FOLDER 1

GENERAL PRESENTATION

REGULATORY FRAMEWORK

METHODOLOGICAL APPROACH

REVISION	CAUSES	CHANGES	ADOPTION
00	First edition		BoD decision 29/10/2014
01	Adaptation to regulatory standards; transposal into corporate procedures	Various	BoD decision 1/12/2016
02	Adaptation to regulatory standards; transposal into corporate procedures	Various	BoD decision 2/10/2017
03	Update of risk analysis of certain predicate Offences	Special part A art. 24 of (It.) Leg. Decree 231 Special part A/I art. 25 of (It.) Leg. Decree 231 Articles 25bis, bis1 and 25nonies of (It.) Leg. Decree 231	SB initiative 2019
04	Comprehensive restructuring	Various	BoD decision 17/12/2021 .....

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FOREWORD TO REVISION No. 4

The contents of this document constitute the revised Organisation, management and control model drafted and adopted by PANINI SPA to prevent the risk of incurring the liability envisaged by (It.) Legislative Decree of 8 June 2001, no. 231 (*Regulation of the administrative liability of legal persons, of companies and of associations even without a legal status, ...*).

Decree 231 introduced in Italian legislation **a form of corporate liability** (defined as administrative, but of a markedly criminal nature), that **can be added to the liability of the natural person who actually committed the offence**. **Companies, associations and other Entities may thus be held liable independently and directly for specific offences** (expressly laid down in Decree 231)**, which are the result of the behaviour of persons operating within their organisational context**. **Criminal liability**, previously only applicable to natural persons, has been **extended to legal persons to which the unlawful behaviour is attributable** and is **punished with rather onerous monetary and prohibitory sanctions.**
Decree 231 envisages that the Entities may **prevent exposure to criminal risk by preparing and implementing organisation, management and control Models and by establishing a Body competent for monitoring compliance therewith**; the adoption of such prevention measures constitutes, in case liability is apportioned, a vital tool for the Entity's defence and protection.
The indictment of the Entity always hinges on ascertainment that persons related thereto committed the offence, but is not **founded** on the involvement of the Entity in the unlawful behaviour committed by the natural person, but rather **on *organisational guilt*, which consists in the inability of the organisational setup to prevent the offences** by preparing and implementing the Model and establishing the Supervisory Body.

The adoption of the Prevention Measures indicated by the Decree does not constitute a legal obligation, but **depends on the discretion of the Entity's governing body; furthermore, their preparation is not sufficient to prevent the Entity from being found administratively liable, as the final decision regarding their adequacy and concrete implementation lies with the assessment of the judge in the context of the criminal proceedings.** Nevertheless, **corporate criminal liability**, twenty years after its entry into force, **is nowadays an integral part of the regulatory framework that monitors and regulates the performance of economic activities, the management of undertakings and commercial companies,** and it may be assumed that **the implementation of the prevention system envisaged by Decree 231 forms part of the Directors' management duties and responsibilities, as an indicator of the Company's sound organisation.** As a matter of fact:

- **the absence of the Model and of the SB are a symptom of organisational guilt that may facilitate the indictment and liability of the Entity**;
- the **Decree's scope of application involves the processes that are typical of any and all Entities** (corporate, accounting and administrative management, tax obligations, protection of safety and of the environment, etc.);
- the **231 Model is increasingly seen as a requirement** for **operating in various economic sectors**, for **obtaining financing**, for **participating in tender procedures**, for **obtaining attestations, authorisations and other certifications**;

- **failure to adopt the Model** may constitute a **violation of the Directors' diligence obligations**, rendering them liable against the shareholders;
- **the contribution of the preparation and implementation of the Model to improving the Entity's organisational quality** is increasingly evident.

PANINI SPA **adopted the first edition of the 231 Model in 2014** (BoD - of 29 October 2014)**;** that was the time of **appointment of the Supervisory Body**, with a composition that consists of more than one person**. The Model was revised in 2016 and in 2017** (adaptation to the regulatory standards and transposal of new procedures) **and again in 2019** (revision of the Risk Analysis regarding certain predicate Offences). More recently, **the BoD of PANINI SPA**, also on **suggestion of the Supervisory Body, decided** (Minutes of the session of 5 October 2020) **to further revise the 231 Model** to **adapt it to new predicate Offences.**

The task of taking steps to update the 231 Model was entrusted to a professional with whom it was agreed, taking into account the time elapsed from the original edition, to **go beyond adaptation to the regulatory standards**: to go ahead and carry out **an organic restructuring, no longer restricted by the original methodological structures and criteria**. **In fact, it was deemed** that **a flexible approach would be better suited to comprehensive innovation and**, to the extent that this is possible, **to the simplification of the OMM.**

The revision of the Model referenced, in general, the Confindustria Guidelines (edition June 2021), the contents of which were selected, adapted and integrated taking into consideration the specific characteristics and conditions of the Company and the methodological approach adopted.

The scope of the revision took into account the guidance of the legal theory and jurisprudence that has been consolidated in the meantime, the experience acquired in the years of implementing the OMM, and the instructions of the Supervisory Body.

Below please **find a summary of the** NEW PREDICATE OFFENCES ADDED BY THE REGULATORY FRAMEWORK that were taken into consideration when revising the Model:

(a) the crimes of **Fraud in public supplies** (art. 356 of the (It.) Penal Code) and **Fraud in agriculture** (art. 2 of (It.) Law 23/12/1986 no. 898 Art. 2) were added to **art. 24 (Offences against the PA)**;

(b) the case regarding the **protection of the National Cybersecurity Perimeter** (It. Law 18/11/2019 no. 133 - conversion of Decree Law 21/09/2019 no. 105) was added to **art. 24bis (Cyber crime and unlawful data processing)**;

(c) (It.) Law 9/01/2019 (so-called "corruption buster") added the **Offence of trafficking unlawful substances** (art. 346bis PC) to **art. 25 (Corruption offences)**; further, the offences of **Misappropriation** (art. 314 PC), **Misappropriation by profiting from the error of another** (art. 316 PC) and **Abuse of office** (art. 323 PC) were added, **covered by criminal law only if the fact is committed against the financial interests of the EU**;

(d) **art. 25 terdecies (Racism and xenophobia** - (It.) Law 20 November 2017, no. 167) was added;

(e) **art. 25 quaterdecies (Fraud in sports competitions, abusive exercise of game or betting and gambling with the use of forbidden equipment** - (It.) Law no. 39 of 2019) was added;

(f) **art. 25 quinquiesdecies (Tax offences)** was added, which implements two different legislative acts:

- (It.) Law 157 of 2019 (conversion of (It.) Decree Law 124 of 2019, in force since 24 December

2019);

- (It.) Legislative Decree of 14 July 2020, no. 75, in force since 30 July 2020, implementation of Directive EU 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law which, with regard to tax offences, applies solely to cases of serious offences against the EU VAT system, deemed to be serious when the intentional actions or omissions [...] are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000;

(g) art. 25 sexiesdecies (Smuggling - (It.) Legislative Decree no. 75 of 2020) was added.

Moreover, with reference to the general provisions on corporate administrative liability, art. 2 of (It.) Law of 29 December 2017, no. 179 added paragraphs 2 bis, 2 ter and 2 quater to art. 6 of Decree 231; these paragraphs **introduced an additional requirement that the Models must meet**: to **envisage one or more channels that make it possible to report unlawful behaviour or violations of the 231 Model, detected within the Entity's organisation (termed *whistleblowing*)**.

During the revision, the **Protocol for the prevention of the predicate Offence of manslaughter or serious or very serious bodily harm with violation of laws on safeguarding occupational health and safety** (Decree 231 - art. 25 septies) was supplemented with the **procedures adopted by the Company to counter the COVID 19 pandemic emergency.**

The revision of the Model was coordinated by the Head of the Administration, finance and control division who constantly communicated with the consultant, providing them with the necessary documentation and support and organising the exchanges of information and opinions with the corporate officers handling the Risk Analysis and the preparation of the Protocols. The final version of the revision, before being adopted by the BoD, was presented to, discussed, and shared with the SB.

The 231 Model is structured in the following Folders:

- FOLDER 1 General presentation - Regulatory framework - Methodological approach
- FOLDER 2 Risk Analysis
- FOLDER 3 The Code of Ethics
- FOLDER 4 The Prevention Protocols
- FOLDER 5 The Supervisory Body
- FOLDER 6 The system of sanctions
- FOLDER 7 Guidelines for the preparation of the Procedure for reporting unlawful behaviour or violations of the 231 Model (whistleblowing).

The individual **Folders**, although organically connected, **are structured in such a way that makes it possible to consider, use, and revise them also independently, in relation to specific application, communication, and training needs** in the context of the Company's organisational perimeter.

Folder 1 constitutes the Model's general part and describes the regulatory framework of reference, the methodology, and the general criteria for the preparation of the Model; **the other Folders are each a special Part of the Model, prepared based on the choices of PANINI SPA, and taking into account the company's characteristics and conditions.**

The Model's recipients are the company's Top Management and their Subordinates, as well as those who, although not a part of the Company's corporate and organisational structure, operate on its orders or by virtue of contractual relationships, and are however subject to management or supervision by the Top Management of PANINI SPA.

The PANINI SPA Model, thus revised, will be communicated to the recipients and the stakeholders by adequate communication and training means.

The Code of Ethics is available to the recipients and to all those who must, on various grounds, apply it or who have a need to know it, on the Company's website www.panini.it and on the website www.paninigroup.com.

DEFINITIONS

In the Model (and in the Annex to Folder 2), the following terms (in the singular or in the plural) and acronyms are used with the following meaning attributed to each one:

- "**Risk analysis**": the process, structured in the Risk Mapping and Assessment stages, that aims to identify the predicate Offences that may be theoretically associated with the activity of the Entity and thus evaluate, with reference to each corporate organisational area or process, the exposure to the risk of incurring administrative liability.
- "**Top Management**": the people who represent, manage, and direct the Entity, or those who, also de facto, manage and control the Entity or one of its organisational units that has financial and functional autonomy.
- "**CC**": The (It.) Civil Code.
- "**Code of Ethics**": the document that describes the Entity's values and principles of reference.
- "**PC**": The (It.) Penal Code.
- "**Decree" or "Decree 231**": (It.) Legislative Decree of 8 June 2001 no. 231 "*Regulation of the administrative liability of legal persons, of companies and of associations even without a legal status*."
- "**Employees**": the natural persons who are in a working relationship with the Entity, characterised by obligations of subordination pursuant to articles 2094 and 2095 of the (It.) CC, even if regulated in a form other than an employment relationship, subject to the management or supervision of Top Management.
- **"RAD"**: A risk assessment document envisaged by the Consolidated Text on Safety.
- "**Entity**": the natural persons, the companies and associations, even without a legal status, as per the Decree.
- **"PSO"**: Public service officer;
- "**Risk mapping**": the stage of the Risk Analysis process that aims to identify the predicate Offences that may be theoretically associated with the Entity's activity.
- "**Prevention measures"** or **"Prevention system**": the organisation, management and control Model and the Supervisory Body envisaged by Decree 231.
- "**Model**", or "**231 Model**" or "**OMM**": the organisation, management and control model envisaged by the Decree.
- "**SB**": the Supervisory Body, a body of the Entity that has autonomous powers of initiative and control, which has been entrusted with the task of supervising the operation of and compliance with the Models and ensuring they are updated.
- "**Governing body**" or "**BoD**": the Board of Directors of PANINI SPA.
- **"PA"**: Public administration.
- **"Special proxy"**: the proxy that the CEO of PANINI SPA has conferred on various corporate officers.
- "**Protocols**" or "**Prevention protocols**": the set of conduct rules, of organisation, management and

control systems, and of procedures that have been drafted and must be implemented for each predicate Offence identified as at-risk by the Risk Analysis.

- **"PO"**: Public officer.
- "**Predicate offences**": the offences that may give rise to the administrative liability of Entities pursuant to Decree 231.
- "**Administrative liability**" or "**Corporate liability**": the administrative liability of Entities as per Decree 231.
- **"OSS"**: the occupational safety system of PANINI SPA;
- **"Disciplinary system"**: the regulation of sanctions laid down by the Entity in case of non-compliance with the 231 Model by the recipients.
- **"Company"** or "**Undertaking"** or "**PANINI SPA"**: Panini S.p.a.
- "**Subordinates**": the Employees and Third Parties, if and to the extent that they are actually subject to the management or supervision of the Entity's Top Management.
- **"Management tools":** the management systems, the procedures, and the working practices, and the other organisational tools that the Company has prepared and uses in the performance of its activities, and which it deems suitable for integration in the Protocols for the prevention of the specific offences.
- "**Third Parties**": the natural or legal persons who are in a qualified relationship with the Entity, who are not subject to management and supervision by the Top Management of PANINI SPA (customers, suppliers, partners). The Third Parties may be seen as Subordinates only if they are subject to management or supervision by the Entity's Top Management.
- **"Consolidated Text on Safety"**: (It.) Legislative Decree of 9 April 2008 no. 81 "*Consolidated text on occupational safety*".
- **"TULD"**: Decree of the President of the (It.) Republic of 23 January 1973, no. 43 "*Consolidated text on customs laws*".
- "**Risk assessment**": the stage of the Risk Analysis process that aims to assess, for each organisational area or corporate process, the degree of the Company's exposure to criminal risk with reference to each at-risk predicate Offence.

CHAPTER 1 - OUTLINE OF CORPORATE CRIMINAL LIABILITY

1.1. The general features of Corporate Liability and its organisational nature

Corporate liability (i.e. the ability of Entities to be held liable) may only arise **if it is ascertained that specific offences have been committed by natural persons operating within the Company's organisational perimeter by virtue of a qualified relationship** (formal investiture or proxy, employment relationship, or contracts in general). The recognition of the offence as a criminal act, traditionally centred on the natural person, has thus been supplemented by a form of **liability that also punishes the Entity as a whole,** highlighting the **direct and organic relationship between the natural person and the legal person**. Consequently, **the commission of a predicate Offence may entail, other than the purely criminal liability of the natural person, the independent administrative liability of the Entity**, which exists even if the offender has not been identified or may not be indicted, and persists if the offence is no longer punishable for a reason other than amnesty.

Decree 231 (art. 1, paragraph 2) indicates as the recipients "*entities possessing legal status, companies possessing legal status, and companies and associations even without legal status*"; conversely, Decree 231 does not apply "*to the State, to territorial public agencies, to other non-economic public agencies, and to agencies carrying out functions of constitutional importance*" (art. 1, paragraph 3). The recipients of the Decree include **companies incorporated under private law that perform a public service** (for example, based on a concession relationship), and **companies controlled by the PA.**

Corporate liability, qualified as *administrative*, has **unmistakable criminal elements**:

- it depends on a crime,
- it is ascertained through criminal proceedings,
- it is punished with stringent sanctions (monetary and prohibitory) that can have a negative effect on the equity and economic and entrepreneurial capacity of the Entities liable;
- it is subject to criminal law principles: legality and certainty (art. 2), non-retroactivity (art. 3, paragraph 1), favourable treatment of the offender (art. 3, paragraph 2).

Decree 231 suggests, as prevention measures, the **adoption of organisation, management and control Models** that can **counter or discourage unlawful behaviour by the natural persons related thereto**. Essentially, this is the **organic representation of the set of management tools that the Entity** has adopted and applies in the performance of its activities, and which, in accordance with the Decree's requirements, **it deems adequate to also prevent the criminal risk**. Moreover, the Entity must **entrust the supervision of compliance with the OMM to a dedicated Body**.

Corporate liability, therefore, depends on *organisational guilt*: not having put in place an organisation that can prevent unlawful behaviour. Failure to adopt and implement the prevention system indicated by the Decree constitutes the organisational gap that can result in the Entity's liability and compromise its defence during court proceedings (in accordance with the means of establishing culpability laid down in articles 6 and 7 of the Decree).

The ORGANISATIONAL NATURE OF CORPORATE LIABILITY is supplemented with the requirement of *adequacy of the organisational, administrative, and accounting setup* which now constitutes a common paradigm for all undertakings. This direction was definitively *confirmed* with the reformulation of art. 2086 of the (It.) CC (It. Legislative Decree of 12/01/2019 no. 14 - Company crisis and insolvency code) which

confirmed the general duty of entrepreneurs who operate in the form of a company or collectively to ***put in place an organisational, administrative, and accounting setup that is adapted to the undertaking's nature and size.*** **This consolidates the regulatory approach introduced by the reform of company law** (CC - art. 2381):

- the governing body or the delegated bodies (if appointed) are responsible for the adequacy of the organisational, administrative, and accounting setup;
- the governing body evaluates whether such adequacy is maintained;
- the board of statutory auditors supervises its concrete presence (CC - art. 2403).

Ensuring the *adequacy of the company's organisational, administrative, and accounting setup* **constitutes, therefore, one of the most important responsibilities of the directors:** ***"The directors must fulfil the duties imposed thereon by law and by the articles of association with the diligence required by the nature of the mandate and by their specific skills. They shall be jointly liable towards the company for damage deriving from a failure to comply with such duties [..]."*** (CC - art. 2392).

It is thus that **the entrepreneur, by putting in place an organisational, administrative, and accounting setup for the undertaking, meets the requirements for the preparation of an effective 231 Model and, in a similar vein, by adopting the 231 Model, he or she contributes to qualify the adequacy of the Entity's organisational, administrative, and accounting setup as a whole.**

In this context of organisational planning, it is **important** to have a **consistent and clear representation of the proxies of powers, responsibilities, and authorities conferred for the management of the Entity, especially if they are intended for the Top Management.** In fact, **the conduct of Top Management, by virtue of their position of power in the organic organisation, exposes the Entity to a more directly and more grave criminal risk;** it is therefore appropriate to put in place and represent an institutional and organisational setup which makes it possible to **identify** with sufficient certainty **the persons who, by virtue of the powers exercised and tasks performed, may be qualified as Top Management, especially in complex organisations where the top offices are often shared by more than one persons**.

It should be pointed out here that the absence of formal proxies, or the uncoordinated overlap of powers, responsibilities, and authorities, especially in complex organisations, may constitute a symptom of the inadequacy of the organisational setup.

Proxies must, therefore, represent, in a clear and consistent manner, the responsibilities and authorities delegated and must meet the **formal and essential requirements laid down by the regulatory framework in force and specified by jurisprudence** (written form; suitability of the person granted the proxy in relation to the specific nature of the powers delegated; effectiveness and autonomy; description of any restrictions and limitations; reporting obligations; publicity), which, to the extent that they have been drawn up mainly in the context of proxies on the protection of occupational health and safety, may be deemed to be generally pertinent.

1.2. The predicate Offences

The Entity may incur administrative liability as a consequence of the offences that are indicated expressly and exhaustively in the objective scope of application of Decree 231, whose definition is based on a **criterion that is flexible and may be expanded, open to the progressive introduction of new cases, which currently includes the following predicate Offences**:

Decree 231 articles	Predicate offence
24	Undue receipt of disbursements, fraud against the State, a public agency or the EU or in order to receive public disbursements, IT fraud against the State or a public agency and fraud in public supplies
24 bis	Cyber crime and unlawful data processing
24 ter	Crimes committed by criminal organisations
25	Misappropriation, extortion, undue inducement to give or promise an advantage, corruption and abuse of office
25 bis	Forgery of money, money values having legal tender or revenue stamps and instruments or identification signs
25 bis 1	Crimes against industry and trade
25 ter	Corporate offences
25 quater	Crimes committed for purposes of terrorism or designed to subvert democracy
25 quater 1	Mutilation of female genital organs
25 quinquies	Crimes against individual freedoms
25 sexies	Market abuse
25 septies	Manslaughter or serious or very serious bodily harm committed with violation of laws on safeguarding occupational health and safety
25 octies	Handling stolen goods, laundering and use of money, assets or benefits whose origin is illegal, and self-laundering
25 novies	Crimes regarding breach of copyright
25 decies	Inducements not to make statements or to make false statements to the courts
25 undecies	Crimes against the environment
25 duodecies	Employment of third-party nationals whose residence is unlawful
25 terdecies	Racism and xenophobia
25 quaterdecies	Fraud in sports competitions, abusive exercise of game or betting and gambling with the use of forbidden equipment
25 quinquiesdecies	Tax offences
25 sexiesdecies	Smuggling
(It.) Law no. 146/2006	Organised transnational crime
(It.) Law no. 9/2013 (art. 12)	Offence of Entities who operate in the virgin olive oil production and supply chain

The Entity can incur administrative liability even if the predicate Offence was committed by the natural person, Top Management, or Subordinate, in the form of an attempt (CP - art. 56); the offence is **attempted** when the natural person commits the crime, but the action is not completed or the event does not come about; in such case, the sanctions are reduced.
The Entity's administrative liability may also derive from the commission of the predicate Offence by the natural person, Top Management, or Subordinate, in association between them or with third parties (CP - articles 110 and 113).

1.3. The elements that constitute corporate administrative liability

The ability of the Entity to be indicted requires that certain conditions be met (art. 5, paragraph 1)**:**
(1) The predicate Offence must have been committed by one of the persons qualified by Decree 231:

- **Top Management**: the people who **(a)** represent, **(b)** manage or direct the Entity, or one of its organisational units that has financial and functional autonomy, or **(c)** also de facto manage and control such organisational unit. The definition focuses on the **exercise of top management powers and functions, also in the absence of a formal proxy**. This category includes the Legal Representatives, the Directors, the Executives with (de facto) management and control powers of the Entity or of its organisational units that are financially and functionally independent.
- **Subordinates**: persons subject to the management or supervision of a member of the Entity's Top Management, by virtue of an employment or collaboration relationship.

(2) The offence must be committed in the interest or for the benefit of the Entity (the requirements are either/or).
The INTEREST **must exist at the time of the behaviour and refers to the intent of the natural person, who**, by committing the predicate Offence, **has the intention to procure an advantage for the Entity and is aware of doing so**. If the **interest of the Entity is absent** and **the natural person acted exclusively in their own interest or in that of third parties, the Entity is not liable**. If, instead, **the natural person committed the predicate Offence mainly in their own interest or in that of third parties**, and therefore **the Entity's interest, regardless of whether such interest is marginal or occasional, is present, administrative liability exists, even if the Entity did not obtain any advantage or if the advantage was minimal**; in such case, **the monetary sanctions are reduced and the prohibitory sanctions do not apply** (Decree 231 - art. 12, paragraph 1).
The ADVANTAGE consists in the **set of benefits** (also of a non-monetary nature) **that were actually obtained as a result of the commission of the offence**.

The inclusion in the predicate Offences of offences **due to negligence** (Manslaughter and serious injury due to negligence with violation of the laws on the protection of occupational health and safety; Crimes against the environment) raises **the issue of their compatibility with the requirements relating to the Entity's interest or advantage**. **In fact, while, in offences committed with criminal intent, the intention of the event lies with the offender and may directly serve the interest or confer an advantage to the Entity, conversely, in offences due to diligence, the Entity's interest or advantage cannot be correlated to the event coming about, something that is wholly hypothetical.** In the case of offences that touch

on occupational health and safety, for example, the death or the injuries of the worker are neither intended nor foreseen by the offender (otherwise the offence would be committed with criminal intent). The question was answered by established judicial practice which, in the case of predicate Offences due to negligence, associates **the interest or the advantage not with the event but with the purpose of the offender's behaviour** who, by failing to comply with rules and regulations, procedures and working practices, certainly intends to favour the Entity (therefore acting in its interest) and/or confer an advantage thereto (saving on costs; increased productivity), regardless of whether the event came about.
Lastly, with regard to felonies, for the purposes of ascribing liability to the Entity, the offender must have intended both the behaviour and the event (if this is a constitutive element of the offence), while, **in the case of offences due to negligence, the simple behaviour of the offender is sufficient** (violation or omission of standards or procedures, etc.).

In the presence of an **offence that has been completed and all constitutive elements** and **conditions for attribution of which have been ascertained, the Entity may therefore be incurring the administrative liability** envisaged by Decree 231.

1.4. The prevention measures envisaged by Decree 231

Decree 231 lays down **the actions and measures the adoption and implementation of which make it possible for the Entity, in case it is indicted, to defend itself, by providing proof of a concrete and substantial policy that prevents the commission of crimes during its activities.** In particular:

- **If the predicate Offence is committed by a member of Top Management, the Entity is not liable if it can prove** (Decree 231 - art. 6):
  - **(a)** *that it has, before the commission of the offence, adopted and effectively implemented* (this is a responsibility of the governing body) *organisation and management Models that can prevent offences of the same type as that committed;*
  - **(b)** *that it has entrusted the tasks of supervising and updating the Models to a Body which has been granted autonomous initiative and control powers;*
  - **(c)** *that the persons committed the offence by fraudulently circumventing such Models;*
  - **(d)** *that the Supervisory Body did not fail in or omit its supervision duties.*
- **Conversely, if** the predicate Offence **is attributable to a subordinate**, it will be up to the **prosecutor to prove** that **the commission of the offence was made possible by failure to comply with the obligations of management or supervision, a circumstance that *is presumed* not to exist if, before the commission of the offence, the Entity has adopted and effectively implemented an organisation, management, and control Model that can prevent offences of the same type as that committed** (Decree 231 - art. 7).

The distinction between Top Management and Subordinates does not qualify administrative liability differently depending on whether the predicate Offence was committed by one or the other, nor does it differentiate the preparation and implementation of the Model (which is the same for all), but **concerns the dynamics of the burden of proof in case blame is apportioned to the Entity** (it lies with the Entity if the predicate Offence was committed by members of Top Management, it lies with the prosecutor if the predicate Offence was committed by Subordinates).

The 231 Model must envisage, in relation to the nature and the size of the organisation and to the type of activity carried out, measures that can guarantee the performance of the activities in compliance with the law and that can uncover and promptly eliminate risky situations. The effective implementation of the Model requires: **(a) periodic checks** and **updates** if significant violations of the provisions have been uncovered or if there are changes to the Entity's organisation or activity; **(b)** a **disciplinary system** that can punish non-compliance.

1.5. The territorial area of application of corporate criminal liability

Art. 4 of Decree 231 governs offences committed abroad, providing that "*In those cases and under the conditions set forth by articles 7, 8, 9, and 10 of the (It.) Penal Code,* ***Entities having their main place of business within the state are also liable in respect of offences committed abroad*** (by members of their Top Management or their Subordinates)*,* ***provided that prosecution is not brought by the State in the place where the act is committed.***"

All Entities established abroad that have their administrative headquarters or main place of business in Italy are subject to Italian law and, therefore, to Decree 231.

Lastly, please note that **the scope of the predicate Offences includes** (It. Law no. 146 of 2006 - art. 10) **certain cases of a transnational nature** (such as, criminal association also of a Mafia type, association aiming to traffic narcotics, trafficking of immigrants). The following conditions must be met so that the offence may be deemed to be transnational:

(a) an organised crime group must be involved in the commission of the offence;

(b) the unlawful act must be punished with a sanction no shorter than a maximum of 4 years in prison;

(c) the unlawful act must be committed, alternatively: (*) in more than one State; (*) in one State but have substantial effects in another State; (*) in a single State, although a substantial part of its preparation or planning or direction and control take place in another State; (*) in a single State, but with the involvement of an organised crime group operating in more than one State.

1.6. Administrative liability in *groups* of companies

The subjective scope of application of Decree 231 does not consider *groups of companies* as an autonomous focus of apportioning administrative liability that only refers to the Entities established in the forms envisaged by art. 1 (entities with legal status, and companies and associations also without legal status); this formulation **constitutes a prerequisite that excludes the direct liability of *groups* pursuant to Decree 231.**

Furthermore, the notion of *group* is absent from the general legal system which, with the reform of company law (It. Legislative Decree of 17 January 2003, no. 6), **focused on and regulated substantial situations, such as control and connection** (art. 2359 CC) and **direction and coordination** (art. 2497 CC). **The term *group*, therefore, generally defines this set of situations, which includes both horizontal integration phenomena and cases of single management by a parent company. Therefore, the *group*, as such, lacks autonomous legal capacity and is used to define a set of Entities, interlinked in various ways, but where each one has an individual and distinct legal personality, also for the purposes of application of Decree 231.**

Consequently, in the context of such structures, it may be complicated to put in place prevention systems that can effectively protect each Entity with regard to *events that are transversal to the group*. The issue gives rise to important theoretical and practical uncertainties, deriving from the dynamics with which the Entities can serve their interest or procure advantages and be consequently indicted, when, under specific circumstances, the individual criminal behaviour can result in administrative liability being incurred by several Entities that belong to the same *group*. It is, therefore, useful to examine in depth **the conditions under which an offence committed in the context of a *group* company may also**

activate the administrative liability of other companies, and of the parent company in particular, and also **form hypotheses** (based on the lines taken by the jurisprudence and legal theory) **regarding the measures that can be adopted by Entities organised in the form of a *group* so that they do not unjustly incur liability for offences committed by the officers of another *sister* company.**

In general, **the administrative liability of companies belonging to the same *group* may not be ascribed based on the mere existence of a control or connection situation, or one of direction and coordination**. **The criteria for ascribing administrative liability laid down by Decree 231 must, in fact, be concretely ascertained with regard to each individual company**, as there cannot be a common interest or advantage that is directly attributable to the *group*, nor may it be deemed that there exists **a guaranteed possibility for the top management of the parent company to prevent the commission of offences within the organisational scope of the subsidiaries**.

These critical issues are of particular importance if the ***group's* operations are of a transnational nature**, a situation that is afflicted by specific risks of exposure to unlawful acts that may be associated with economic crime. **In such contexts, the Risk Analysis must particularly focus** on the predicate Offences that may be related to the transnational nature of the Entity's activity.

Jurisprudence has had to deal with certain situations in which, in the presence of a predicate Offence, the involvement of more than one *group* company may be found to be more probable:

- obviously in the hypothesis where it has been ascertained that **the predicate Offence was committed in collusion** among natural persons (Top Management or Subordinates) employed by different *group* companies;
- in case it has been ascertained that the predicate Offence was committed in implementation of a **common criminal plan** that involved different *group* companies;
- where the predicate Offence is found to have been committed in the **immediate and direct interest or advantage of more than one *group* company;**
- in cases where the **subsidiary on which liability may be ascribed is found to be hetero-directed by the parent company**;
- in cases where **the members of top management of the various *group* companies are the same or overlap** (interlocking directorates).

To **prevent situations of undue involvement of companies belonging to the same *group*** in administrative liability for unlawful acts committed within a different *sister* company, **the approach to the preparation of the prevention system envisaged by Decree 231 must take into account certain criteria** (which, to the degree they are applicable, are also valid for transnational groups):

- **the company that exercises the direction or coordination (or the parent company) must assess the need or appropriateness of defining, in its 231 Model** (or in its procedures), **the means of establishing relationships with the *group* companies, at least for the more sensitive processes**;
- **each *group* company, as an individual recipient of Decree 231, must put in place its own organisation Model**, consistently with its specific circumstances; this may also happen based on the instructions and implementation rules laid down by the *parent company* depending on the *group's* organisational and operational setup, taking steps however to prevent this from resulting in a restriction of the subsidiaries' autonomy in adopting the Model;

- **each *group* company must appoint its own SB**, also ensuring that its composition is unique; in fact, the presence of SBs composed entirely by the same subjects or that carry out their activities in more than one *sister company* is not recommended in the context of a *group*;
- steps must be taken to **prevent the same subjects from occupying top management positions in more than one *group* company**; the accumulation of corporate offices may give credence to the hypothesis that the top management of more than one *group* company was involved in the commission of the predicate Offence;
- **steps must be taken to identify and assess the risks that are potentially connected to *infra-group* operations or to entrusting *group* companies with services or processes**; in such situations, steps must be taken to define ways of stipulating fair contracts and to prepare procedures regarding the performance of *infra-group* activities that must be documented and recorded transparently;
- in general, where appropriate or needed in relation to the specific *infra-group* activity, steps must be taken to set down **procedures and means of transmission of sensitive communications among the *group* companies involved in a specific business transaction;**
- it is certainly useful **to envisage forms of communication, reporting, or consultation among the SBs of the various *group* companies**, taking steps however not to interfere with the autonomy and independence of each one thereof.

1.7. Sanctions in case of corporate criminal liability

If administrative liability is ascertained, the Entity is exposed to **various types of monetary and prohibitory sanctions,** expressly laid down by Decree 231.

MONETARY SANCTIONS

Monetary sanctions are **applied in case the Entity's liability has been ascertained**; the Entity is liable autonomously and directly with its assets or with the shared fund (Decree - art. 27).

Such sanctions are **determined based on a quota mechanism** (Decree 231 - art. 10):

- for each predicate Offence, **Decree 231 indicates** the **minimum and maximum number of quotas (from 100 to 1000) applicable to each predicate Offence**;
- **the judge, having ascertained the Entity's liability, determines the value of the monetary sanction** by setting the number of quotas that applies to the specific case and the amount of each quota, that varies from 258.23 to 1,549.37 euros; the number of **quotas** must be **commensurate with the seriousness of the event, the degree of the Entity's liability, the activity carried out to remedy the consequences of the unlawful act and to prevent others**; the **amount of the individual quotas** is instead **set based on the economic and equity conditions of the Entity**, so as to guarantee the effectiveness of the sanction.

SANCTION OF CONFISCATION OF THE OFFENCE'S PROCEEDS OR PROFIT

The sentence that convicts the Entity is always accompanied by the confiscation of the offence's proceeds or profit, with the exception of the part that can be returned to the injured party. Without prejudice to the rights obtained by third parties in good faith. When it is not possible to enforce the confiscation on the assets that directly constitute the offence's proceeds or profit, such confiscation may be brought to bear on amounts of money, goods, or other assets of a value **equal** to the offence's proceeds

or profit.

As a **precautionary measure**, the court may impose the seizure of things which, as they constitute the offence's proceeds or profit or their monetary equivalent, are subject to confiscation.

PROHIBITORY SANCTIONS

In the presence of particularly grave conditions in the commission of the predicate Offence, the judge may impose on the Entity the prohibitory sanctions expressly laid down in Decree 231.

They apply if at least one of the following conditions is met:

- the Entity's profit from the offence was significant (**gravity of the damage**) and the offence was committed by members of Top Management or by Subordinates (in this case, the commission of the unlawful act must have been the result of or have been facilitated by serious organisational deficiencies);
- in case the unlawful acts are repeated (**hazardousness and propensity of the Entity to criminal activity**).

The prohibitory sanctions are as follows:

(a) **ban from conducting the business activity**: it only applies if the imposition of other prohibitory sanctions is found to be inadequate; it entails the suspension or withdrawal of authorisations, licences, or concessions required for the performance of the activity (in the presence of specific prerequisites, the judge may appoint a temporary receiver who continues the Entity's activity for a period equal to the duration of the prohibitory sanction - art. 15);

(b) **suspension or withdrawal of authorisations, licences, or concessions that were of material importance in the unlawful act**;

(c) **ban from stipulating contracts with the public administration**: it may also be limited to specific types of contract or to specific public agencies;

(d) **exclusion (or withdrawal) of incentives, loans, contributions, or grants**;

(e) **ban from advertising goods of services.**

The prohibitory sanctions **must refer to the specific activity sector in which the unlawful act was committed**; **they must be adjusted in compliance with the principles of appropriateness and proportionality,** and the sentence that imposes prohibitory sanctions "*must always indicate the activities or structures to which the sanction refers*", (Decree 231 - art. 69, paragraph 2).

The type and duration (from 3 months to 2 years) **of the prohibitory sanctions are set based on the same criteria envisaged for monetary sanctions (gravity of the unlawful act, and economic and equity conditions of the Entity)**.

Prohibitory sanctions may be imposed definitively (art. 16) in particularly serious cases, in case of repetition or habitual commission of the offence, in cases of significant profit (the Entity has already been convicted and a temporary ban from conducting the business activity has been imposed 3 times in the last 7 years; the Entity is habitually used for the only or main purpose of making it possible to commit or to facilitate the commission of crimes). Prohibitory sanctions may not be applied if the damage is minor or if the offender acted in their own overriding interest or in that of third parties and the Entity did not procure an advantage or procured a minimal advantage from said offence.

The application of prohibitory sanctions as a precautionary measure is allowed (Decree - articles 45 et

seq.) where there is overwhelming evidence of the Entity's liability and founded and specific factual elements that support belief of a tangible danger that offences of the same kind as the one being tried will be committed. The application of prohibitory sanctions as a precautionary measure depends on the following criteria:

- they may only be applied separately and for a maximum duration of one year;
- the judge who orders their application takes into account the specific suitability of each one to satisfy the need to adopt precautionary measures;
- each measure must be proportionate to the extent of the event and to the sanction that is deemed applicable;
- the Entity may object to the application of precautionary measures; if the conditions are met, the Entity may request their suspension, withdrawal, and replacement.

SANCTION OF PUBLICATION OF THE CONVICTION SENTENCE

Lastly, if they apply prohibitory sanctions, the judge may impose the publication of an extract of or of the entire conviction sentence in one or more newspaper, together with billposting in the municipality where the Entity has its headquarters. This sanction may have a grave impact on the Entity's image.

CASES OF MITIGATED PUNISHMENT.

Decree 231 envisages certain **behaviours (*remedying behaviours*) that make it possible to lower or mitigate the monetary or prohibitory sanction**:

- articles 12 and 13 paragraph 3, respectively, envisage cases of lower monetary sanctions and of non-application of prohibitory sanctions, where the Entity has had a marginal interest in the commission of the crime and a minimal or inexistent advantage, where the damage was minor, where the Entity put in place remedying behaviours and adopted the 231 Model;
- art. 17 envisages that, without prejudice to the application of monetary sanctions, prohibitory sanctions do not apply to the Entity, if, prior to commencement of proceedings before the court of first instance, the Entity adopted remedying behaviours (compensation of the damage, adoption of the Models, etc.);
- art. 26 envisages the reduction of the monetary and prohibitory sanctions in case of mere attempt to commit the predicate Offences;
- art. 49 sets forth that, where applied, the precautionary measures may be suspended if the Entity files a motion requesting permission to complete the procedures of art. 17;
- art. 65 sets forth that, before proceedings before the court of first instance are opened, the judge may decide to suspend the trial if the Entity files a motion requesting permission to take the actions of art. 17 and proves that it was unable to adopt them earlier;
- art. 78 envisages that the Entity, where it belatedly implements the remedying behaviours of art. 17, may, within 20 days from the date on which the extract from the judgement is served, request the mutation of the prohibitory sanction into a monetary sanction.

CHAPTER 2 - THE ORGANISATION, MANAGEMENT, AND CONTROL MODEL

2.1. General aspects

The Entity may defend itself from the imposition of administrative liability:

- **by proving its lack of connection to the unlawful act** (the natural person acted exclusively in their own interest or in that of third parties);
- and/or by **adopting and effectively implementing its own 231 Model and by entrusting the supervision of compliance therewith to the SB**.

Decree 231 does not provide a template for the OMM, nor does it indicate the methodological criteria in accordance with which it is to be drafted; **the entrepreneur's organisational autonomy, the varied nature of types of Entity, of the specific activities carried out, and of the possible means of management and organisation make it, in fact, impossible to usefully pinpoint the contents and structure of such document.** Furthermore, were the legislator to provide abstract templates of reference, which would a priori be recognised as being adequate, that would be **inconsistent with the criminal nature of administrative liability, as well as with the discretionary character of the adoption of prevention measures** and with the **necessary specificity and effectiveness** required therefrom. **The judgement regarding the suitability and the effective implementation of the Model is, therefore, subject to the judge's free assessment**; it is the judge who is responsible for ascertaining administrative liability in relation to the predicate Offence that was actually committed.

Decree 231 limits itself to indicating the purposes, the features, and the general criteria that must guide the preparation of the Model (Decree 231 - articles 6, paragraph 2; 7, paragraphs 3 and 4):

- it must be **able to prevent crimes of the same type as the one committed**;
- it must be **consistent with the extent of the powers delegated and the risk that offences will be committed, with the organisation's nature and size, with the type of activity carried out**;
- it must **identify the Entity's activities in the context of which the offences may be committed**;
- it must **envisage specific protocols aiming to plan training on and the implementation of the Entity's decisions in relation to the offences to be prevented, and envisage measures that can guarantee that the activity is carried out in compliance with the law, and to uncover and promptly eliminate risky situations**;
- it must **identify management methods of the financial resources** that can prevent offences from being committed;
- it must be **subject to supervision by the SB** and envisage **obligations with regard to its information**;
- it must **introduce a disciplinary system that can punish failure to comply with the OMM**;
- it must be **subject to periodic checks and possibly be amended when significant violations of the provisions are uncovered or when there are changes to the organisation or activity;**
- it must envisage **one or more channels that make it possible** for members of Top Management or for Subordinates to present, in order to protect the entity's integrity, **circumstantiated reports of unlawful behaviours**, pertinent pursuant to decree 231 and founded on accurate and consistent evidence, **or of violations of the Entity's Model** (Decree 231, art. 6, paragraphs 2-bis et seq.).

The set of requirements that the OMM must meet requires an **organic approach to risk management**,

which, through **functionally and logically correlated in-depth examination**, assumes tangible form in a **permanent and structured process**, founded on the **general recognition of the risks** to which the Entity is exposed, on the **verification of existing management and control tools,** and on **planning organisational measures that can ensure effective monitoring and minimisation of risks at a reasonably acceptable level**. This approach must **take into account the specific context of the Entity, both internal** (organisational structure, territorial structure, size, etc.) **and external** (economic sector, geographical area, environmental context, etc.), **identifying the Entity's activities that are theoretically exposed to the risk of incurring administrative liability in reaction to specific predicate Offences. The Model**, therefore, is not a bureaucratic obligation, but **must closely follow the Entity's characteristics and evolve and adapt to its changes**, so as to prevent the commission of the predicate Offences, **guiding the behaviour of the persons who operate in the context of the Entity's business activity in compliance with the principles of transparency, fairness, and legality.**

The **preparation of the 231 Model may therefore be summarised in the following actions**:

- **identification of the risks**, which entails: the **examination of the corporate and entrepreneurial context**, in order to, as a first step, define whether the Entity is generally exposed to criminal risks and which ones; the **thorough analysis of the risks identified**, taking into account their actual correlation to the corporate processes and the behaviours that could theoretically result in the Entity being found liable (risk Mapping and Assessment);
- **preparation of the Protocols**: it consists in preparing the conduct rules and the operational procedures that can prevent the commission of the predicate Offences identified, also through supplementation and/or adaptation of the management and control instruments being used by the Entity;
- **preparation of the other elements laid down in Decree 231** (SB, disciplinary system; reporting channel).

The adequacy and effectiveness of the prevention system may be enhanced by the presence of preventive control and management instruments that can be added to the 231 Model, already used by the Entity, or prepared at the same time as the Model in question, such as:

- the **Code of Ethics** and/or the **rules of conduct** that the Entity requires from its officers;
- the **organisational system**;
- **the management systems, the procedures, and the working practices**;
- the **Proxy** instruments that describe the **authorisation and signature powers**;
- the **control and monitoring systems** that make it possible to promptly detect violations, gaps, or critical issues.

With a view to integrating such control instruments in the 231 Model, steps must be taken to formalise them and to ensure that they are consistent with the risks to which the Entity is exposed.

In revising the 231 Model of PANINI SPA, **the methodology indicated in the Confindustria Guidelines was thus used and described**:

(a) the identification of potential risks is developed in Folder 2 and structured as follows:

- first came the examination and representation of **the Company's general characteristics and conditions** with reference to the extension of delegated powers, to the organisation's nature and size, to the type of activity carried out, **taking into account any and all aspects that served to**

define the overall context in which PANINI SPA operates, and to **briefly assess the theoretical exposure to criminal risk**;

- based on the circumstances thus highlighted, **the risk of the predicate Offences being committed was identified through the Risk Analysis process**, which, in the specific risk Mapping and Assessment stages, made it possible to isolate the organisational areas and the activities that may be theoretically associated with the unlawful acts envisaged by Decree 231;

(b) **the planning of the prevention system was developed in the subsequent Folders of the 231 Model, and in particular in Folder 4 which contains the prevention Protocols prepared and dedicated to each one of the predicate Offences that the Risk Analysis made it possible to associate with the management and operational context of the Company;**

(c) **the other elements that constitute the OMM** (Code of Ethics; SB regulation, disciplinary system; regulation of reports) **were prepared by evaluating the specific conditions of the Entity**, adapting and integrating the procedures that are already in use and preparing new ones.

2.2. The Risk Analysis and the preparation of the Prevention Protocols

(A) POWERS OF INITIATIVE FOR THE PREPARATION OF THE 231 MODEL

Decree 231 (art. 6, paragraph 1, letter a) sets forth that, in case of indictment, *[...] the Entity shall not be held liable if it proves that the **governing body**, before the commission of the offence, **adopted and effectively implemented organisation and management Models** that can prevent offences of the same type as that committed.* This indication **makes it clear that the responsibility for the adoption and implementation of the Model lies with the Entity's management. In Entities established in the form of a company, the governing body usually coincides with the managing body and the preparation and implementation of the Model fall under its normal management responsibilities,** as an **expression** (as extensively mentioned in Chapter 1.1. above) of the **duty** that the (It.) Civil Code places on the entrepreneur who operates in the form of a company or association, ***to put in place an organisational, administrative and accounting setup that suits the nature and the size of the undertaking, [...]".***

Without prejudice to the functions of the SB, the **governing body** then plays a **central role in implementing and maintaining the Model's suitability**: it demands compliance therewith, punishing its violations, ensures the dissemination and awareness thereof inside the organisation, promotes its update, makes available the financial and professional resources that are required for its effective implementation.

(B) RISK ANALYSIS

The Risk Analysis is the process that aims to **identify the predicate Offences that can be theoretically associated with the Entity's activity** as its organisation and processes have been structured, and thus to **evaluate**, with reference to the associations found, **the degree and probability of the Entity's risk of incurring administrative liability. The effectiveness of the Risk Analysis process** (in all its stages) **depends** to a great degree **on the useful collaboration between the person tasked with preparing the Model and qualified officers of the Entity** who must **provide the necessary documents and information, collaborate in the necessary in-depth examination,** and **share its outcome**. This collaboration **is structured in certain steps**:

- **Examination of the Entity's general characteristics and conditions** that aims to provide a picture of the Entity's institutional and organisational context, the activities conducted, the working arrangements, and everything else that is pertinent for the purposes of analysing the risks and preparing the Protocols.
- **Mapping of the risks**, aiming to **identify and describe the potential correlations between the predicate Offences and the Entity's organisational areas or processes**;
- **Assessment of the risks**, the goal of which is to define the degree of the Entity's potential exposure to criminal risk with reference to each predicate Offence to which the Entity was found to be at risk from, as a result of the Mapping stage. In the context of this assessment, steps must be taken to **also take into account the most important judicial cases in which the Entity has been involved**, obviously due to behaviours attributed to Top Management or Subordinates and in relation to each predicate Offence considered.

(C) PREPARATION OF THE PREVENTION PROTOCOLS

Decree 231 sets forth (art. 6, paragraph 2, letter b) that the prevention Models must "*envisage specific protocols aiming to plan the formulation and implementation of the entity's decisions in relation to the offences to be prevented*". This translates into the **need for the organisational areas or corporate processes that were found to be potentially exposed to criminal risk as a result of the Risk Analysis to be monitored by prevention Protocols**, consisting of the **set of rules of conduct, organisation, management, and control systems, procedures, and working practices with which each organisational unit and each officer must comply and which must be used in the performance of specific activities**. Such instruments for the organisation, management, and control of activities may also be defined while the specific Protocols are being drafted, taking into account the various aspects highlighted by the Risk Analysis; that is to say (as most often happens) that **the Protocols can transpose and incorporate *rules and habits* that are already in use, supplementing them with specifically prepared measures and instructions**.

In this sense, it must be specified that **the organisation, management, and control systems, the procedures, and working practices** that the Entity has prepared and implements for the performance of specific activities or processes **may not**, either individually or collectively, **constitute in and of themselves the Protocols** envisaged by the Decree **or be a replacement for the 231 Model**; in fact, **they specifically act as support for improving the effectiveness in the performance of the activities or processes for which they have been drafted**, while **the objectives of the 231 Model are to prevent criminal risk and to protect therefrom.** It is however clear that **an organisational context that is culturally predisposed to the definition and description of its management and control instruments** (and to their certification) **can only facilitate a positive approach in the preparation of the 231 Model and of the related Protocols, also stimulating any interventions that can consolidate mutual consistency and flexibility, ensuring that the overall management system of the Entity pursues objectives of effectiveness and legality**. **When preparing the Protocols, steps must be taken** to take into account, in relation to the nature of the sensitive predicate Offences and to the specific characteristics of the organisational areas and corporate processes concerned, the content of **certain management and control criteria** (to which reference is made in the Confindustria Guidelines):

- **Every operation, transaction, and action must be: verifiable, documented, consistent, and appropriate.** All operations must be described with adequate supporting documentation which make it possible, at all times, to perform checks that attest the operation's characteristics, motivations, and implementation stages.
- **No one can manage an entire process independently.** In performing its operations, the Entity must guarantee the **separation of functions**; for this reason, the responsibility for authorising an operation must lie with a person other than the person responsible for accounting, executing, or checking it; no one must be granted unlimited powers; authorisation and signature powers must be consistent with the organisational responsibilities allocated and documented so that their control is guaranteed.
- **The powers and responsibilities allocated to the various subjects operating within the Entity's perimeter** (especially those holding Top Management posts) **must be clearly defined, consistently with the actual responsibilities and authorities, be proven by specific proxy or organisation instruments, and be known within the Entity.**
- **The checks must be documented.** The control system must envisage a reporting system (possibly by drafting minutes and reports) that can document the implementation and the outcomes of the checks, also with regard to supervision.

The Protocols and, more in general, the entire prevention system, may be considered *effective if they cannot be circumvented unless fraudulently* (Decree 231 - art. 6, paragraph 1, letter c), by circumventing the prevention measures, or, in offences due to negligence, by failure to comply therewith.

2.3. The Code of Ethics

Although Decree 231 does not include it in the constitutive elements of the OMM, **the Code of Ethics is frequently drafted and introduced by Entities in the criminal prevention system as a preventive control instrument, that can guide the conduct of the Entity's officers**. In any case, whether the Code of Ethics is drafted autonomously or it is conceived at the same time as the 231 Model is not very important; the adoption and implementation of the prevention measures indicated by Decree 231 may not be separated from the presence of this instrument that describes the principles and values which the Entity wishes to guide the performance of its activities.

The nature and the general function of the Code of Ethics is to communicate the Entity's principles and values of reference, prescribe or forbid behaviours, setting forth possible sanctions in case of non-compliance, promoting the Entity's image and social commitment. **The description of the principles and values of reference in a specific document drafted by the Entity constitutes, therefore, an important choice, especially if the Code of Ethics is adopted in support of the 231 Model and thus with the objective of guiding the concrete behaviours of the members of Top Management and of the Subordinates in the performance of the specific activities and in the application of the regular management and control instruments adopted by the Entity** (management systems, procedures, working practices, Job Descriptions, or organisational manuals). **These instruments are thus entrenched, also through the prevention Protocols, in the principles and values described in the Code of Ethics, compliance with which presupposes and comes true with the effective operation of the organisational structure.**

The Entity must, therefore, take steps to communicate and share the Code of Ethics with its Top Management and Subordinates, in a manner that requires ethically transparent and consistent conduct in the performance of the activities and in the application of management systems and procedures. Formalising ethical values may therefore promote communication that is tailor-made for the recipients and make the organisational instruments prepared for their implementation more effective, also in relation to the contents and the aims of the 231 Model. In fact, the effectiveness of a Code of Ethics depends to a large degree on the level of communication and dissemination that it obtains within the institutional context of the Entity and by the concrete willingness of directors and managers to comply therewith, especially in the context of complex organisations.

The PANINI SPA Code of Ethics (described in Folder 3) has been prepared taking into account these thoughts; although it is valid and functions autonomously, especially with regard to Third Parties, it has been included in the framework of the 231 Model in order to guide and support the application of the Protocols. The Code of Ethics was drafted by defining principles and values, prescriptions and prohibitions that refer to a set of behaviours that goes beyond those that are closely related to the predicate Offences identified as at-risk following the Risk Analysis, with the aim of setting down their function as general reference in the performance of the Company's activities.

2.4. The Supervisory Body

Art. 6 of decree 231 envisages that the Entity may be cleared of administrative liability if the governing body, as well as adopting the OMM, has ***entrusted the task of supervising its operation and compliance therewith and the responsibility for its update to a body of the entity that has been granted autonomous initiative and control powers***. The conferral of these tasks to the SB and their correct performance constitute **indispensable conditions for the Entity to be cleared of liability**.

Usually, the **SB IS ESTABLISHED** **at the same time as the approval of the 231 Model by the governing body, which may also set forth the general establishment and operation rules** (composition, requirements, term, remuneration, information rights and duties, etc.), refraining however from imposing restrictions or limitations that may compromise or condition the SB's autonomy and independence. The SB may, at its discretion, regulate the methods by which it performs its activities (timeframe of checks, supervision criteria and procedures, etc.).

The law does not provide precise instructions as to the **COMPOSITION OF THE SB**, which is why the Entity, consistently with its characteristics and conditions, may opt for a **single-member or a collective body**. In case the SB only has one member, it is preferable that the member of the SB be external to the Entity's organisation; while, in the case of a collective body, the SB may be composed also of internal subjects, on the condition that they meet suitable requirements and that the non-SB related activities performed in favour of the Entity do not compromise the autonomy and independence of the SB, or the possibility of participating continuously and effectively in SB-related activities.

THE RESPONSIBILITIES AND AUTHORITIES OF THE SB are essentially as follows (Decree 231 - articles 6 and 7):

- examination of the adequacy of the Model to prevent the predicate Offences considered;
- supervision of the effective implementation of the Model;

- checks to ensure that the Model's adequacy is preserved over time;
- action to update the Model as needed, by identifying the needs to supplement it and formulating the related proposals;
- identifying and reporting to the governing body violations of the Model that may require the application of disciplinary sanctions or entail the proposal of additions or changes.

The effective performance of the SB's functions imposes specific REQUIREMENTS (that refer to the SB as a whole and not to the individual members, except in the case of strictly personal requirements):

- **Honour and reliability.** The members of the SB must meet honour and reliability requirements: absence of criminal convictions for specific offences; absence of conflicts of interest or of competition situations; recognised reliability and authority; [...]; on this matter, reference may be made to what is envisaged for directors (CC - art. 2382) and statutory auditors (CC – art. 2399).
- **Autonomy and independence.** The governing body must ensure that the SB can deliberate autonomously and independently from interference or conditioning by departments or other bodies or offices of the Entity. This condition is met by the insertion of the SB in a high organisational position, possibly in a direct hierarchical relation with the top body of the Entity (the *governing body*). The Entity must also place at the disposal of the SB economic resources (its own budget) so that it may autonomously prepare the necessary inspections and in-depth examinations, also using, in full autonomy, external consultants.
- **Professionalism.** The SB, as a whole, must possess adequate skills and knowledge in relation to the Entity's nature, complexity, and characteristics, in the technical/legal, management, and organisational matters that are required for the performance of its functions. Given the variety of the topics to which the predicate Offences pertain, the SB may have recourse, autonomously, to consultants to supplement its skills, especially when dealing with activities that require particular specialisation, using the budget placed at its disposal by the Entity.
- **Continuity of action.** The supervisory activities may not be carried out only occasionally and the SB must plan the monitoring of compliance with the OMM so as to make effective and constant supervision possible. For this purpose, steps must be taken to prevent the SB from being involved in Entity activities that are not related to its functions or that may distract it from its duties. Moreover, continuity of action is essential for the effectiveness of the prevention system, as it makes it possible to prove, in case the Entity is indicted, that the commission of the predicate Offence was not facilitated by gaps in the supervisory activity; such activity must, therefore, be documented by the activities of the SB being formally planned and scheduled. Such activities must then be recorded in reports and archived so as to make it possible to obtain effective feedback on the related results.

An essential condition for the performance of supervisory activities is ensuring adequate INFORMATION FLOWS to the SB so that it may have all pertinent information with regard to the Entity's management. The SB must be guaranteed free access to all Entity departments so that it may obtain all information or data deemed necessary for the performance of its tasks. In this sense, art. 6, paragraph 2, letter (d) of Decree 231 sets forth that the Model must *envisage information obligations towards the body that has been tasked with supervising the operation of and compliance with the models*. Steps must therefore be taken to ensure that the SB has free access to the information or documents that are essential for the

performance of its tasks, also specifying the means by which the corporate departments and officers communicate information and documents and the nature of such communication. The **flows towards the SB** should, in general, guarantee:

- **periodic transmission of routine information or documents** pertaining to the normal operation of the Entity: financial statements; internal management or control activity reports; reports from other bodies or offices tasked with control or certification functions (statutory auditors, auditors, certifying bodies, etc.);
- **prompt transmission of information or documents and updates with regard to activities, initiatives, or business deals that have particular or atypical characteristics** in terms of their type, amount, means of performance, nature of the counterparties;
- **prompt reporting and updates with regard to issues** that have had or may have repercussions on the operation of the Entity (failure to comply with management systems, procedures, or working practices, critical issues in the relationships with suppliers or customers or third parties in general, or the application of disciplinary sanctions to employees, etc.);
- **prompt transmission of decrees or reports drafted by Authorities** competent to supervise specific processes (safety, environment, labour, etc.), also on the occasion of inspections, checks, and controls concerning the Entity, and updates with regard to their progress;
- prompt communication of information concerning facts or circumstances that may **expose the Entity to the risk of being indicted with administrative liability** and updates with regard to their evolution;
- **prompt communication of notifications, decrees, or acts issued by authorities, bodies, or agencies exercising judicial functions** against the Entity or its officers, with specific reference to criminal proceedings pertaining to predicate Offences and updates with regard to their progress;
- **prompt communication with regard to changes in the general conditions of the Entity** (corporate transactions; organisational revisions; adoption of management systems or procedures, etc.).

Lastly, steps must be taken so that the 231 Model envisages **flows from the SB towards the other bodies and offices of the Entity** with regard to the performance of the supervisory activities (periodic reports), as well as, in more complex cases, a duty of cooperation among them.

2.5. The system of sanctions

Moreover, the **effective implementation of the 231 Model requires** setting up ***a "disciplinary system that can penalise non-compliance with the measures indicated in the Model".*** The disciplinary or sanctions system [its definition as a *system of sanctions*, instead of *disciplinary*, is meant to cover the variety of punishment instruments that are also intended for persons not subject to the hierarchical powers of the employer] completes the 231 Model and renders it effective as an **aid internal to the Entity**, and **does not depend on the occurrence of the unlawful act and on the possible indictment of the Entity.**
The application of a sanction against Entity officers, especially if such sanction entails their dismissal, without waiting for the court's sentence, entails **rigorous ascertainment of the facts**, without prejudice to the possibility of having recourse to precautionary suspension from employment in more serious cases. For this reason, the 231 Model must envisage **clear and consistent sanctions and a procedure for their application** which, as well as **punishment for violations of the Model, are also the expression of a desire to dissuade and respect the rights of the persons involved**:

- steps must be taken so that the Model envisages **a variety of detailed and specific sanctions, which are progressive and proportional** to the severity of the violations, that it envisages injunctive measures for less severe breaches all the way to measures pertaining to the termination of the contractual relationship between the natural person and the Entity in the case of more serious violations;
- furthermore, it is necessary to ensure the right of the person concerned **to be heard**, defining a **procedure for ascertaining the alleged violation that makes it possible for the alleged offender to produce justifications in defence of their behaviour**;
- it must be clear **which corporate departments are mandated to evaluate and impose the disciplinary measures** for violations of the Code of Ethics and/or the 231 Model; the **role of the SB** in implementing the procedure for ascertaining the violation and for applying the sanction must also be clear;
- steps must be taken so that the Entity guarantees that the disciplinary system is **adequately publicised and communicated** to the recipients of the sanctions (at least where Subordinates are concerned).

(A) DISCIPLINARY MEASURES AGAINST EMPLOYEES. The application of a sanction against employees of the Entity entails a **rigorous ascertainment of the facts**; for this purpose, the 231 Model must envisage a **clear and consistent procedure that respects the rights of the persons involved**. **The disciplinary system must therefore envisage, for both Top Management and Subordinates, the procedures for detecting and reporting violations of the Model, as well as the investigation, the ways in which the alleged offender can be heard for the application of sanctions by the governing body**. **The role to be allocated to the SB in detecting and reporting non-compliance, in checking the procedures that have been disregarded, and in conducting the preliminary investigation for ascertaining liability** is of fundamental importance.
In case of violations by employees of the Entity, however, it is necessary to **coordinate the provisions of the system of sanctions with the principles of the legislation, jurisprudence, and with the contractual principles that apply to the disciplinary powers of the employer** (Workers' Statute - art. 7) **that confirm the principle of correlation between violations and sanctions, and also take into account the content of the applicable Collective Bargaining Agreements which, in general, already contain a description of the appropriate disciplinary measures that may be transposed in the Model** with any adaptations needed.

(B) SANCTIONS AGAINST MEMBERS OF TOP MANAGEMENT. With regard to members of Top Management, a distinction must be made between posts which are the recipients of **representation or administration proxies** (institutional offices, directors, CEOs, general agents) and **posts whose occupants are the recipients of function proxies** pertaining to **the direction of the Entity or of one of its organisational units with financial and functional autonomy or the management and control thereof.** Given that such posts often coincide and that the role of the member of Top Management is not a simple synonym for executive, but depends on the specific functions exercised and the degree of autonomy recognised, the **system of sanctions must envisage various punitive measures:**

- **What has been mentioned under point (A) is valid** with regard to **members of Top Management who carry out managerial functions** (administration, management, and control of the Entity or of one of its organisational units with financial and functional autonomy), **if employed by the Entity**; in this case, it would be useful to refer to **the regulations on labour law that qualify the disciplinary powers of the employer**, starting with art. 7 of the Workers' Statute; however, **with regard to executive posts**, taking into account their trust-based nature that characterises the relationship with the

Company, collective bargaining agreements do not envisage a specific disciplinary system. **In general, only sanctions that entail dismissal are applied**. **This circumstance makes it difficult to identify the suitable means for punishing executives for *minor* violations of the OMM, which it would be however appropriate to punish, given the context of Decree 231 which focuses on prevention. Steps must therefore be taken to reconstruct, in the context of the Model's system of sanctions, the appropriate punishment measures that are consistent with executive posts.**

With regard to **executives who are not employed by the Entity**, the sanction-related regulations should be included in the respective mandates.

- When dealing with persons **who represent or administer the Entity, the system of sanctions must refer to the typical measures of company law** (liability proceedings, revocation of the mandate), possibly supplemented with other measures, although, in the cases of such posts, as is the case of executives and especially for minor breaches, it is without a doubt difficult to establish an appropriate system of sanctions.

(C) SANCTIONS AGAINST THIRD PARTIES. With regard to sanctions that may be applied to Third Parties (Customers, Suppliers, Partners) with whom the Entity entertains contractual or other relationships, given that **they are outside of the Entity's organisational and management perimeter, it is not possible to envisage exact sanctions for the violation of the Entity's Model, with which such third parties are not in general obliged to comply**. In fact, considering that **the 231 Model applies exclusively to the Entity and has been drafted based on its specific organisation**, it is absolutely **unreasonable and incompatible with the managerial autonomy of third parties to impose compliance with an instrument that refers to an organisational setup, to management systems, to procedures, and working practices that have been planned and are being implemented in a different business context.**

It is, instead, **possible and desirable to include, in the rules that govern the specific relationships, the obligation to comply with the applicable regulatory framework, with explicit reference to the predicate Offences envisaged by Decree 231, and also to demand that the third party read and comply with the Entity's Code of Ethics**, as well as **to subject, in cases where this is found to be necessary or possible, the performance of the relationship to compliance with specific procedures or Protocols of the Entity** (thus extracted from the 231 Model).

In such case, **failure to comply with such obligations, consistently with the nature of the relationship, may be punished with specific contractual clauses** (penalties, suspension of payments, temporary interruption or termination of the relationship, forfeit of any warranties), **so as to demand compliance with specific behaviours and punish any violations**.

2.6. Communication and training

The implementation of the 231 Model presupposes the dissemination at company level of awareness of the regulatory framework, of the specific behaviours indicated in the Protocols, and of the sanctions envisaged by the system of sanctions. To this end, the Entity must take steps to plan and carry out, in agreement with the SB, adequate communication and training actions on the content of the OMM for the recipients.

The communication must deal with the adoption or revision of the 231 Model as a whole (or of various elements thereof) and must be: widespread, authoritative, clear, and detailed.

Moreover, the Entity must plan and carry out **training programmes that are adapted to the needs of the corporate populations concerned**: the employees as a whole, those who operate in specific at-risk areas/activities, the members of the corporate bodies, etc. Steps must be taken to **envisage the content of the training courses, their periodicity, the mandatory nature of participation in the courses, the**

checks as to the frequency and quality of the programmes' content, the systematic update of the contents of the training events. The **training activity must be promoted and supervised by the SB**, with the support of the competent company departments or external consultants.

2.7. Reporting unlawful conduct or violations of the Model (whistleblowing).

Art. 2 of (It.) Law no. 179 of 2017 (Provisions for the protection of the authors of reports of offences or irregularities of which they became aware in the context of a public or private employment relationship) supplemented art. 6 of Decree 231, introducing **an additional requirement that the Model must meet;** in fact, paragraph 2bis sets forth that the OMMs must envisage:

(a) **one or more channels that make it possible for members of Top Management and Subordinates to present, in order to protect the Entity's integrity, circumstantiated reports of unlawful conduct, pertinent pursuant to this decree** and **founded on accurate and consistent evidence**, or of **violations of the Entity's organisation and management model**, of which they became aware by virtue of the functions carried out; **such channels maintain the identity of the person making the report confidential during activities for the management of the report**;

(b) **at least one alternative reporting channel that can guarantee, by IT means, that the identity of the person making the report will remain confidential**;

(c) the **prohibition of acts of reprisal or discrimination**, direct or indirect, **against the person making the report** for reasons related, directly or indirectly, to the report;

(d) **sanctions** (also in the context of the disciplinary system) against anyone who violates the rights of the person making the report, as well as against anyone who, with intent or gross negligence, makes reports that are found to be unfounded.

Furthermore, art. 6 sets forth the following on the matter:

"***2-ter.*** *The adoption of discriminatory measures against the persons who make the reports [...] may be reported to the National Labour Inspectorate, for the measures under its purview, not only by the person making the report but also by the trade union indicated thereby.*

2-quater. *The retaliatory or discriminatory dismissal of the person making the report shall be null and void. Change of tasks pursuant to article 2103 of the (It.) Civil Code, as well as all other retaliatory or discriminatory measures adopted against the person making the report, shall also be null and void. It shall be the duty of the employer, in case of disputes related to the imposition of disciplinary sanctions or to demotions, dismissals, transfers, or subjection of the person making the report to another organisational measure with negative effects, be they direct or indirect, on the working conditions subsequently to the production of the report, to prove that such measures are founded on reasons that are not related to the report in question.*"

The rule (which entered in force on 29 December 2017) intends to **promote, in the context of private Entities** (a similar and more organic rule is already envisaged for public Agencies in relation to corruption offences), **the uncovering of unlawful behaviour or conduct that goes against the 231 Model**.

With reference to the CONTENT OF THE REPORTS, paragraph 2 bis of art. 6 sets forth that the subject of these reports must be **unlawful behaviours, pertinent pursuant to Decree 231, or violations of the Entity's organisation and management Model**, of which the persons making the report became aware by virtue of the functions exercised. The scope of the reports is thus restricted to the scope of application of Decree 231 and concerns behaviours pertaining to the predicate Offences or violations of the Model.

The law envisages that the reports be circulated on ONE OR MORE CHANNELS, set in place by the Entity, which guarantee that the identity of the person making the report will remain confidential, to this end envisaging at least ONE ALTERNATIVE REPORTING CHANNEL BY IT MEANS.

With regard to the subjects who may (or must) report the unlawful behaviours and the violations of the Model (WHISTLEBLOWERS), the law expressly indicates **members of Top Management and Subordinates**.

With regard to the **departments or offices** that are RECIPIENTS OF THE REPORTS, **the law does not provide instructions** and leaves their organisation to the Entity's discretion. The most effective organisational option must be identified taking into account the organisation's nature and size, the type of activity carried out, the extent of the delegated powers, and the risk that offences will be committed; lastly, by taking into consideration the Entity's specific characteristics. For example, the recipients may be:

- the Supervisory Body or another specifically identified subject, committee, structure;
- the head of the compliance department;
- a committee represented by subjects belonging to various departments (e.g., legal, internal audit, compliance, HR);
- an external body or subject of proven professionalism, that handles the management of the first stage, the receipt of the reports, in coordination with the Entity.

Except in specific circumstances that dictate a different choice, **it is deemed that the SB may be the natural recipient of such reports.**