



**The Organisational, Management and Control Model
pursuant to Articles 6 and 7 of
the Legislative Decree no. 231 of 8 June 2001**

6 April 2017

GENERAL PART

PART ONE

The Legislative Decree no. 231 of 8 June 2001

1. THE LEGISLATIVE DECREE No. 231 OF 8 JUNE 2001

The Legislative Decree no. 231 laying down the “*Standards governing the Administrative Liability of the Legal Persons, Companies and Associations lacking Legal Personality*” introduced in the Italian legal system an administrative liability regime (essentially similar to the criminal liability) to be borne by the collective entities (companies, legal persons, unacknowledged collective entities, associations, consortia, hereinafter jointly referred to as “**Entities**”) in relation to some offences, exhaustively listed, whenever committed in the interest or to the benefit of the following parties:

- (i) the natural persons that hold representation, administrative or managements offices of such Entities or any of their organisational unit enjoying a financial and operational autonomy as well as the natural persons that perform, also in fact, the management and control of such Entities or
- (ii) the natural persons subject to the management and supervision of one of the parties mentioned above, if the commission of the offense was made possible by failure in supervision.

The Entity’s liability shall be added to the liability of the natural person that materially committed the offence.

The aforesaid liability shall be classified as such also in relation to the offences committed abroad – always in the interest and to the benefit of an Entity having its main headquarters in Italy – provided that, *inter alia*, the State holding jurisdiction over the place where the offences had been committed proceeded to repress the same.

The subject matters of the offences provided for by the Legislative Decree no. 231/01 that constitute the administrative liability of the Entities currently are:

- Offences committed in the relations with the Public Administration (Articles 24 and 25);
- Computer-related offences and unlawful data processing (Article 24 *bis*);
- Organised crime offences (Article 24 *ter*)
- Coinage offences (Article 25 *bis*);
- Offences against industry and trade (Article 25 *bis* 1);
- Corporate offences (Article 25 *ter*);
- Offences committed for terrorism purposes and offences related to subversion of the democratic order (Article 25 *quater*);

- Female genital mutilation practices (Article 25 *quater* 1);
- Offences against the individual person (Article 25 *quinquies*);
- Market abuse offences (Article 25 *sexies*);
- Offences of voluntary manslaughter and severe and very severe culpable injuries committed by infringing the rules on hygiene and health protection at the workplace (Article 25 *septies*);
- Receiving, laundering and use of money, goods or property of unlawful origin (Article 25 *octies*);
- Transnational offences (Articles 3 and 10 of Law no. 146 of 16 March 2006);
- Offences related to copyright infringements (Article 25 *novies*);
- Induction to not make statements or to make false statements before the Judicial Authority (Article 25 *decies*);
- Environmental offences (Article 25 *undecies*);
- Employment of citizens of third countries subject to illegal stay (Article 25 *duodecies*).

1.1 Adoption of the organisational, management and control model as grounds for the Entity's liability exclusion.

Article 6 of the Legislative Decree no. 231 establishes that the Entity shall not be punished for having committed the offence in its own interest and to its benefit on condition that the same proves to “have adopted and effectively implemented”, prior to committing the offence, “*the organisational and management (thereafter classified as “control” models by Article 7) models suitable to prevent the offences classified as the one committed*”.

Furthermore, the same provision establishes the creation of a *control body within the Entity* in charge with supervising the functioning, effectiveness and observance of such models as well as with updating them.

Said organisational, management and control models (hereinafter, the “**Models**”), pursuant to Article 6, paragraphs 2 and 3 of the Legislative Decree no. 231 shall comply with the following requirements:

- identify the activities under which the offences under the Legislative Decree no. 231 may be committed;
- provide for specific protocols intended to plan the drawing up and implementation of the Entity's decisions in relation to the offences to be prevented;
- identify management procedures of the financial resources suitable to prevent the commission of such offences;
- provide for disclosure obligations with respect to the body entrusted with the supervision over the models' functionality and observance (hereinafter, the “**Supervisory Body**”);
- introduce a disciplinary system intended to sanction failure to observe the measures indicated by the Model.

In the event the offence is committed by parties holding representation, administrative and management offices within the Entity or one of its organisational units enjoying financial and operational autonomy as well as by parties performing, also in fact, the management and control of the same, the Entity “shall not be punishable on condition that the same proves” that:

- the management body has adopted and efficiently implemented, prior to the commission of the act, a Model suitable to prevent the commission of offences belonging to the same offence class as the offence committed;

- the task of supervising over the operation and observance of the Model as well as the task of updating such Model had been entrusted to an Entity's body holding independent powers of initiative and control;
- the parties had committed the offence by fraudulently eluding the Model;
- there had been no omitted or insufficient supervision by the control body with respect to the Model.

Instead, in the event the offence is committed by parties subject to the management and supervision of one of the parties mentioned above, the Entity shall be deemed liable if the commission of the offence had been possible due to failure to observe the management and supervision obligations. Such failure to observe shall be, however, excluded if the Entity, prior to the commission of the offence, had adopted and efficiently implemented the Model suitable to prevent the commission of offences belonging to the same offence class as the offence committed.

1.2 Key Elements of the Model

With reference to the “requirements” identified by the law-maker in the Legislative Decree no. 231 and subsequently tackled with by the guidelines of the professional associations, the key points identified for defining the Model may be briefly summarised as follows:

- the map of the “sensitive” corporate activities, namely the ones within which, by their own nature, the offences under the Legislative Decree no. 231 may be committed and, therefore, to be submitted to analysis and monitoring;
- the analysis of the current protocols and the definition of any implementations intended, with reference to the “sensitive” corporate activities, to reduce the offence-risk;
- the definition of the ethical principles in relation to the conducts that may supplement the offence subject matters under the Legislative Decree no. 231 intended to define the necessity to:
 - observe the current laws and regulations;
 - establish, while relying on fairness and transparency principles, the relationship with the Public Administration;
 - require a conduct in line with the general principles of the Code of Ethics from all controlled/subsidiary enterprises, main suppliers, contractors and sub-contractors.
- appropriate procedures for the management of the financial resources;
- identification of the Supervisory Body and allocation of specific tasks to supervise the efficient and correct operation of the Model;
- definition of the information flows towards the Supervisory Body;

- information, awareness raising and dissemination on all corporate levels of the conduct rules and the procedures established;
- definition of the responsibilities with regard to the approval, transposition, supplementation and implementation of the Model as well as the assessment of the operation of the same and of the corporate conducts with the relevant regular updating (*ex post* control).

1.3 Approval and transposition of the Model's reference principles

Considering that the Model is “a document issued by the management body” (in accordance with the provisions under Article 6, paragraph 1, sub-par. a) of the Legislative Decree no. 231), the Board of Directors shall bear the responsibility to approve and transpose the Model, by appropriate resolution, as well as any amendments and updates thereof.

1.4 The sanctions imposed on the Entity

Pursuant to the Legislative Decree no. 231/01, the sanctions imposed on the Entity for the unlawful administrative acts derived from the offence are the following (Article 9):

- a) fine;
- b) interdictory sanction;
- c) confiscation;
- d) publication of the judgement.

The *fine* is unfailing and shall be applied on a quota system basis.

The amount of one quota ranges between a minimum limit of € 258.23 up to a maximum limit of € 1,549.37.

The number of quotas is between one hundred and one thousand.

While establishing the proportion of the fine, the Judge determines the number of quotas taking into consideration the seriousness of the act, the Entity's liability degree as well as the activity carried out to eliminate or mitigate the consequences of the fact as well as to prevent the commission of other unlawful acts.

Instead, the value of each quota shall be established taking into consideration the economic and assets position of the Entity in order to ensure the effectiveness of the sanction.

The *interdictory sanctions* are:

- a) disqualification from carrying out the activity;

- b) suspension or lifting of authorisations, licences or permissions operational for the commission of the unlawful act;
- c) ban on contracting with the public administration, without prejudice to providing a public service;
- d) exclusion of facilitations, financing, contributions or subsidies and any lifting of the ones already granted;
- e) ban on advertising goods or services.

The interdictory sanctions shall apply to offences expressly referred thereto, when at least one of the following conditions exists:

- a) by committing the offence, the Entity has benefited from a significant profit and the offence was committed by parties holding top positions or by parties subject to another party's management, if the commission of the offence had been determined or eased by serious organisational shortcomings;
- b) in case of reiteration of the unlawful acts (*id est*: the Entity, having been already subject to final conviction, commits another offence during the five years following such judgement).

It is herein added that, pursuant to Article 38 sub-par. m) of the Legislative Decree no. 163/2006 (Code for Public Contracts), the parties that have been subject to the interdictory sanction under Article 9, paragraph 2, sub-par. c) of the Legislative Decree no. 231/2001 or to any sanction prohibiting such party's contracting with the Public Administration shall be excluded from participating in procedures intended for grant of concessions and work contracts, supplies and services and the same shall not be sub-contractors and shall not stipulate the relevant contracts.

The ***publication of the judgement convicting the party*** shall be ordered when the Entity is subject to an interdictory sanction. The judgement shall be published only once, in the form of an extract or in its entirety (at the Entity's expenses), in one or several newspapers specified by the Judge in the judgement as well as by posting it in the municipality where the Entity has its headquarters.

The judgement convicting the Entity shall order that ***the price or profit deriving from the offence be confiscated***, less the share that may be returned to the damaged party.

When the above mentioned confiscation cannot be executed, the same may concern amounts of money, goods or other utility of a value equivalent to the price or profit of the offence.

1.5 The Supervisory and Control Body

As already mentioned, Article 6, paragraph 1, sub-par. b) of the Legislative Decree no. 231 identifies another prerequisite intended to permit the Entity to be exonerated from the liability arising from the commission of the offences listed therein: the setting up of a Supervisory Body “*holding independent powers of initiative and control*” in charge with “*supervising the operation and compliance with the model and with keeping it updated*”.

This is a corporate body holding a third-party position, being independent from the other bodies of the Entity, particularly the executive bodies.

The **requirements** that the control body shall meet in order to efficiently perform its functions are:

- 1. autonomy and independence:** the Supervisory Body shall not be entrusted with operational duties and shall keep only staff relationships with the corporate top management (administrative body);
- 2. professionalism while performing** the institutional duties: to this end, the members of the aforesaid body shall have specific knowledge in relation to any technique useful to prevent the commission of offences, to find the offences already committed and to identify the causes thereof as well as to check the compliance with the Model by the parties involved in the corporate organisation;
- 3. continuity of action:** such requirement imposes a permanent *presence* within the company, since the Company decided to exclude that the control be performed by the Board of Statutory Auditors.

Supervisory Body’s Functions and Powers

According to the provisions under the Legislative Decree no. 231, the **functions** carried out by the Supervisory Body may be outlined as follows:

- 1. evaluation of the Model’s appropriateness,** or of the suitability thereof, in relation to the typology of the activities and the features of the enterprise in order to prevent the commission of offences.

This involves an update activity regarding the Model in accordance with the corporate structure evolution and any amendments in the law;

2. supervision over the Model's effectiveness which means checking the correspondence between concrete conducts and the established model.

In order to effectively carry out the above functions it is advisable that the Supervisory Body be equipped with a staff that offers support in the performance of its duties and be conferred a range of powers and prerogatives necessary to guarantee the continuous supervision and update of the Model.

1.6 The Guidelines of the Representative Professional Associations

The Organisational, Management and Control Models may be prepared on the basis of the Codes of Conduct (so-called Guidelines) of the representative Professional Associations (Article 6, paragraph 3, Legislative Decree no. 231).

The first Guidelines to be adopted are the Confindustria Guidelines, which are jointly considered to be the most complete indication of the *best practice* in the field.

The essential requirements referred to by such guidelines may be summarised as follows:

- **identification of the risk areas** intended to emphasise the corporate functions within which the commission of the offences provided for by the Legislative Decree no. 231 may occur;
- **preparation of a control system** able to prevent the risks by adopting special protocols. The most significant elements of the control system are:
 1. Code of Ethics;
 2. organisational system;
 3. manual and computer procedures;
 4. authorisation and signature powers;
 5. control and management systems;
 6. communication to staff and staff training.

The elements of the control system shall follow the standards below:

- verifiability, accountability, coherence and congruency of each operation;
- application of the separation of functions standard (no party can manage independently the whole process);
- controls accountability;
- provision of an appropriate sanction system for the infringement of the Code of Ethics and of the procedures under the Model;
- identification of the Supervisory Body's requirements summarised as:
 - autonomy and independence;
 - professionalism;
 - continuity of action.
- provision of management procedures of the financial resources;

- the control body's duty to inform.

Other professional associations (amongst which: ABI, ANIA, ANCE, ASSTRA, ASSOSIM, ASSOGESTIONI, ASSIFACT, CONFCOOPERATIVE, CONFCOMMERCIO) have prepared guidelines that reiterate, even though referring to their relevant business fields, the above mentioned standards.

All the aforesaid documents have been taken into consideration while drafting the Model intended to discipline the conduct of the Beni Stabili company as well as of its subsidiaries and affiliates pursuant to Article 2359 of the Civil Code since the same have been deemed as being the expression of best practice in the field of *corporate governance* and internal control.

PART TWO

DISSEMINATION OF THE MODEL AND TRAINING OF THE STAFF

2. Dissemination, Training and Awareness Raising Activity

2.1 Dissemination of the Code of Ethics

The Supervisory Body shall proceed with the dissemination of the Code of Ethics according to the procedures mentioned in such document as summarised below:

- delivery of a Code of Ethics copy to the members of the Board of Directors, the members of the board of Statutory Auditors, the members of the Control and Risks Committee;
- delivery of a Code of Ethics copy to all employees and collaborators of Beni Stabili that, upon being hired, shall sign an acceptance form;
- forward of a Code of Ethics copy to the Auditing Company;
- posting of a Code of Ethics copy in places accessible to all employees pursuant to and to the effects of Article 7, paragraph 1 of Law 300/1970 (Statute of Workers' Rights);
- publication of the Code of Ethics on the Company's website;
- detailed information on the existence of the Code of Ethics (existing relationships) provided to external collaborators and suppliers;
- inclusion in the stipulated contracts of a clause intended to inform the third parties on the existence of the Code of Ethics, which reads as follows (subject to, upon occurrence, any necessary amendments and supplements): *“Beni Stabili, as to conducting its business and to managing its relations, refers to the standards enclosed with the Code of Ethics. Such Code is published on the Company's website at the following address www.benistabili.it. The infringement of the provisions under the Code of Ethics by [contractual counterparty] may determine, depending on the seriousness of the infringement, the termination of the contract in beyond compensation for the damages suffered”*.

2.2 Staff Training

The staff training in relation to the ethical issues and to the prevention of offences represents a key-point of the Beni Stabili's Model.

The training meetings shall particularly regard the staff employed in the risk areas as defined in part two; however, all employees and collaborators starting with *the so-called “top” managers* shall benefit therefrom. Participation in the meetings is compulsory and shall be regarded as fulfilling an employment duty.

The Supervisory Body shall take care, at least once a year and, however, each time the same may deem it necessary, of:

- calling an information meeting aimed at highlighting the contents and any updates and amendments of the Model that shall be attended by the employees/collaborators of Beni Stabili, the members of the Board of Directors and the Board of Statutory Auditors and, where appropriate, also by third parties that collaborate, for any reason, with the Company. Special minutes shall be drafted at every meeting and shall enclose the attendees' names and the issues dealt with;
- calling a meeting to be attended by the function managers also intended to discuss the corporate procedures under the Model as well as any issues related to the application of the corporate organisational measures (*internal dealing*, registry enclosing the inside dealers, *code of disclosure*).

Furthermore, the Supervisory Body shall provide for the creation and the management of a special area on the corporate *intranet* dedicated to the Legislative Decree no. 231/2001 enclosing the relevant laws and all data and information necessary for the continuing updating on the corresponding application issues.