" for certain offences committed or attempted in the interest or to the advantage of the companies themselves, by those in the top hierarchy of the company (the so-called "senior management" figures) and by those subject to the instructions or supervision of the latter (art. 5, paragraph 1 of Legislative Decree 231/2001[2].

The administrative responsibility of the companies is independent from the criminal responsibility of the natural person committing the offence and goes hand-in-hand with the latter.

This expansion of responsibility aims substantially at involving the assets of the company in the punishment of particular offences and hence, in the final analysis, the economic interests of shareholders who, until the entry into force of the Decree in question, suffered no direct consequences from the commission of offences in the interest or to the advantage of the company itself, its directors and/or employees[3].

Legislative Decree 231/2001 makes changes to the Italian legal order in that companies are now liable, directly and independently, for penalties of a monetary or interdictive character in relation to offences attributed to persons functionally associated with the company in accordance with art. 5 of the Decree.

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[1] Legislative Decree 231/2001 was published in the Official Gazette of June 19, 2001 no.140, and Law 300/2000 in the Official Gazette of October 25, 2000, no. 250.

[2] Art. 5, paragraph 1, of Legislative Decree 231/2001: "Responsibility of the entity – *The entity is responsible for the offences committed in its interest or to its advantage: a) by persons carrying out the functions of representation, administration or management of the* entity *or of one of its organisational units enjoying financial and operational independence and also by persons exercising, including de facto, the management and control of the* entity *itself; b) by persons subject to the management or supervision of one of the subjects referred to under letter a)".*

[3] Thus the introduction of the Confindustria *Guidelines for the development of organisation, management and control models pursuant to Legislative Decree no. 231/2001*, circulated on March 7, 2002, supplemented on October 3, 2002, with an annex relating to so-called corporate crimes (introduced into Legislative Decree 231/2001 by Legislative Decree no. 61/2002) and updated most recently on May 24, 2004.

However, the administrative responsibility of companies is excluded if the company has, *inter alia,* adopted and effectively implemented, prior to the commission of the offences, organisational management and control models aimed at preventing their commission; these models may be adopted on the basis of a code of conduct (guidelines) drawn up by representative associations of companies, including Confindustria, and communicated to the Ministry of Justice.

The administrative responsibility of companies is, in all cases, excluded if the senior management and/or those reporting to them has/have acted in the exclusive interest of themselves or third parties.[4]

1.2 Nature of the responsibility

With reference to the nature of the administrative responsibility pursuant to Legislative Decree 231/2001, the explanatory Report to the Decree underlines the *"creation of a tertium genus which associates the essential features of the criminal and administrative system in the attempt to adapt the rationale for preventive effect to that – all the more inescapable – of the maximum guarantee".*

Legislative Decree 231/2001 has, in fact, introduced into our legal order an "administrative" type of corporate responsibility – in compliance with the requirements laid down by art. 27 of our Constitution[5] – but with numerous affinities with a responsibility of the "criminal" type.
Among the most significant are articles 2, 8 and 34 of Legislative Decree 231/2001: the first reaffirms the principle of legality typical to the criminal law; the second affirms that the responsibility of the entity is independent from the establishment of the responsibility of the natural person committing the criminal conduct; the third provides that such responsibility, dependent on the commission of an offence, is established within criminal proceedings and therefore comes within the guarantees that are intrinsic to the criminal process. One may also consider the burdensome nature of the penalties applicable to the company.

1.3 Authors of the offence: senior managers and staff subject to the instructions of superiors

As indicated above, according to Legislative Decree 231/2001, a company is responsible for offences committed in its interest or to its advantage:

– by *"persons carrying out the functions of representation, administration or management of the enterprise or of one of its organisational units enjoying financial and operational independence and also by persons exercising, including de facto, the management and control of the* entity *itself"* (the aforementioned "senior management" figures; art. 5, paragraph 1, letter a) of Legislative Decree 231/2001;

– by persons subject to the instructions or supervision of one of the senior management figures (the so-called staff subject to the instructions of superiors; art. 5, paragraph 1, letter b) of Legislative Decree 231/2001).

[4] Art. 5, paragraph 2, of Legislative Decree 231/2001: "Responsibility of the entity – *The* entity *is not responsible if the persons indicated in paragraph 1 have acted in the exclusive interest of themselves or third parties"*
[5] Art. 27 paragraph 1 of the Constitution of the Italian Republic: "*Criminal responsibility is personal in nature*".

One should repeat, moreover, that the company – by express legislative provision (art. 5, paragraph 2 of Legislative Decree 231/2001) - is not responsible if the aforementioned persons have acted in the exclusive interest of themselves or of third parties[6].

1.4 Categories of offence

On the basis of Legislative Decree 231/2001, the entity may be held responsible only for the offences expressly covered by articles 24, 25, 25-*bis*, 25-*ter*, 25-*quater*, 25-*quinquies,* 25-*sexies* and 25-*septies* of Legislative Decree 231/2001, if they are committed in its interest or to its advantage by the subjects qualifying under art. 5, paragraph 1 of the Decree, or in the event of specific legal provisions which refer to the Decree, as in the case of art. 10 of Law no.146/2006.

The following is a convenient categorisation of the offences:

- **offences against the Public Administration.** These are the first group of offences originally identified by articles 24 and 25 of Legislative Decree 231/2001 as bribery, misappropriation to the detriment of the State, fraud to the detriment of the State and computer fraud to the detriment of the State[7];
- **offences against the public trust**, such as counterfeiting money, banknotes, public credit notes issued by governments and revenue stamps provided for by art. 25-bis of the Decree and introduced by Law of November 23, 2001, no.409, containing *"Urgent provisions in light of the introduction of the euro*"[8];
- **corporate offences** Legislative Decree of April 11, 2002, no.61, within the ambit of the company law reform, provided for extending the regime of administrative responsibility of entities also to particular corporate offences (such as the offences of false corporate communications and of undue influence on the General Meeting referred to by art. 25-*ter* of Legislative Decree 231/2001[9];
- **offences relating to terrorism and the subversion of the democratic order** (referred to by art. 25-*quater* of Legislative Decree no. 231/2001, introduced by art. 3 of Law of January 14, 2003, no. 7). This refers to the "*offences aimed at terrorism or the subversion of the democratic order provided for by the Criminal Code and by special laws*", and to the offences, other than those

[6] The explanatory Report to Legislative Decree 231/2001, in the part relating to art. 5, paragraph 2, Legislative Decree 231/2001, states: "*Paragraph two of article 5 of the draft borrows the closing clause from letter e) of the government act and excludes the responsibility of the entity in circumstances when natural persons (whether senior management or otherwise) have acted in the exclusive interests of themselves or third parties. The rule marks the "rupture" of the model of corporate identification; namely, it refers to cases in which the offence committed by the natural person is not in any way attributable to the entity because it is not committed even partially in the interests of the latter. We underline that, where the extraneousness of the moral person becomes manifest, the judge should not even assess whether the moral person happens to have obtained an advantage (the provision therefore operates in derogation from the first paragraph)."*

[7] See Special Section A.

[8] Art. 25-*bis* was introduced into Legislative Decree no. 231/2001 by art. 6 of Decree Law 350/2001 converted into law, with modifications, by art. 1 of Law 409/2001. It concerns the offences of counterfeiting money, passing counterfeit money and introducing counterfeit money into the State in concert (art. 453 Criminal Code), alteration of money (art. 454 Criminal Code), passing counterfeit money and introducing counterfeit money into the State but not in concert (art. 455 Criminal Code), passing of counterfeit money received in good faith (art. 457 Criminal Code), counterfeiting of duty stamps, introduction into the State, purchase, possession or circulating of counterfeit stamps (art. 459 Criminal Code), counterfeiting of watermarked paper in use in making public credit notes or duty stamps (art. 460 Criminal Code), making or possession of water marks or equipment intended for counterfeiting of money, duty stamps or watermarked paper (art. 461 Criminal Code), use of counterfeit or altered duty stamps (art. 464 Criminal Code).

[9] See Special Section C.

indicated above, "*committed in violation of the provisions of art. 2 of the International Convention for the Suppression of the Financing of Terrorism signed in New York on December 9, 1999*")[10];

- **offences relating to the practice of female genital mutilation** (referred to by art. 25 *–quater.1* of Legislative Decree no. 231/2001)[11];
- **market abuse**, referred to by art. 25-*sexies* of the Decree, as introduced by art. 9 of Law of April 18 2005, no. 62 (" *Community Law 2004*")[12];
- **offences against the individual**[13], provided for by art. 25-*quinquies*, introduced into the Degree by art. 5 of Law of August 11, 2003, no. 228, such as child prostitution, child pornography, trafficking in persons and reduction to and maintenance in slavery[14];
- **transnational offences.** Article 10 of Law of March 16, 2006 no. 146 provides for the administrative responsibility of the company also with reference to the offences, specified in the same Law, which present transnational characteristics[15];
- **offences of involuntary manslaughter and involuntary bodily harm committed in infringement of the accident prevention rules and occupational health and safety rules** (so-

[10] Art 25-*quater* was introduced into Legislative Decree no. 231/2001 by art. 3 of Law of January 14, 2003, no. 7. It deals with the *"offences aimed at terrorism or the subversion of the democratic order provided for by the Criminal Code and by special laws",* and the offences, other than those indicated above, *"committed in violation of the provisions of art. 2 of the International Convention for the Suppression of the Financing of Terrorism signed in New York on December 9, 1999");* This Convention punishes any person who unlawfully and with intent supplies or receives funds in the knowledge that they will be, even in part, used to carry out: (i) acts aimed at causing the death or serious injury of civilians, when the action is aimed at intimidating a population or coercing a government or an international organisation; (ii) acts constituting a crime pursuant to the conventions relating to flight and navigation safety, safeguarding of nuclear material, protection of diplomatic agents, suppression of attacks carried out with the use of explosives. The category of "*offences aimed at terrorism or the subversion of the democratic order provided for by the Criminal Code and by special laws"* is mentioned by the legislator in a general way, without indicating the specific provisions whose infringement would bring into effect the application of this article. However, one may identify as the main offences article 270-*bis* Criminal Code (*Associations aimed at terrorism, including international terrorism, or at subversion of the democratic order)* which punishes persons who promote, establish, organise, direct or finance associations that promote the performance of violent acts aimed at terrorism or subversion, and article 270-*ter* Criminal Code (*Assistance to associates*) which punishes persons who give refuge or food, hospitality, means of transport, instruments of communication to any of the persons participating in associations aimed at terrorism or subversion.

[11] Art. 25-*quater.1* was introduced into Legislative Decree no. 231/2001 by art. 8 of Law no. 7 of January 9, 2006 and relates to the unlawful practice of female genital mutilation referred to in article 583-*bis* Criminal Code.

[12] The rule provides that the company may be held liable for offences relating to the abuse of privileged information (art. 184 of the consolidated financial law) and market manipulation (art. 185 of the consolidated financial law). Based on art. 187-*quinquies* of the consolidated financial law, the entity may also be held liable to pay an amount equal to the monetary administrative sanction applied for the administrative offences of abuse of privileged information (art. 187-*bis* of the consolidated financial law) and market manipulation (art. 187-*ter* of the consolidated financial law), if they are committed (in their own interest or to their own advantage) by persons belonging to the categories of "senior management" and "persons subject to the management or supervision of others".

[13] See Special Section E.

[14] Art. 25-*quinquies* was introduced into Legislative Decree no. 231/2001 by art. 5 of Law of August 11, 2003, no. 228. This relates to the offences of reduction to or maintenance in a condition of slavery or servitude (art. 600 Criminal Code), trafficking in persons (art. 601 Criminal Code), purchase and sale of slaves (art. 602 Criminal Code), offences associated with child prostitution and exploitation of the same (art. 600-*bis* Criminal Code), child pornography and exploitation of the same (art. 600-*ter* Criminal Code), possession of pornographic material produced through the sexual exploitation of children (art. 600-*quater* Criminal Code), tourism aimed at exploiting child prostitution (art. 600-*quinquies* Criminal Code).

[15] In this case, no further provisions have been included within Legislative Decree no. 231/2001. Liability derives from an independent provision contained in the aforementioned article 10 of Law no. 146/2006, which establishes the specific administrative sanctions applicable to the aforementioned offences, providing by way of reference in the final paragraph that "*the provisions referred to in Legislative Decree of June 8, 2001, no. 231 apply to the administrative offences envisaged by the present article* ".

called "accident" offences), provided for by art. 25-*septies*, introduced into the Decree by art. 9 of Law no. 123 of August 3, 2007[16];

– **offences of receiving stolen goods, laundering and use of money, assets or benefits of illegal origin,** provided for by art. 25-*octies*, introduced by art. 63 of Legislative Decree no. 231 of November 21 2007[17];
- **offences relating to computer crime**, provided for by art. 24-*bis*, introduced by Law no. 48 of March 18, 2008, ratifying and implementing the Convention of the Council of Europe signed in Budapest on November 23, 2001[18];
- **offences of organised criminality[19];**
- **offences against industry and commerce**[20];
- **offences relating to copyright infringement**[21];
- **inducement not to make declarations or to make false declarations before law courts**[22];
- **forgery of identification instruments and distinctive signs**[23].

The aforementioned categories are likely to be supplemented, also in accordance with international and EU obligations.

1.5 Regime of penalties

The following penalties against companies, for committing or attempting to commit the aforementioned offences, are provided for by articles 9-23 of Legislative Degree 231/2001:

– monetary penalty (and preventive attachment as a precautionary measure);

[16] See Special Section B.
[17] See Special Section F.
[18] See Special Section D.
[19] Art. 25-ter was introduced into Legislative Decree no. 231/2001 by art. 2, paragraph 29, of Law of July 15, 2009, no.94. The offences provided for are the following: association for purposes of committing a crime (art. 416 Criminal Code), mafia-style associations, including foreign mafia-style associations (art. 416–bis Criminal Code), political-mafia electoral pacts (art. 416-ter Criminal Code), kidnapping of persons for purposes of robbery or extortion (art. 630 Criminal Code), the offences of illegal manufacture, introduction into the State, sale, assignment, possession and the bringing to a public place or a place that is open to the public of small arms or light weapons or parts of the same, of explosives, of clandestine arms, and also of common shooting weapons excluding those referred to by article 2, paragraph 3 of Law of April 18, 1975, no. 110 (art. 407, paragraph 2, letter a, no. 5, Criminal Code), association aimed at unlawful trafficking in narcotic or psychotropic substances (art. 74 Presidential Decree no. 309/1990).
[20] Art. 25-bis.1 was introduced into Legislative Decree no. 231/2001 by art. 15, paragraph 7, letter b of Law no. 99 of July 23, 2009. The offences envisaged are the following: disruption of freedom of trade or industry (art. 513 Criminal Code), unlawful competition using threats of violence (art. 513 –bis Criminal Code), fraud against national industries (art. 514 Criminal Code), fraud in the conduct of trade (art. 515 Criminal Code), sale of non-genuine food substances as genuine (art. 516 Criminal Code), sale of industrial products with false signs (art. 517 Criminal Code), manufacture and trade in goods produced by infringing industrial property rights (art. 51-ter Criminal Code), counterfeiting of geographical indications or denominations of origin for agricultural and food products (art. 51-quater Criminal Code).
[21] Art. 25-novies was introduced into Legislative Decree no. 231/2001 by art. 15, paragraph 7, letter c, of Law no. 99 of July 23, 2009. The offences provided for are contained in articles 171, paragraph one, letter a-bis), and paragraph three, 171-bis, 171-ter, 171-septies and 171-octies of Law of April 22 1941, no. 633.
[22] Art. 25-decies was introduced into Legislative Decree no. 231/2001 by art. 4, paragraph 1, of Law no. 116 of August 3, 2009, and related to the offence referred to by article 377-bis Criminal Code.
[23] Art. 25-bis (offences against the public trust) of Legislative Decree no. 231/2001 was supplemented by art. 15, paragraph 7, letter a, of Law no. 99 of 23 July 2009 providing for the offences of counterfeiting, alteration or use of trademarks, distinctive signs or of patents, models and designs (art. 473 Criminal Code), introduction into the State and trade in products with false signs (art. 474 Criminal Code).

– interdictive penalties (applicable also as a precautionary measure) of a duration no less than three months and no greater than two years (with the clarification that, pursuant to art. 14, paragraph 1 of Legislative Decree 231/2001, "*The interdictive penalties refer to the specific activity to which the offence committed by the* entity *refers*") which, in turn, may involve:

o disqualification from carrying out the activity;

o suspension or revocation of authorisations, licences or permissions which assist in the commission of the offence;

o prohibition on contracting with the public administration, except in order to obtain a public service;

o exclusion of facilities, loans, contributions or subsidies and, if appropriate, the revocation of those already granted;

o the prohibition on publicising goods or services;

o confiscation (preventive attachment as a precautionary measure);

o publication of sentence (in the case of an interdictive sanction).

The monetary sanction is determined by the criminal court based on a system of "quotas" in a number no less than 100 and no greater than 1000, and varying in amount from at least Euro 258.22 to a maximum of Euro 1549.37. The court determines the following, in deciding the amount of the penalty:

– the number of quotas, taking account of the seriousness of the offence, the level of responsibility of the company and of the steps taken to eliminate or attenuate the negative consequences of the offence and to prevent the commission of further offences;

– the amount of the individual quota, based on the profit and loss and capital position of the company.

The interdictive sanctions apply only in respect of those offences for which they are expressly provided (in particular, offences against the public administration, certain offences against the public trust e.g. counterfeiting, offences in relation to terrorism and subversion of the democratic order, offences against the individual, occupational health and safety offences, transnational offences) and provided at least one of the following conditions applies:

a) the company has obtained a significant advantage from the commission of the offence and the offence was committed by senior management figures or by staff subject to the instructions of superiors when, in the latter case, the commission of the offence was produced or facilitated by serious organisational failures;

b) in the case of repeated offences[24].

[24] Art. 13, paragraph 1, letters a) and b) of Legislative Decree 231/2001. Here, see also art. 20 Legislative Decree 231/2001, by which "*The repetition applies when the* entity*, already conclusively sentenced on at least one occasion for an offence based on the commission of a crime, commits another offence within the five years following the*

The court determines the type and duration of the interdictive sanction, taking account of the likelihood that the individual penalties will prevent the commission of offences of the same type and, if necessary, it may apply them jointly (art. 14, paragraph 1 and three of Legislative Decree 231/2001).

The penalties involving disqualification from exercise of the activity, the prohibition on contracting with the public administration and the prohibition on publicising goods or services may be applied – in the most serious cases – on a definitive basis[25]. There is also the possibility for the activity of the company to be continued by a commissioner (instead of applying the sanction) appointed by the court pursuant to and in accordance with the conditions of art. 15 of Legislative Decree 231/2001[26].

1.6 Attempted offences

In the case of attempt to commit the offences criminalised by Legislative Decree 231/2001, the monetary penalties (in terms of amount) and the interdictive penalties (in terms of duration) are reduced from a third to a half.

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conclusive sentence." Regarding the relationship between the aforementioned rules, see De Marzo, *op. cit.*, 1315: "*Alternatively, in relation to the requirements referred to at letter a)* [of art. 13, no. d.r.]*, letter b) identifies, as a precondition for the application of the interdictive sanctions expressly envisaged by the legislator, the repetition of the offences. In accordance with article 20, the repetition occurs when the* entity*, already conclusively sentenced on at least one occasion for an offence based on the commission of a crime, commits another offence within five years of the conclusive sentence. Here the commission of the offences, despite the handing down of a sentence which has (now irrevocably) confirmed the previous infringement of law, demonstrates the tolerance towards the commission of the offences, without the need to dwell on the size of the benefit obtained and the analysis of the organisational models adapted. What emerges, in any case, is an awareness that the ordinary regime of monetary sanctions (and of interdictive sanctions, where the conditions referred to at letters a) or b) of article 13, paragraph 1 are already satisfied in the event of previous offences) has not succeeded as an effective deterrent against actions which do not comply with the fundamental canon of legality".*

[25] Here, see article 16 Legislative Decree 231/2001, which states: "*1. A definitive disqualification may be applied to the activity in question if the* entity *has significantly benefited from the commission of an offence and has already been sentenced at least three times in the previous seven years to temporary disqualification from the performance of the activity. 2. The judge may definitively prohibit the* entity *from contracting with the Public Administration or from promoting or publicising goods or services if the same sanction has already been handed down at least three times in the previous seven years. 3. If the* entity *or one of its organisational units is used on an ongoing basis for the sole and primary purpose of allowing or facilitating the commission of offences for which its responsibility is envisaged, the definitive disqualification from carrying out the activity still applies, and the provisions of article 17 have no application".*

[26] See article 15 of Legislative Decree 231/2001: "Judicial Committee – *If the conditions are satisfied for the application of an interdictive sanction which interrupts the activities of the* entity*, the court, instead of applying the sanction, provides for the activity of the* entity *to be continued by a committee for a period equivalent to the duration of the interdictive sanction which would have been applied, when at least one of the following conditions is satisfied: a) the* entity *carries out a public service or a service of public necessity whose interruption could seriously prejudice public welfare; b) the interruption of the activities of the* entity *could have significant repercussions for employment, taking account of its size and of the economic conditions of the territory in which it is located. In its order providing for the continuation of the activity, the court indicates the duties and powers of the committee, taking account of the specific activity within whose context the offence committed by the* entity *occurred. Within the frame of the duties and powers indicated by the court, the committee shall ensure the adoption and effective implementation of the organisation and control models appropriate to preventing offences of the kind which occurred. It cannot carry out acts of extraordinary administration without the authorisation of the court. The profits deriving from the continuation of the activity are confiscated. The continuation of activities by the committee may not be ordered if the interruption of activities leads to the definitive application of an interdictive sanction".*

The application of sanctions is excluded where the entity voluntarily prevents the commission of the act or the realisation of the event (art. 26 of Legislative Decree 231/2001). The exclusion of sanctions in this case is justified by the interruption of all relations of identification between the entity and the subjects pretending to act in its name and on its behalf.

1.7 Events altering the corporate structure

Legislative Decree 231/2001 governs the regime of financial liability of the entity also in relation to events which alter the structure of the entity as a result of its transformation, merger, scission and sale.

According to art. 27, paragraph 1 of Legislative Decree 231/2001, the entity is obliged to pay the monetary penalty out of its assets or common fund, where the concept of "assets" refers to companies and entities having legal personality, while the concept of "common fund" relates to associations which are not officially recognised. The provision in question expresses the will of legislators to identify a responsibility of the entity which is independent not only from the responsibility of the subject committing the offence (see art. 8 of Legislative Decree 231/2001)[27] but also from the shareholders.

Articles 28-33 of Legislative Decree 231/2001 govern the impact on the responsibility of the entity of those events which modify the corporate structure, namely the transformation, merger, scission and sale of the company. The legislation sought to take account of two conflicting requirements:

– on the one hand, to avoid the possibility that these operations could be a convenient means of evading the administrative responsibility of the entity;

– on the other hand, not to penalise attempts to reorganise the entity for other than such evasive purposes. The explanatory Report to Legislative Decree 231/2001 states "*the general criterion applied has been to allow the issue of monetary penalties to be dealt with in conformity with the principles of the Civil Code relating to the other debts of the original entity while ensuring, conversely, that the interdictive penalties continue to be associated with the business arm within which the offence was committed*".

In relation to transformation, art. 28 of Legislative Decree 231/2001 provides (in accordance with the nature of this procedure which involves a simple change in the type of company, without extinguishing the original legal entity) that the responsibility of the entity remains unchanged in relation to the offences committed prior to the date of the transformation in question.

In relation to merger, the entity resulting from the merger (including merger by incorporation) is responsible for the offences for which the entities participating in the merger were responsible (art. 29 of Legislative Decree 231/2001). The entity resulting from the merger, indeed, assumes all the rights and obligations of the companies participating in the operation (art. 2504-*bis*, of the Civil

[27] Art. 8 of Legislative Decree 231/2001: "Independence of responsibility of the entity – *1. The entity's responsibility applies also when: a) the author of the offence has not been identified or is not chargeable; b) the offence is distinguished for a reason other than amnesty. 2. Unless the law provides otherwise, action is not taken against the entity when an amnesty is granted in respect of an offence for which it may be held responsible, and the accused has renounced its application. 3. The entity may renounce the amnesty*."

Code)[28] and it combines with the corporate activities which it takes over, also those corporate activities within which the offences were generated and for which the companies participating in the merger would have been responsible[29].

Article 30 of Legislative Decree 231/2001 provides that, in the event of partial scission, the split company remains responsible for offences committed prior to the date in which the scission occurred.

The entities benefiting from the scission (whether total or partial) are subject to the joint obligation to pay the monetary penalties due from the split entity for offences committed prior to the date of the scission, subject to the actual value of the shareholders equity transferred to the individual entity.

This limit does not apply to beneficiary companies to which is assigned, even only in part, the business branch within which the offence in question was committed.

The interdictive penalties relating to offences committed prior to the date of the scission apply to entities which maintain (or to which is transferred, even in part) the business branch within which the offence in question was committed.

Article 31 of Legislative Decree 231/2001 establishes common provisions for mergers and scissions, relating to the determination of penalties in the event that these extraordinary operations occur prior to the conclusion of the court case. The principle should be noted, in particular, that the court must determine the monetary penalty according to the criteria envisaged by art. 11, paragraph 2 of Legislative Decree 231/2001[30], making reference in all cases to the profit and loss and capital position of the entity originally responsible, and not to that of the entity to which the penalty must be attributed following the merger or scission.

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[28] Art. 2504-bis of the Civil Code: "Effects of merger – *The company resulting from the merger or the merging company assumes the rights and obligations of the extinct companies.*" Legislative Decree 6/2003 modified the text of article 2504-bis in the following way: "Effects of the merger - *The company resulting from the merger or the merging company assumes the rights and obligations of the companies participating in the merger, continuing all of its relationships and judicial processes in place prior to the merger."*

[29] The explanatory Report to Legislative Decree 231/2001 clarifies that "*In order to ensure, with particular regard to interdictive sanctions, that the rule in question does not lead to a questionable "expansion" of punishment – involving "healthy" companies in measures which are aimed only at "unhealthy" companies (one thinks e.g. of a small company, responsible for an offence punishable by prohibition from contracting with the Public Administration, which is incorporated by a large company listed on the stock exchange) – they establish, on the one hand, the general provision which limits interdictive sanctions to the activity or to the corporate structures within which the offence has been committed (article 14, paragraph 1, of the draft); and, on the other hand, they provide for the* (…) *entitlement by the entity resulting from the merger to request these sanctions to be replaced by monetary sanctions in appropriate cases."* Here, the Legislator alludes to art. 31, paragraph 2, of Legislative Decree 231/2001, according to which "*Without prejudice to the provisions of article 17, the entity resulting from the merger and the entity to which (in the event of scission) the interdictive sanction applies, may request the court to replace the latter with the monetary sanction where, following the merger or scission, the conditions provided for by letter b) of paragraph 1 of article 17 apply, and where the further conditions referred to at letters a) and c) of the same article apply".*

[30] Art. 11 of Legislative Decree 231/2001: "Criteria for measuring the monetary sanction - *1. In determining the monetary sanction, the court determines the number of quotas by taking account of the seriousness of the offence, the degree of responsibility of the entity and also the activity carried out, in order to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences. 2. The amount of the quota is determined on the basis of the economic and financial conditions of the entity in order to ensure the effectiveness of the sanction* .(…)".

In the case of an interdictive sanction, the entity which is held responsible following the merger or scission may request the court to convert the interdictive sanction into a monetary penalty, on condition that: (i) the organisational negligence which facilitated the commission of the offence has been eliminated and (ii) the entity has compensated the damage and made available (for confiscation) the part of any profit obtained. Article 32 of Legislative Decree 231/2001 allows the court to take account of judgements already handed down against the entities participating in the merger (or against the split entity) in order to reconfigure (in accordance with art. 20 of Legislative Decree 231/2001) what constitutes a repeated offence by the entity resulting from the merger (or beneficiary of the scission) - in relation to subsequently committed offences[31]. For the offences of assignment and sale of companies, a unitary regime exists (art. 33 of Legislative Decree 231/2001)[32]; the assignee, in the case of assignment of a company within the ambit of whose activities the offence was committed, is subject to the joint obligation to pay the monetary penalty inflicted on the assignor, subject to the following limitations:

(i) without prejudice to the assignor's right to enforce prior payment;

(i) the responsibility of the assignee is limited to the value of the company assigned and to the monetary penalties based on the obligatory accounting books or due in respect of administrative offences which were within its knowledge. On the other hand the interdictive penalties inflicted on the assignor do not extend to the assignee.

1.8 Offences committed abroad

According to art. 4 of Legislative Decree 231/2001, the entity may be summonsed in Italy in relation to offences contemplated by the same Decree and committed abroad[33].

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[31] Art. 32 Legislative Decree 231/2001: "Relevance of merger or scission for purposes of repetition - *1. Where the entity resulting from the merger or the beneficiary of the scission is held responsible for offences committed after the date of the merger or scission, the court may consider the repetition, under article 20, also in connection with sentences handed down against the entities participating in the merger or the split entity in respect of offences committed prior to this date. 2. For this purpose, the court takes account of the nature of the infringements and the activity within whose context the offences were committed as well as the characteristics of the merger or of the scission. 3. In relation to the entities which benefit from the scission, the repetition may be considered in accordance with paragraphs 1 and 2 only if that business branch has been transferred (also in part) to them within which the offence was committed, in respect of which offence judgement was handed down against the split entity".* The explanatory Report to Legislative Decree 231/2001 clarifies that "*Here, however, the repetition does not operate automatically, but is the subject of discretionary evaluation by the court, in relation to the particular circumstances of the case. In relation to entities benefiting from the scission, the repetition may only be recognised in the case of an entity to which the business branch has been transferred (also in part) within which the offence was committed".*

[32] Art. 33 of Legislative Decree 231/2001: " Transfer of enterprise. - *1. In the event of the assignment of the enterprise within which the offence was committed, the assignee is jointly and severally obliged – without prejudice to the right to enforce prior payment against the assignor, and within the limits of the net worth of the enterprise – to pay the monetary sanction. 2. The obligation of the assignee is limited to the monetary sanctions based on the obligatory accounting books, or due in respect of administrative offences which were within its knowledge. 3. The provisions of the present article apply also in the case of assignment of the enterprise".* On this point, the explanatory Report to Legislative Decree 231/2001 clarifies: " *It is understood how these operations may potentially lead to the evasion of responsibility; the requirement to protect the trust and integrity of the legal process becomes all the more important, since there are various possible succession arrangements which leave the identity (and the responsibility) of the assignor or of the assignee unchanged".*

[33] Art. 4 of Legislative Decree 231/2001 provides as follows: "*1. In the cases and on the conditions provided for by articles 7, 8, 9 and 10 of the Criminal Code, entities which have their main headquarters in the territory of the State are also responsible for offences committed abroad, provided the State in which the offence was committed does not bring proceedings against them. 2. Where the law provides that the guilty party be punished at the request of the Ministry for Justice, proceedings are brought against the entity only if the request is formulated also against the latter."*

The explanatory report to Legislative Decree 231/2001 underlines the need not to leave unsanctioned a frequently occurring criminal situation, also in order to avoid the convenient evasion of the whole regulatory regime in question.

The following are the basic conditions of responsibility of the entity in respect of crimes committed abroad:

(i) the offence must have been committed by subjects functionally associated with the entity, pursuant to art. 5, paragraph 1, of Legislative Decree 231/2001;

(ii) the entity must have its main headquarters in the territory of the Italian State;

(iii) the liability of the entity applies only in the cases and under the conditions envisaged by articles 7, 8, 9, 10 of the Criminal Code (having said that, where the law provides that the guilty party – a natural person – should be punished on the application of the Minister for Justice, proceedings are taken against the entity only if the application is also made against the entity itself)[34] and – also in accordance with the principle of legality referred to in article 2 of Legislative Decree 231/2001 - only for offences for which responsibility is provided for by *ad hoc* legislative provision;

(iv) the State of the place where the offence was committed does not proceed against the entity in the circumstances and on the conditions referred to in the aforementioned Criminal Code.

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[34] Art. 7 Criminal Code: "Offences committed abroad - *A citizen or foreigner who commits any of the following offences in a foreign territory is punished in accordance with the law of Italy: 1) offences against the Italian Nation; 2) offences of counterfeiting the State seal and the use of such counterfeit seal; 3) offences of counterfeiting money constituting legal tender in the territory of the State, or duty stamps or Italian public credit notes; 4) offences committed by public officers in the service of the State, involving abuse of power or infringement of the duties inherent in their functions; 5) any other offence for which special provisions of law or international agreements provide for the applicability of the Italian criminal law*". Art. 8 Criminal Code: "Political offence committed abroad - *A citizen or foreigner committing a political offence in a foreign territory which is not among those indicated at no. 1 of the previous article, is punished in accordance with the law officially at the request of the Ministry for Justice. In the event of an offence indictable as a result of personal prosecution, a legal action must be taken in addition to the aforementioned request. For the purposes of the criminal law, a political offence is any offence which violates a political interest of the State, or a political right of the citizen. The non-political offence, determined in whole or in part by political motives, is also considered a political offence".* Art. 9 Criminal Code: "Non-political offence of the citizen committed abroad – *A citizen who, outside the cases indicated in the two previous articles, commits an offence in a foreign territory for which Italian law provides for life imprisonment or imprisonment of no less than three years, is punished in accordance with the same law, provided the citizen is within State territory. If it is an offence for which a term of imprisonment of lesser duration is envisaged, the guilty party is punished at the request of the Ministry for Justice, or on the application or suit of the injured party. In the cases envisaged by the preceding provisions, if an offence is committed to the detriment of the European communities, a foreign State or a foreign person, the guilty party is punished at the request of the Ministry for Justice, provided his extradition has not been granted, or has not been accepted by the Government of the State in which the offence was committed."* Art. 10 Criminal Code: "Non-political offence committed by a foreigner abroad – *A foreigner who, outside the cases indicated in articles 7 and 8, commits an offence in foreign territory to the detriment of the State or of a citizen for which Italian law envisages life imprisonment or a term of imprisonment no less than one year, is punished in accordance with the same law, provided the said foreigner is within the territory of the State and there is a request to this effect by the Ministry for Justice or an application or suit by the injured person. If the offence is committed to the detriment of the European communities, a foreign State or a foreign person, the guilty party is punished in accordance with Italian law at the request of the Ministry for Justice, provided: 1) the guilty party is within the territory of the State; 2) the offence in question is one for which life imprisonment or imprisonment for a term of no less than three years is applicable; 3) the said party's extradition has not been granted or has not been accepted by the Government of the State in which that party committed the offence in question, or by the Government of the State to which the said party belongs."*

1.9 Procedure for establishing the offence

Responsibility for an administrative offence stemming from a crime is assessed in the context of a criminal procedure. Here, article 36 of Legislative Decree 231/2001 provides *"competence to establish the administrative offences of the* entity *belongs to the criminal court with competence in relation to the offences on which they are based. The provisions relating to the composition of the tribunal and the associated procedural provisions relating to the offences on which the administrative offence is based should be observed, in relation to the proceedings to establish the administrative wrongdoing of the entity.*

The mandatory combination of the procedures is another applicable rule, inspired in the interests of effectiveness, homogeneity and procedural economy: the procedure against the entity must, as far as possible, be combined with the criminal proceedings activated against the natural person who committed the offence thought to fall within the entity's responsibility (art. 38 of Legislative Decree 231/2001). This rule is moderated by art. 38, paragraph 2, of Legislative Decree 231/2001 which, *vice versa,* governs cases where a separate procedure is activated for the administrative offence[35]. The entity takes part in the criminal proceedings with its own legal representative, unless the latter are defendants in the offence which is the basis for the administrative offence; when its legal representative does not appear, the entity is represented by defense counsel (art. 39, paras. 1 and 4 of Legislative Decree 231/2001).

1.10 Organisational, management and control models

A key aspect of Legislative Decree 231/2001 is to attribute justificatory value to corporate models of organisation, management and control. In the case of a crime or offence committed by a person in top management, indeed, the Company is not responsible if it can prove (art. 6, paragraph 1, Legislative Decree 231/2001) that:

a) the management organ has adopted and effectively implemented, prior to the commission of the offence, organisational and management models capable of preventing offences of the kind that occurred;
b) the duty to supervise the operation of and compliance with the models - and to ensure that they are kept updated - was entrusted to a company organ with independent powers of initiative and control;
c) the persons committing the offence did so by fraudulently evading the organisational and control models;
d) the supervision on the part of the Supervisory Board was neither absent nor insufficient.

[35] Art. 38, paragraph 2, of Legislative Decree 231/2001. "*A separate procedure for the administrative wrongdoing of the entity applies only when: a) the suspension of the procedure has been ordered pursuant to article 71 of the Code of Criminal Procedure* [suspension of the procedure due to incapacity of the accused, no.d.r.]*; b) the procedure has been determined by way of the abbreviated adjudication (fast-track trial) or by the application of the penalty pursuant to article 444 of the Code of Criminal Procedure* [application of penalty on request, no.d.r.]*, or the criminal conviction has been issued; c) compliance with trial provisions makes it necessary*." For completeness, one may also refer to article 37 of Legislative Decree 231/2001, which states "*The administrative offence of the entity will not be examined when the criminal proceedings cannot be brought or maintained against the co-author of the offence due to the absence of one of the procedural preconditions)* (i.e. those conditions provided for by Title III of Book V of the Criminal Code: lawsuit, application by injured party or by a public body to the Public Prosecutor to bring proceedings or authorisation to bring proceedings, referred to respectively in articles 336, 341, 342, 343 Criminal Code.).

The company must therefore demonstrate that it was not a party to the facts alleged against the senior manager in question, proving the existence of the aforementioned requirements and, obviously, the fact that the commission of the offence was not attributable in any way to its own "organisational negligence"[36].

Where, however, the offence is committed by persons subject to the instruction of superiors or subject to supervision, the company is responsible if the commission of the offence was made possible by the infringement of obligations relating to management and supervision with which the company is required to comply[37].

In any case, the infringement of management or supervisory obligations does not apply if the company, prior to the commission of the offence, has adopted and effectively put in place an organisation, management and control Model suitable for preventing the offences or crimes of the kind which occurred.

Art. 7, paragraph 4, of Legislative Decree 231/2001, moreover, defines the requirements of the effective implementation of the organisation models:

– the periodic verification and possible modification of the Model when significant infringements are discovered of its provisions, or when intervening changes occur in the organisation and in the activity in question;

– a disciplinary regime appropriate to penalising the failure to comply with the measures indicated in the Model.

Here there is a reversal of the burden of proof on the prosecution, which must – in the circumstances envisaged by aforementioned article 7 – prove the failure to adopt and effectively implement an organisation, management and control Model suitable for preventing the crimes or offences of the kind which occurred.

Legislative Decree 231/2001 lays down the content of the aforementioned models, providing - in relation to the extension of the delegated powers and the risk of commission of the offences, as specified by article 6, paragraph 2 - that they must:
– identify the activities in whose context offences may be committed;

– provide for specific protocols aimed at establishing a training programme and implementing the decisions of the company in relation to the offences to be foreseen;

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[36] Here, the explanatory report to Legislative Decree 231/2001 states, in these terms: *"As to the responsibility of the entity to ensue, therefore, not only must the offence be capable of being associated with it at the objective level (the conditions on which this occurs, as we saw, are governed by article 5), but also the offence must represent the expression of company policy or at least derive from organisational negligence".* And again: *"the presumption applies (empirically founded) at the very start that, in the case of an offence committed by a senior manager, the "subjective" requirement of responsibility of the entity [or the so-called* "organisational negligence" *of the entity] is satisfied based on the fact that the senior manager expresses and represents the policy of the entity; if this is not the case, it is for the company to prove its extraneousness, and it can do this only by proving the existence of a series of concurrent requirements."*

[37] Art. 7, paragraph 1, of Legislative Decree 231/2001: "Persons subject to the management of others and to organisational models of the entity – *In the case provided for by article 5, paragraph 1, letter b), the entity is responsible if the commission of the offence was made possible by failure to comply with management or supervisory obligations".*

– identify financial resource management procedures capable of preventing the commission of crimes or offences;

– provide for information obligations in relation to the Supervisory Board assigned to oversee the operation of and compliance with the models;

– introduce a disciplinary regime appropriate to penalising any failure to comply with the measures indicated in the Model.

1.11 Codes of conduct of associations representing entities

Art. 6, paragraph 3, of Legislative Decree 231/2001 provides "*The organisational and management models may be adopted – in compliance with the requirements of paragraph 2 – on the basis of codes of conduct drawn up by representative associations of entities and communicated to the Ministry of Justice which, in combination with the competent Ministries, may make observations within 30 days relating to the suitability of the models for the prevention of the offences"*.
Confindustria has defined the "*Guidelines for the development of organisation, management and control models pursuant to Legislative Decree no. 231/2001"*, circulated on March 7, 2002 and supplemented on October 3, 2002 with an annex relating to the so-called corporate offences (introduced in Legislative Decree no. 61/2002) most recently updated on March 31, 2008 (hereinafter, "Confindustria Guidelines") providing, amongst other things, methodological approaches to identifying risk areas (sector/activity within which offences might be committed), the planning of a control system (the so-called protocols for planning training programs and implementing decisions of the entity) and the content of the organisation, management and control Model.

In particular, the Confindustria guidelines suggest to the associated companies that they should apply the *risk assessment* and *risk management* processes, and they envisage the following stages for definition of the Model:

– identification of the risks and of the protocols;

– adoption of a number of general instruments, the principal ones being a code of ethics with reference to the offences pursuant to Legislative Decree 231/2001 and a disciplinary regime;

– identification of the criteria for selection of the Supervisory Board, indicating its requirements, functions and powers as well as the information requirements.

Lombardini S.r.l., has adopted its own organisation, management and control Model on the basis of the Guidelines of Confindustria.

1.12 Assessment of suitability

The task of assessing the responsibility of the company attributed to the criminal court involves the following:

– assessment of the existence of the crime or offence for which the company may be responsible; and

– examination of suitability conducted of the organisation models adopted.

The examination by the court of the theoretical suitability of the organisation Model for prevention of the offences referred to in Legislative Decree 231/2001 is conducted in accordance with the criterion of so-called "posthumous prognosis".

The judgement of suitability is made in accordance with a substantially *ex* ante criterion by which the court theoretically places itself inside the company at the time of the offence, in order to assess the appropriateness of the Model adopted. In other words, the organisation Model is judged to be "suitable for the prevention of offences" if, prior to the commission of the offence, it could and should have been such as to completely cancel out, or at least minimise with reasonable certainty, the risk of commission of the offence which subsequently occurred.

CHAPTER 2
DESCRIPTION OF THE ENTERPRISE: COMPONENTS OF THE GOVERNANCE MODEL AND OF THE GENERAL ORGANISATIONAL STRUCTURE OF LOMBARDINI S.R.L.

2.1 Lombardini S.r.l.

The activities currently attributable to Lombardini S.r.l. began between the 1920s and 1930s with the production of the first engines and the establishment of the "*Officine Meccaniche* (mechanical workshops) *Fratelli Lombardini*".

Nowadays the company has the following corporate purpose:

"the exercise, whether direct or indirect, of industrial mechanics for the manufacture of engines and of any kind of application whatsoever, the design, the conduct of research and experiment, production, marketing and sale, assembly and any other associated activity, relating to automatic machines and specialised technical applications for engines and systems for the chemical, food, ceramics and electric industry and for industries in general.

The company may sell or purchase rights for the exploitation of patents or participate, in collaboration with third parties, in design research relating to the corporate purpose, and provide goodwill and know-how for any assignments of production technologies or other.

The company may, in relation to any third party, carry out any act suitable for the establishment, regulation or extinction of relationships, provided this is instrumental to the aforementioned activities. For example acts involving:

- the purchase, also by leasing, transfer, the leasing of goods of any kind, whether tangible or intangible;
- import/export operations;
- the opening of branch offices both in Italy and abroad;
- the purchase, use and transfer of patents of any kind;
- the assumption, in any form whatsoever, of shareholdings in other companies, enterprises, associations and businesses including specific business transactions, within the limits allowed;
- the taking on of loans payable;
- the taking on of obligations to banks and credit institutions (loans, advances and similar);
- the grant of real or personal guarantees also in favour of third parties;
- the renunciation, in compliance with the rules in force, of guarantees granted by third parties also without satisfaction of the guaranteed credit;

In 2007 it became part of the Kohler Group, Global Power Group Division. Its shares are currently held by KOHLER POWER SYSTEMS ITALY S.R.L., sole shareholder.

Here, we underline that the philosophy of the Kohler Group is based on a profound integration of the participating companies and, above all, on the effective operational and organisational control by the parent company over the companies it controls.

Therefore the organisation, management and control Model of Lombardini S.r.l. is necessarily influenced by the policies of the Group to which it belongs. The parent company is an Italian company which issues directly from the Group based in the USA, with a consequently significant awareness of compliance and risk assessment policies.

2.2 Business Model

Lombardini S.r.l. operates in the low-power diesel and petrol engine market; currently it conducts operations at four production sites (Reggio Emilia, Rieti, India and Slovak Republic) and exports worldwide (except for countries subject to the US embargo) through a network of approximately 2000 sales and assistance outlets, 150 distributors and six branches (France, Germany, Spain, Great Britain, Singapore and India). The company is leader in the creation, research and development and customisation of products with applications in various sectors (agricultural, marine, automotive, building, industrial). In general the company does not relate to the Public Administration as business interlocutor.

As early as 1995, Lombardini S.r.l. obtained the Quality System certification in accordance with Standard ISO 9001; in 2002 the company obtained certification in accordance with the environmental conformity Standard and the QS 9000 standard specific to enterprises operating in the automotive sector. The Quality System is subject to constant updating: to date, the company has also been certified under ISO 9001:2000 and ISO/TS 16949.

The activities of Lombardini S.r.l. are characterised by notable formalisation of the operational procedures of the company, with high risk control thresholds. In particular, for example, the following:

- the decision-making processes of Lombardini S.r.l. involve an internal delegation system (see below) and are also characterised by very strict integration with the policies of the Group; to this end, the vast majority of decisions must meet with the approval and satisfy the thresholds of the parent company, as well as satisfying internal controls;
- hence the operations of the company are regulated by a Group procedure referred to as Authorised Corporate Transaction (ACT) which requires, depending on the decisions to be taken, the authorisation of several hierarchical control thresholds;
- as already indicated, the American parent company has developed a strong policy of compliance with ethical and risk control rules (e.g. anti-bribery rules);
- the parent company has a Ethical Code which it applies to all companies in the Group;
- again, consistently with the integration process, the company has introduced the SAP management system based on a rigid segregation of functions, imposed by the parent company.

2.3 Governance Model of Lombardini S.r.l.

Lombardini S.r.l., by its Articles of Association, may be governed by one or more directors up to a maximum of nine directors; the management power of the governing body extends to all activities and operations necessary for implementing the corporate purpose.

The following figures individually represent the company before third parties and in judicial proceedings:

- the Chairman of the Board of Directors;

- each of the Managing Directors within the limits of the powers granted to them.

The Chairman and the Managing Directors may not grant powers of attorney to third parties, or revoke the same, without the prior authorisation of the Board of Directors.

To date, the Board of Directors has six members, two of which have received powers of attorney for the running of the company.

The system of delegations and powers of attorney currently attributed within the organisational structure of Lombardini S.r.l. is balanced and appropriate, given the corporate structure of the company; moreover, the delegations and powers in question have been issued in compliance with relevant legal and case-law criteria (form, satisfaction of requirements of professionalism and experience by the figures delegated/authorised, effective attribution of organisation, management and control powers to the delegates, independent power of expenditure, knowledge of the delegation/power of attorney received and acceptance of the same).

The system of delegations and powers of attorney provides for appropriate control protocols; in particular:

- horizontal system with definite apportionment of functions;
- precise and rigid reporting lines which consistently guarantee traceability of assessments of the work of delegates;
- provision made for particular decisions of strategic importance or involving high amounts to require the double signature mechanism.

To the above may be added the considerations indicated in the preceding paragraph relating to the ACT procedure and the reporting lines and authorisation at Group level.

The Board of Auditors of the Company consists of three Regular Auditors and two Substitute Auditors who remain in office for three financial years and may be re-elected.

All of the Regular Auditors and Substitute Auditors of the Company satisfy the requirements of integrity and professionalism referred to in article 148, paragraph 4 of the Consolidated Text, and also the requirements of independence provided for by article 148, paragraph 3 of the Consolidated Text.

Lombardini S.r.l. is subject to the accounting audit and employs auditing firms registered in the appropriate Roll.

CHAPTER 3
THE ORGANISATION, MANAGEMENT AND CONTROL MODEL AND METHODOLOGY USED IN ITS PREPARATION

3.1 Introduction

The adoption of an Organisation, Management and Control Model under Legislative Decree 231/2001 (hereinafter also "Model") and its effective and continued implementation represents a basis for exclusion of the Company's responsibility for the commission of some types of offence, but it also represents an act of corporate responsibility on the part of Lombardini S.r.l. from which benefits flow to all interested parties: shareholders, employees, creditors and all other subjects whose interests are linked with the fortunes of the company.

The introduction of a system of control of business conduct and activities, along with the establishment and circulation of ethical principles – enhancing the already elevated standards of conduct adopted by the company – have the effect of increasing the trust and reputation enjoyed by Lombardini S.r.l. in its relations with third parties and, above all, these have a regulatory role in that they govern the conduct and decisions of persons who are required, on a daily basis, to act for the benefit of the company in accordance with the aforementioned ethical principles.

Lombardini S.r.l. has therefore sought to implement a series of activities aimed at making its organisation Model conform with the requirements of Legislative Decree 231/2001 and with the principles already rooted in its corporate governance culture.

3.2 The project of Lombardini S.r.l. to develop its own organisation, management and control Model under Legislative Decree 231/2001

The methodology chosen to carry out the project – in terms of organisation, definition of operational procedures, structuring in stages and assignment of responsibilities between the various corporate functions – was determined in order to ensure the quality and authoritativeness of the results.

The methodologies followed and the criteria adopted in the various phases of the Project are detailed below.

3.2.1 Identification of the processes and of the "key officers", identification of the risk Areas.

Art. 6, paragraph 2, letter a) of Legislative Decree 231/2001 indicates that the Model requires, *inter alia,* the identification of the processes and of the activities within which the offences expressly referred to by the Decree itself may be committed. Those activities and corporate processes, in other words, which are commonly defined as "sensitive" (hereinafter "sensitive activities" and "sensitive processes").

The purpose of this phase has been simply to identify the corporate environments the subject of the intervention, and to identify in a preliminary way the sensitive processes and activities, thus excluding those offences which are the precondition for administrative responsibility pursuant to

Legislative Decree 231/2001 in relation to which the issue of risk was assessed only in an abstract manner.

To facilitate identification of the Sensitive Activities, an analysis was made of the current business and control Model (*Corporate Governance* and *Control Governance*) applied by Lombardini S.r.l., and the purpose of this analysis was to achieve a better understanding of the corporate environments being analysed.

The analysis of the organisation and of the operational Model and of the delegations/powers of attorney granted by the Company enabled an initial identification to be made of sensitive processes/activities and a preliminary identification of the departments/roles responsible for such processes/activities.

Subsequently the "key officers" were identified, namely those subjects in the company who, based on their functions and responsibilities, are familiar with the sensitive areas and with the current control mechanisms in place.

This essential data was gathered through the analysis of corporate documentation and also through structured interviews with the key officers.

3.2.2 Assessment of the "as-is" situation and assessment of the current control Model, Gap Analysis and Action Plan.

The following principles of reference have been considered in assessing the system of control:

– the existence of formalised procedures;
– the segregation (articulation) of duties;
– adequacy of the *ex post* traceability and verifiability of transactions through adequate documentation/information supports;
– adequacy of the delegation system.

In order to provide a detailed assessment and analysis of the existing Model of control intended to safeguard against the risks found and highlighted in the aforementioned analysis of sensitive activities, and in order to assess the conformity of the Model itself to the provisions of the Decree, a comparative analysis was conducted to compare the existing organisation Model with a theoretical reference Model based on the regime established by the Decree.

This comparison has enabled actions to be identified which enhance the existing internal control system (processes and procedures); based on the results, an implementation plan is prepared which is aimed at identifying the organisational requirements characterising a "specific" Model of organisation, management and control in conformity with the provisions of the Decree, and the associated actions to improve the internal control system.

Following the activities carried out, a document analysing the sensitive processes and the control system was prepared, highlighting:

– elementary processes/activities;
– departments or internal/external subjects involved;
– relevant roles/responsibilities;

– system of existing controls.

3.2.3 Design of the Organisation, Management and Control Model.

The purpose of this phase was to define the organisation, management and control Model of Lombardini S.r.l., in accordance with Legislative Decree 231/2001, separated into all of its various components.

This phase was supported by the results of the preceding phases and by the policy choices taken by the Company decision-making organs.

Lombardini S.r.l. has aimed to prepare a Model which takes account of its own particular corporate reality, in accordance with its own system of governance and in a way that can take advantage of the existing controls and structures.

Therefore the Model represents a coherent totality of principles, rules and provisions which:

- impact on the internal functioning of the Company and on the manner in which it conducts relations outside the Company;

- regulate the careful administration of a system of control of sensitive activities, aimed at preventing the commission or attempted commission of the offences referred to by Legislative Decree 231/2001.

The Model represents an organic system of rules and control activities aimed at:

- ensuring an environment of transparency and correctness in the conduct of corporate activities in order to protect the reputation and image of the Company, the interests of its shareholders and the work of its employees;

- preventing commission of offences capable of being committed by senior managers or by those reporting to them, and ensuring the exoneration from responsibility of the entity in the event of commission of one of the offences or crimes identified in Legislative Decree no. 231/2001.

The present document consists of a "General Section", containing the cardinal principles of the Model, and individual "Special Sections", prepared – based on the corporate activities and the Sensitive Processes surveyed and the associated improvement interventions – for the various categories of offence or crime contemplated by Legislative Decree 231/2001.

The Special Section, called "*Offences in relations with the Public Administration*", applies in relation to the specific categories of offence envisaged by articles 24 and 25 of Legislative Decree 231/2001; the Special Section, called "*Offences relating to Health and Safety*", applies in relation to the categories of offence envisaged for the offences referred to by article 25-*septies* of Legislative Decree 231/2001; the Special Section, called "*Corporate Offences*", applies for the categories of offence envisaged for the offences referred to by article 25-*ter* of Legislative Decree 231/2001; the Special Section, called "*Offences relating to computer crime*", applies in relation to the categories of offence envisaged for the offences referred to by article 24-*bis* of Legislative

Decree 231/2001; the Special Section, called "*Offences relating to money laundering*", applies for the categories of offence envisaged for the offences referred to by article 25-*octies* of Legislative Decree 231/2001; the Special Section, called "*Offences against the individual*", applies for the categories of offensive envisaged for the offences referred to by article 25-*quinquies* of Legislative Decree 231/2001.

CHAPTER 4
THE SUPERVISORY BOARD PURSUANT TO LEGISLATIVE DECREE 231/2001

4.1 The Supervisory Board

Based on the provisions of Legislative Decree 231/2001, the entity may be exonerated from responsibility following the commission of offences by senior managers or those subject to their supervision and management, if the governing body has:

– adopted and effectively implemented models of organisation, management and control capable of preventing the offences in question;

– assigned the duty of supervising the operation and compliance with the Model – and of ensuring that it is kept updated – to a body which is part of the entity and which enjoys independent powers of initiative and control.

The assignment of these tasks to a body with independent powers of initiative and control, in combination with the proper and effective use of these powers, therefore represents an indispensable precondition for exoneration of the entity from the responsibility envisaged by Legislative Decree 231/2001.

The Confindustria Guidelines identify autonomy and independence, professionalism and continuity of action as the primary requisites of the Supervisory Board.

In particular, the requirements of **autonomy** and **independence** may be satisfied where the initiative of control is free from any interference and/or influence by any member or component of the Company; to this end it is of paramount importance to ensure that the Supervisory Board is placed *"as an independent personnel unit at the highest possible position in the hierarchy"*, also enabling the Supervisory Board to *"report"* to the top senior acting manager/management, or to the Board of Directors as a whole.

It is also necessary that the Supervisory Board is not assigned operational tasks which, by having it participate in operational decisions activities, would endanger its objectivity of judgement when it comes to assess corporate conduct and the implementation of the Model.

The requirement for **professionalism** must be understood in relation to the *"ensemble of means and techniques"* necessary for the Supervisory Board to effectively carry out its activities; to this end, the Company has decided to make use of the specialised techniques of persons conducting "inspection" activities, but also of consultancy for the analysis of management and control systems, and also legal consultancy.

Continuity of action, which guarantees the effective and continual implementation of the organisational Model, is guaranteed by the existence of a body devoted exclusively and on a full-time basis to the activity of supervision.

4.2 General principles relating to the establishment, appointment and revocation of the Supervisory Board

In the absence of specific indications set out in Legislative Decree 231/2001, Lombardini S.r.l. has opted for a solution which, taking account of the aims of the law, can ensure that the supervision conducted by the Supervisory Board is effective in relation to the size and organisational structure of the Company itself.

The Supervisory Board remains in office for three years, and its members may be re-elected.

The members of the Supervisory Board, in addition to possessing the relevant professional qualifications, must satisfy subjective requirements which ensure the autonomy, independence and integrity required by the position. In particular, the Board of Directors must carefully assess:

a) persons who satisfy any one of the conditions of ineligibility or forfeiture provided for by article 2382 of Civil Code in respect of directors;

b) persons who are accused of one of the offences referred to in Legislative Decree no. 231/2001;

c) persons who are condemned to imprisonment following a criminal trial for the commission of a crime;

d) the spouse and relatives up to the fourth grade of kinship of the directors of the company, the directors, the spouse and relatives up to the fourth grade of kinship of the directors of the companies controlled by the said company and/or of controlling, associated and/or participant companies;

e) persons who are associated with the company – or with companies controlled by and/or associated with the said company, or with controlling and/or participant companies – under a contract of employment or consultancy or for paid professional services, or by virtue of financial relations that compromise its independence.

Where a company departmental manager is being appointed, the same requirements apply, save for those indicated at letter e) above.

If there is no operating Supervisory Board, the Board of Directors shall take steps to replace it by passing the relevant resolution.

In order to ensure the necessary stability and permanence of the Supervisory Board, the procedures for revocation of the powers associated with this assignment are given below.

The revocation of responsibilities of a member of the Supervisory Board may occur for the reasons listed below:

- cessation, verified by the Board of Directors, of responsibilities of the person carrying out the role in question. In all cases, any measure of an organisational character relating to the person responsible for the role in question (e.g. change to another assignment, dismissal, disciplinary measures, appointment of new person responsible) should be brought to the attention of the Board of Directors;

- failure to satisfy the aforementioned requirements;

- serious, verified incompatibility which jeopardise that member's independence and autonomy;

- grave negligence in carrying out the relevant duties;

- infringement of the confidentiality obligations of the Supervisory Board;

- unjustified absence, on more than three consecutive occasions, from meetings of the Supervisory Board.

The revocation of the Supervisory Board or of a member thereof is the responsibility of the Board of Directors, on the advice of the Board of Auditors; the revocation decision must be made by a majority of two thirds of the votes of directors present who are entitled to vote.

The Board of Directors, at the meeting to decide the revocation of a member of the Supervisory Board, shall replace the said member.

4.3 Functions and Powers of the Supervisory Board

The Supervisory Board is required, in general terms, to carry out the following duties:

- to supervise the effectiveness of the Model, by evaluating whether actually occurring conduct is consistent with the Model adopted;
- to closely examine the adequacy of the Model, namely its actual (and not merely theoretical) effectiveness in general to prevent unwanted conduct;
- to analyse the maintenance over time of the Model's requirements of soundness and effectiveness;
- also by having recourse to the various roles involved, to assess the need for proposing to the Board Directors any updates of the Model, based on changes to the organisational structure, on corporate operations and/or based on any changes in applicable rules;
- to assess the suitability of the system of delegations and of the responsibilities assigned, in order to guarantee effectiveness of the Model.

At an operational level, the Supervisory Board of Lombardini S.r.l. has the following duties:

- to draw up and implement a programme of periodic verifications of the effective application of the corporate control procedures in relation to the "Sensitive Activities" and of their efficacy, taking account of the fact that the primary responsibility for supervision of activities is assigned to acting management, and forms an integral part of the Company processes;

- to gather, process and store information relevant for purposes of compliance with the Model and also, where necessary, to update the list of information required to be transmitted to the Supervisory Board or made available to it;

- to monitor the Sensitive Activities. To this end, the Supervisory Board is kept constantly informed of the development of activities in the aforementioned risk areas, and it has free access to all corporate documentation. All personnel must also notify the Supervisory Board of any situations within the sphere of corporate activities which could expose the company to the risk of commission of offences;

- to verify that the elements provided for by the Model in respect of the various categories of offence (e.g. adoption of standard clauses, fulfilment of procedures, segregation of responsibilities etc) are adequate and respond to the requirements set out in the Decree, otherwise ensuring that it requests that these elements be updated;

- to avail also of the collaboration of the various departmental managers, promoting appropriate initiatives to spread awareness and understanding of the Model itself amongst all personnel;

- to collaborate with the various departmental managers in ensuring the preparation of the necessary internal organisational documentation in order to facilitate the operation of the Model itself, containing instructions, clarifications or updates.

The Supervisory Board, to ensure that it carries out its duties in a complete fashion:

- has freedom of access to all corporate departments, without prior notice and without the need for any prior consent – in order to obtain all information or data deemed necessary for carrying out its duties under the Decree;

- in carrying out the duties assigned to it, is entitled – under its direct supervision and responsibility – to the collaboration of all departments and structures within the Company or of external consultants, taking advantage of the relevant skills and competences;

- has its budget established by the Board of Directors within the context of the annual budgeting process, appropriate to its decisions on expenditure necessary for the performance of its functions (specialised consultancy, missions and travel allowances, refresher training etc). The allocation of the budget allows the Supervisory Board to operate in full independence, and with the means appropriate to effectively carry out its duties under the present Model in accordance with Legislative Decree no. 231/2001;

- must be free to carry out its activities without being required to answer to any other body or structure within the Company, except the Board of Directors.

4.4 Information obligations in relation to the Supervisory Board. Information of a general nature and mandatory specific information

The Supervisory Board must be promptly informed, through the relevant internal communication system, of acts or conduct or events which could involve or constitute an infringement of the Model or which, more generally, are relevant for the purposes of Legislative Decree 231/2001.

The obligations to provide information on any conduct contrary to the provisions of the Model fall within the broader duties of diligence and trust of the employer, which are established by the Civil Code.

Persons reporting the aforementioned circumstances in good faith shall be protected against any form of retaliation, discrimination or penalty, and the identity of the person making the report shall in all cases be confidential, without prejudice to legal obligations and to the protection of the rights of the Company or of persons accused in error and/or bad faith.

The proper fulfilment of the information obligations by the employer cannot give rise to disciplinary sanctions.

In order to ensure that the aforementioned reports are accessed effectively, the Supervisory Board will notify all subjects concerned about the procedures and forms by which the said reports may be made.

The Supervisory Board assesses the reports received and the circumstances in which action is deemed necessary, at its own discretion and in accordance with its own responsibility.

Here, the following general provisions apply:

- any reports must be collected which relate to the commission, or to the reasonable danger of commission, of offences associated with conduct generally inconsistent with the rules of conduct adopted in implementation of the principles referred to in the present document;

- an employee who intends to report an infringement (or presumed infringement) of the Model must contact his or her own direct superior. If the report has no apparent outcome or the employee feels uneasy turning to his or her direct superior to make the report, the employee should refer it the Supervisory Board (dedicated, confidential and non-anonymous information channels will be set up to facilitate the flow of unofficial reports and other information to the Supervisory Board, and in order to resolve cases of dubious interpretation relating to the general principles of the Model);

- the Supervisory Board assesses the reports received; any subsequent proceedings are in conformity with the provisions of the following chapter 5 (Disciplinary Regime).

In addition to the reports received in connection with the infringements of a general character described above, information relating to the following matters must be immediately communicated to the Supervisory Board:

- decisions relating to the application for, provision and use of public funding;

- requests for legal assistance made by managers and/or employees in relation to which judicial proceedings are underway for the offences in question;

- action and/or information from the criminal police or from any other authority which suggests that investigations are being carried out, in relation to unknown persons, for the offences referred to in Legislative Decree no. 231/2001;

• information relating to the effective implementation at all corporate levels of the organisational Model, highlighting the disciplinary procedures and sanctions applied, if any (including measures taken against employees) or the archiving of such procedures, supplying the relevant reasons;

• summary reports of Tender contracts awarded following Tender competitions at the national and European level, or by private negotiation;

• information relating to orders assigned by public bodies or subjects carrying out public functions;

• measures taken and/or information available in relation to the application of occupational health and safety rules within the Company, promptly indicating any accidents that have occurred.

4.5 Reporting obligations of the Supervisory Board itself towards company organs

The Supervisory Board has reporting obligations in relation to the implementation of the Model and the emergence of any critical issues. Two lines of reporting are envisaged:

• the first, on a continual basis, directly to the Managing Director in relation to the results of each check carried out;

• the second, at least annually, to the Board of Directors and the Board of Auditors.

In relation to this second line of reporting, the Supervisory Board prepares (on a six-monthly or annual basis) a written report relating to the activity carried out (in particular, indicating the specific checks and controls conducted and the results thereof, the possible updating of the mapping of Sensitive Activities, etc).

Moreover, the Supervisory Board immediately, even on an individual basis, transmits to the Managing Director a report relating to any extraordinary situations occurring such as the potential infringement of the implementation principles of the Model, of legislative innovations relating to the administrative responsibility of entities.

The Supervisory Board must also coordinate with the competent company departments in relation to the various specific aspects.

The Board Directors has the power to summon the Supervisory Board which, in turn, is entitled to request the Chairman of the Board of Directors to summon the latter for urgent reasons. The members of the Supervisory Board must also be summoned to meetings of the Board of Directors called to examine the periodic or extraordinary reports drawn up by the Supervisory Board, and in general for activities relating to the Model.

4.6 Information gathering and conservation

The information, reports (i.e. notification reports) or written reports envisaged in the Model are kept by the Supervisory Board in an appropriate archive (computer or paper archive).

CHAPTER 5
DISCIPLINARY REGIME

5.1 Function of the disciplinary system

Legislative Decree 231/2001 refers – as a condition for the effective implementation of the organisation, management and control Model – to the introduction of a disciplinary regime capable of punishing non-compliance with the measures indicated in the Model itself.

Therefore the definition of an adequate disciplinary regime is an essential precondition, before the entity can rely on the extenuating character of the organisation, management and control Model in regard to its potential administrative responsibility.

The sanctions provided for by the disciplinary regime will be applied to any infringement of the provisions contained in the Model, leaving out of consideration the commission of an offence and any criminal proceedings brought, and the outcome of the said proceedings in the courts.

5.2 Measures in relation to employees.

Compliance with the provisions and the rules of conduct provided for by the Model constitutes fulfilment by employees of their obligations under article 2104, paragraph 2, of the Civil Code; the content of the said Model represents a substantial and integral part of the aforementioned obligations.

The infringement by employees of the individual provisions and rules of conduct referred to in the Model always constitutes a disciplinary offence.

The measures indicated in the Model, the infringement of which it is intended to punish, are communicated to all employees by internal memoranda posted up at a place accessible to all, and binding on all employees of the Company.

The disciplinary measures may be applied to employees in accordance with the provisions of article 7 of Law of May 20, 1970, no. 300 (so-called "*Statuto dei Lavoratori*", or the Workers' Statute of Rights) and any special rules applicable.

When an infringement of the Model has been reported, the procedure to assess the failures in question will be initiated in conformity with the collective national labour agreement applicable to the individual employee affected by the procedure. Therefore:

- any report of infringement of the Model gives rise to the aforementioned assessment procedure;
- where the aforementioned assessment procedure establishes that the Model has been infringed, the disciplinary sanction provided for by the applicable collective national labour agreement shall apply;
- the sanction applied is proportionate to the seriousness of the infringement.

More particularly, if an infringement is verified then the Director-Human Resources – at the application of the Supervisory Board and having consulted with the superior of the employee whose conduct is being investigated – identifies the disciplinary sanction to be applied on the basis of the relevant collective national labour agreement, after having examined the reasons provided by the employee in question.

After having applied the disciplinary sanction, the Director-Human Resources communicates the application of the penalty to the Supervisory Board.

All legal and contractual requirements are duly complied with, in connection with the application of the disciplinary sanction, as well as the procedures, provisions and guarantees provided for by article 7 of the Workers' Statute of Rights and by the specific collective national labour agreement applicable to disciplinary measures.

5.3 Infringements of the Model and associated penalties

In conformity with the provisions of the relevant rules and with the provisions relating to the type of infringements and the type of disciplinary sanctions involved, Lombardini S.r.l. intends to inform its own employees about the provisions and the rules of conduct contained in the Model, whose infringement constitutes a disciplinary offence, and about the applicable disciplinary sanctions, in consideration of the seriousness of the infringements.

Without prejudice to the Company's obligations deriving from the Workers' Statute of Rights, the conduct which represents an infringement of the Model is indicated below, with the associated disciplinary sanctions:

1. A “verbal warning” applies to a worker who infringes one of the internal procedures laid down by the Model (e.g. failure to observe prescribed procedures, failure to communicate any required information to the Supervisory Board, failure to carry out controls etc), or who conducts him or herself in a manner inconsistent with the provisions of the Model regarding activities in the so-called sensitive areas. Such conduct constitutes failure to comply with the provisions imparted by the Company.

2. A “written warning” applies to a worker who is a repeat offender in relation to infringements of the procedures laid down by the Model or in relation to the adoption of conduct inconsistent with the provisions of the Model regarding activities in the so-called sensitive areas. Such conduct constitutes repeated failure to comply with the provisions imparted by the Company.

3. A “fine not exceeding the equivalent of three hours pay” applies to a worker whose infringement of the internal procedures of the Model – or whose Model-infringing conduct in relation to activities in the so-called sensitive areas – endangers the integrity of corporate assets by exposing them to objective hazard. Such conduct, violating the provisions imparted by the Company, created a danger to the integrity of the assets of the Company and/or represent acts or actions contrary to the Company's interests.

4. “Suspension from work and pay for a period not exceeding three work days” applies to a worker whose infringement of the internal procedures of the Model – or whose Model-infringing conduct in relation to activities in the so-called sensitive areas – causes damage to the Company

through his/her acts or actions which are contrary to the Company's interests, or to a worker who commits a repeated offence more than three times in the calendar year in relation to the failures referred to at points 1, 2 and 3. Such conduct, which infringes the provisions imparted by the Company, causes damage to the assets of the Company and/or represents acts or actions which are contrary to the Company's interest.

5. “Dismissal without notice but with severance pay” applies to the worker who, in infringing the internal procedures envisaged by the Model, engages in conduct in the performance of activities in the so-called sensitive areas which is not in compliance with the provisions of the Model and which is aimed unambiguously at the commission of an offence or a crime – and this conduct must reveal significant damage or significant prejudice – or the worker who, in infringing the internal procedures envisaged by the Model engages in conduct in the performance of activities in the so-called sensitive areas which is blatantly in violation of the provisions of the Model, and such as to determine the concrete application by the Company of the measures envisaged by the Decree, and such conduct must reveal the commission of "acts which radically undermine the trust of the Company in relation to the said person" or which have the effect of seriously prejudicing the Company.

The type and seriousness of each of the aforementioned disciplinary sanctions shall be determined also by taking account of the following:

 the intent associated with the conduct or the level of negligence, imprudence or inexperience with reference also to the foreseeability of the event;

 the overall behaviour of the worker with particular regard to the existence or otherwise of previous disciplinary sanctions relating to the said worker, within the limits allowed by law;

 the duties and tasks of the worker;

 the operational role of the persons involved in the facts or events constituting the failure in question;

 the other particular circumstances which accompany the disciplinary offence.

Lombardini S.r.l. retains the prerogative to seek compensation for the loss deriving from the infringement of the Model by one of its employees. The compensation for any loss applied for will be commensurate with:

 the level of responsibility and independence of the employee, the author of the disciplinary offence;

 the existence, if any, of previous disciplinary sanctions against the said employee;

 the degree of intent associated with his or her conduct;

 the seriousness of the effects of the conduct i.e. the level of risk to which the Company reasonably considers it has been exposed – pursuant to for the effects of Legislative Decree 231/2001 – as a consequence of the conduct complained of.

5.4 Measures applied to managers

In the event of infringement of the Model by managers, verified in accordance with the previous paragraph, the Company adopts the measures it considers most suitable in relation to those responsible.
If the infringement of the Model undermines the relationship of trust, the disciplinary sanction applicable is dismissal for just cause.

5.5 Measures applied to members of the Board of Directors

On receiving reports of an infringement by members of the Board of Directors of the provisions and rules of conduct of the Model, the Supervisory Board shall promptly notify the Board of Auditors and the entire Board of Directors of the said infringement. The subjects who receive the said notification by the Supervisory Board may, in accordance with the Articles of Association, adopt the most appropriate measures provided for by law, including the revocation of any delegations or powers of attorney granted to the member/members of the Board Directors responsible for the infringement.

5.6 Measures applied to auditors

On receiving reports of an infringement by one or more auditors of the provisions and rules of conduct of the Model, the Supervisory Board shall promptly inform the Board of Auditors and the Board of Directors of the said infringement. Subjects receiving the said notification by the Supervisory Board may, in accordance with the Articles of Association, adopt the appropriate measures including e.g. calling the General Meeting with a view to adopting the most appropriate measures provided for by law.

5.7 Measures applied to commercial partners, consultants, collaborators

Infringement by commercial partners, agents, consultants, external collaborators or other subjects in a contractual relationship with the Company of the provisions and rules of conduct laid down by the Model within the context of contractual relations in being with Lombardini S.r.l. constitutes infringement justifying the cancellation of the contract in accordance with contractual terms duly signed for the purpose.

This will not prejudice the Company's prerogative to seek compensation for further damage deriving from the infringement by the aforementioned third parties of the provisions and rules of conduct laid down by the Model.

CHAPTER 6
TRAINING AND COMMUNICATION PLAN

6.1 Introduction

Lombardini S.r.l., in order to give effect to the Model, intends to ensure that the content and principles of the said Model are properly circulated within and outside its own organisation.

In particular, it is the aim of Lombardini S.r.l. to extend the communication of the content and principles of the Model not only to its own employees but also to those subjects who/which, although not formally classified as employees, act in pursuit of the objectives of Lombardini S.r.l. on the basis of contractual relationships.

The activity of communication and training varies depending on the addressees involved, but it must in all cases be characterised by principles of completeness, clarity, accessibility and continuity, to ensure that the various addressees are fully aware of the corporate provisions they are required to comply with and the ethical rules which should inspire their conduct.

The activity of communication and training is supervised by the Supervisory Board which has the duty, *inter alia,* to "promote and define initiatives for spreading awareness and understanding of the Model, and also for training personnel and raising their awareness of the key importance of compliance with the principles contained in the Model" and to "promote and prepare communication and training activities relating to the content of the Decree, the effects and impacts of the applicable rules on the activities of the enterprise, and the relevant rules of conduct".

6.2 Employees

Each employee is required:

(i) to acquire knowledge of the principles and content of the Model;

(ii) to know the operational procedures by which his/her own activities must be carried out;

(iii) to actively contribute to the effective implementation of the Model in accordance with his/her own role and responsibilities, reporting any failures encountered therein;

iv) to participate in training courses, differentiated by reason of the various Sensitive Activities.

In order to ensure communication activities that are effective and rational, the Company intends to promote and facilitate learning of the content and principles of the Model on the part of employees, at a level of knowledge that varies depending on the position and role held by the employee in question.

Each employee must receive a summary of the fundamental principles of the Model, accompanied by a communication which underlines the fact that compliance with the principles contained therein is a precondition for the proper conduct of the employment relationship.

The copy (signed by the employee) of this communication must be made available to the Supervisory Board.

A paper copy of the full version of the Model must be made available to all members of the company organs, to senior management and to all persons representing Lombardini S.r.l. A paper copy of the full version of the Model must be given to new managers and new members of the company organs when they accept their office.

Suitable means of communication will be adopted for updating employees in relation to any modifications to the Model and any relevant procedural, regulatory or organisational change.

The Supervisory Board reserves the right to promote any training activities which it deems appropriate for providing proper in-house knowledge and information relating to the themes and principles of the Model.

6.3 Other addressees

Activities relating to the communication of the content and principles of the Model must also be addressed to third-party subjects collaborating with Lombardini S.r.l. under contract or representing the Company on independent basis.

CHAPTER 7
ADOPTION OF THE MODEL – CRITERIA FOR UPDATING AND ADJUSTING THE MODEL

7.1 Adoption of the Model

The Company has considered it necessary to initiate and complete the internal project aimed at preparing an organisation, management and control Model in conformity with the provisions of article 6 of Legislative Decree no. 231/2001.

7.2 Updating and adjusting the Model

The Board of Directors takes decisions relating to the updating and adjustment of the Model based on changes and/or supplements which may be necessary as a result of:

- infringements of the provisions of the Model;
- changes in the internal structure of the Company and/or of the procedures by which the company activities are carried out;
- regulatory changes;
- results of supervisory controls.

As soon as they are approved, the changes and the directions for their immediate application are communicated to the Supervisory Board which, in turn, will ensure that these changes are put into effect without delay and that their content is properly communicated within and outside the Company.

The Supervisory Board in all cases has specific duties and powers relating to the safeguarding and development of the Model, and ensuring that it is kept up-to-date. To this end, it formulates observations and proposals relating to the organisation and control system for the benefit of the company departments or structures responsible for the same or, where of particular relevance, for the benefit of the Board of Directors.

In particular, in order to ensure that the changes to the Model are made sufficiently promptly and effectively - but without creating a lack of coordination between the various operational processes, the provisions contained in the Model and their circulation within the company - the Board Directors has delegated to the Supervisory Board the power and duty to make periodic changes to the Model, where it considers this necessary, which relate to aspects of a descriptive character.

When the Supervisory Board presents its annual summary report, it should present the Board of Directors with a memorandum detailing the variations made in accordance with the aforementioned delegation, for ratification by the Board of Directors.

This is without prejudice to the exclusive competence of the Board of Directors to take decisions in relation to updates and/or adjustments of the Model based on the following factors:

- regulatory changes relating to the administrative responsibility of entities;

- identification of new sensitive activities, or variation of the sensitive activities previously identified, which may also be associated with the initiation of new company activities;

- commission of the offences referred to by Legislative Decree 231/2001 by addressees of the Model or, more generally, of significant infringements of the Model itself;

- discovery of failings and/or lacunae in the provisions of the Model subsequent to evaluations of its effectiveness.

The Model will be in all cases subject to a periodic revision procedure every three years, subject to a resolution of the Board of Directors.

7.3 First application of the Model

By reason of the complexity of the Model and its deep penetration into the company structure, its introduction into the company system must involve the drawing up of an operational programme to incorporate the innovations.

This program will identify the activities required in order to effectively implement the relevant principles contained in the present document for establishing the Model, specifying responsibilities, times and methods of implementation.

The programme will be rigorously observed by all those involved, since it is aimed at the prompt and complete implementation of all the measures provided for in accordance with the requirements and purposes of the regime introduced by Legislative Decree 231/2001.