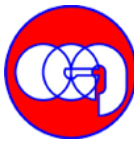


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## **A Synopsis about Legislative Decree n. 231 of 2001**



## **Preliminary Remark**

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## **General outlook**

The implementation of the Italian Legislative Decree n. 231 of 2001 (Corporate Liability in criminal trials) is required to large and medium sized enterprises for two main reasons: the fact that courts are increasingly enforcing the decree (mainly because such crimes as offences to work safety have been included in the corpus); the vicarious liability of administrators in case of "*mala gestio*", that is poor management. Moreover, implementing the decree becomes essential in the case of international corporations whose *compliance programme* is applicable regardless of the country.

## **The administrative liability of Corporations and Institutions in case of offences committed in their interest or to their benefit**

In execution of the delegation to the Government under article 11 of the Law n. 300 dated September 29, 2000 and of international treaties, the Italian Legislative Decree n. 231 dated June 8, 2001 was issued to govern the "*Administrative liability of corporations, as well as of companies and associations, whether incorporated or not*", arising from the commitment of certain offences in the interest or to the benefit of the organization concerned by an individual who works in the organization in an apical position or who is managed or supervised by an individual in an apical position.

Based on the constitutional principle whereby criminal liability can be ascribed to a natural person only, the new standards introduce the notion of non-criminal liability (hence, the definition of administrative liability, but in criminal trials) of corporations and organizations who make recourse to criminal actions as a tool to impose their position in the market (interests or benefits).

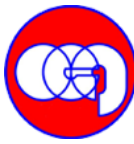
This is an independent liability ascribed to the corporation, which adds to the criminal liability of the individual who committed the offence, and it allows hitting directly a corporation or an organization who have had some interest or have gained some benefit from an individual working with them in an apical position or who is managed or supervised by an individual in an apical position.

## **The predicate offences**

Based on the rule of law contained in article 2 of the above-mentioned Decree, an organization cannot be held liable for a given offence if their administrative liability for that offence and its corresponding sanctions are not expressly contemplated in a law entered into force before the offence was committed.

This rule of law implies that an organization's liability is not connected to the mere commitment of an offence contemplated as such by the criminal law, but it applies only to a list of offences (defined predicate offences) that were introduced by the Legislative Decree n. 231 dated June 8, 2001. The list has been subsequently extended with the addition of further offences and is being regularly updated and amended, either following the indications of the European Union or to meet domestic needs.

The predicate offences may be subdivided into groups, as in the list offered below (see articles 24 and following of the Legislative Decree n. 231 dated June 8, 2001). This classification proved essential to help connect the legal approach to a practical corporate implementation. In fact, a classification by groups helps identify the organization's (and the concerned individuals') processes and actions that may be affected and therefore define the procedures and controls required to manage them. Subsequently, a targeted implementation of the procedures will help gain a specific control over each offence.



The Groups of Predicate Offences are as follows:

1. Offences committed in the relationships with the public administration (corruption, embezzlement, bribery)
2. Corporate offences and market abuses
3. Offences committed for the purpose of committing terrorism or subverting the democratic order
4. Offences against the individuals
5. Offences related to work safety
6. Offences pertaining to handling stolen goods, money laundering and using money, assets or utilities of unlawful origin
7. IT offences
8. Offences pertaining to organised crime
9. Offences pertaining to crimes against the industry and trade
10. Offences pertaining to the breach of copyright
11. Environmental
12. Workers

### **Conditions for exclusion of liability**

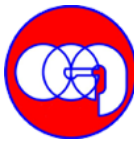
Article 6, paragraph 1, of the Legislative Decree n. 231, dated June 8, 2001 provides that an organization may not be held liable if they can prove that:

- a) the board of directors has adopted and successfully implemented, before the offence was committed, the *models* of organization and management adapted to prevent the type of offence committed;
- b) the task of watching that the models are successfully implemented and observed as well as of updating them is entrusted to an internal body provided with independent powers of initiative and control;
- c) the offender committed the offence by fraudulently evading the models of organization and management;
- d) there was no failure of vigilance or poor vigilance by the body mentioned above under letter b).

The model of organization and management required for an organization to be excluded from liability must meet a number of requirements, which may be described as follows:

- a) identifying the activities where an offence may be committed (**risk analysis and sensitive activities**);
- b) preparing special protocols (**procedures**) aimed at governing the corporate decision-making and decision-enforcing process with respect to the offences to be prevented;
- c) identifying modes of management of the financial resources that help prevent offences from being committed (**basic controls included in the procedures**);
- d) making it compulsory to inform the body entrusted with the task of watching that the model of organization is successfully implemented and observed (**rules and regulations of the Watch Structure and presentation of financial statement**);
- e) introducing a disciplinary system to sanction any failure to comply with the measures indicated in the model of organization (**penalty system**).

The Documents of our organization that will bring the provisions of the law into effect in the “models” required above are between parentheses and in bold text.



## **The Watch Structure**

The Law assigns the Watch Structure, a corporation's internal body, the important and essential task of promoting the implementation of the model, by monitoring corporate conduct, collecting information about corporate activities and related risks for the purposes of the Legislative Decree n. 231 of 2001. Moreover, the Watch Structure is entrusted the task of spreading awareness and information about the principles contained in the Code of ethics and of checking that the model actually works.

The correct and successful performance of the tasks of the Watch Structure makes an inevitable condition for a corporation to be excluded from liability. This implies that the Watch Structure must necessarily be characterized by autonomy, independence, professionalism and continuity of action. The Board of Directors appoints the Watch Structure in compliance with the regulations governing the operation of the body. The document is submitted to the approval of the Watch Structure and, if required, modified according to the needs. These changes are regularly recorded in the minutes of the meetings of the Board of Directors.

To ensure an efficient management of this body, the structure will be composed by one member a lawyer specialized in compliance program, supported by the personnel of the Hotel, in particular by people involved in the following activities: financial, H&S and privacy. The Watch Structure is assigned an annual budget for the performance of its tasks.

The Watch Structure keeps record of the activities performed in special minutes and any concerned party can resort to a specially provided procedure to activate the Watch Structure.

## **Disciplinary System**

Preparing an adequate disciplinary system, capable of sanctioning the violation of the principles of the Code and procedures fixed, is an essential and inescapable condition to guarantee an effective and efficient implementation of the models of crime prevention.

The implementation of the disciplinary system and related sanctions is independent from the progress and result of any possible criminal proceedings, as the behavioural standards imposed by the Code of conduct are adopted by the corporation in full autonomy, regardless of whether conduct is illegal or not. In case the Judicial authority intervenes, then the Board of Directors, after hearing the opinion of the Watch Structure, will adopt a special procedure to manage the event.

The recipients of the disciplinary system, who are the same as the recipients of the Model and of the procedures, are bound to conform their conduct to the above mentioned standards.

Concerning the employees, in compliance with the procedures fixed in article 7 of the Law n. 300 dated May 30, 1970 (Workers' Statute) and in any other special standards that may be applicable, the disciplinary measures will be implemented by taking into account the sanctioning system of the relevant CCNL (Collective Labour Agreement) and of any possible existing corporate regulations and supplementary labour agreement (if applicable).

For the individuals who are bound to the corporation by contracts other than salaried employment, the applicable measures and sanctioning procedures must comply with the law in force and with the relevant terms of agreement. The details are included in the penalty system enclosed to the model.