LIU.JO S.p.a.

ORGANISATION, MANAGEMENT AND CONTROL MODEL as per Legislative Decree no. 231 dated 8th June 2001

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GENERAL SECTION

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1.1. Scope of responsibility provided for by Legislative Decree no. 231/2001

1.1.1. Introduction

Entities have long since become real players on the economic scene and this cannot come with its consequences, including from the perspective of criminal law and phenomenology. For this exact reason, limiting the criminal consequences exclusively to the criminal conduct carried out by natural persons often means that the real parties involved, the true beneficiaries of the crimes committed and in some cases, the actual contriver of the criminal conduct, go unpunished.

More specifically, it should also be added that there may be situations resulting in completely opposite and paradoxical effects First of all, it's not always easy to pinpoint exactly who has the responsibility within complex organisations, which means that criminal offences related to corporate criminality risk going unpunished. On the other hand, it may be the case that the party identified as responsible for the crime committed within a company may, to some extent, act as a "scapegoat", assuming responsibility which should actually be assumed by others.

Last but not least, we shouldn't overlook the fact that the crimes committed by entities may be at a far more serious level of offence compared to the crimes committed by individual parties; think of environmental catastrophes, whereby it's no coincidence that such catastrophes fall into the very category of crime which led to what are known as corporate crimes becoming recognised between the XIX and XX centuries.

In Italy, there has been constant opposition against the introduction of a form of criminal responsibility for collective entities from those who stand by the principal expressed in the Latin saying, which dates back to medieval times: "societas delinquere non potest", or in other words "a society cannot commit a crime", with an explicit reference in art. 27 of the Constitution, establishing the principle of personality in criminal responsibility.

In accordance with traditional “fiction theory”, a legal entity represents a mere legal fiction, an artificial construction, devoid of any independence from the parties which create it. The consequences therefrom are twofold: firstly, that legal entities cannot act with the intent or negligence that criminal responsibility requires and, secondly, that imposing the consequences from the conduct carried out by natural persons on legal entities would equate to introducing into our system a form of criminal responsibility for the actions of others, objective in nature and, therefore, standing in opposition to that stated in the Constitution.

In contrast to fiction theory, there is the theory of “being one and the same”, which states that entity bodies are not separate from the entity when they carry out their roles, rather, they bear the same identity. This means that the psychology of the entity is determined based on the psychology of their decision-making body, and that the entity answers for themselves.

Beyond the discussions surrounding the nature of the responsibility assumed by entities for a crime and the compatibility with that stated in the Constitution, however, towards the end of the 90s, Italy, too, assumed a series of international obligations, resulting in law 300/2000 being brought in, with which parliament tasked the government with introducing a form of responsibility for entities for crimes committed in the interests or to the benefit thereof. As such, exercising the power conferred to them and getting out of the rut the legal debate was stuck in, the government finally introduced a new form of responsibility for entities into the Italian system with legislative decree 231/2001, with this being halfway between criminal and administrative responsibility. This is first and foremost because it is a form of responsibility that depends upon a crime being committed and secondly because the ability to decide upon whether the entity has committed an offence lies with the criminal courts, and also because the preliminary investigations are carried out by the same public prosecutor that investigates the predicate offence and, finally, because the sanctions specified in Legislative Decree no. 231/2001 are so invasive and strict so as to be considered, for all intents and purposes, criminal sanctions in the true sense of the term.

1.1.2. Legislative Decree 231/2001

With Legislative Decree no. 231 dated 8th June 2001 (”The Decree”), which became effective on 4th July 2001, implementing art. 11 of enabling law no. 300 dated 29th September 2000, legislation was introduced, updating the Italian system in line with signed international conventions regarding

entities' responsibility for crimes. In particular, this fulfilled the obligations assumed by Italy when the following agreements were made:

- *The Convention of Brussels dated 26th July 1995* on the protection of financial interests in the European Community;
- *The Convention of Brussels dated 26th May 1997* on the fight against corruption;
- *The Convention of the OECD dated 17th December 1997* on the fight against corruption.

Responsibility arises in relation to certain offences (predicate offences) being committed by parties in the exercise (de facto or de jure) of administrative or managerial roles for, or in the representation of, the entity themselves or one of their organisational units with financial and functional independence, or by subordinate parties. The opposition, intrinsically linked to the principle of "*societas delinquere non potest*" (a society cannot commit a crime), has been suppressed, including within our system, with this Decree coming into force, introducing into the legal system a form of responsibility independent from that of a criminal and personal nature assumed by the natural person who actually committed the crime.

The Decree, containing the "*Discipline of the administrative responsibility of legal persons, companies and associations, including those without legal personalit*y", therefore provides for a wholly particular form of responsibility. Indeed, even though legislation expressly defines such responsibility as "administrative", it has some characteristics of criminal responsibility, as the public prosecutor is responsible for taking action against the entity and the criminal judge, in addition to the obvious criminal investigations, is also responsible for determining aspects of objectivity and subjectivity as defined by legislation, fundamental to entity responsibility, with the precautions and guarantees of criminal proceedings and, where applicable, with the rules established by the code of criminal procedure.

However, as explained in more detail below, an entity shall only assume responsibility if a crime is committed in their interests or to their benefit and, therefore, on any occasion where the crime is the product of "business planning". The foundation of this kind of responsibility lies in the presumption that the entity has, in some way, participated in the crime being committed, with a form of responsibility comparable to being "an accomplice in a crime" (as per the Italian Criminal

Code in art. 10 et seq.), and, in particular, to that of "moral complicity" (as per the Italian Criminal Code, referring to both instigation and determination), as well as in a kind of "organisational liability", which helped the crime be committed. As such, this is not an objective form of responsibility, as in other systems, automatically attributable to the entity any time a crime is committed in their interests or to their benefit, but, on the contrary, it is a form of responsibility based on a guilty verdict essentially related to the fact that a deficit has been found in the organisation of the entity themselves and this deficit had, in some way, facilitated, if not encouraged, the crime.

1.2. Target audience of the Decree

Art. 1 of the Decree specifies that the provisions therein shall be applicable to entities with a legal personality, as well as companies and associations without a legal personality. It shall not apply, however, to the State, local public entities (for regions, provinces, municipalities etc.), not-for-profit public entities and entities that perform tasks of constitutional relevance.

To avoid any doubt, the rules provided for by Legislative Decree 231/2001 do apply to Liu.Jo S.p.A. (hereinafter also referred to as "Liu Jo" or the "Company").

1.3. Predicate offences

The Decree does not stipulate any form of general responsibility for entities, existing any time a crime is committed in their interests or to their advantage, by parties connected thereto, but it limits this responsibility to certain offences. In fact, art. 2 of Legislative Decree 231/2001 stipulates that "*an entity may not be held responsible for an act that constitutes an offence if their administrative responsibility in relation to this offence and the related sanctions* ***are not expressly provided for by legislation which became effective before this act was performed***." This refers to what are known as "predicate offences", that is to say, offences for which legislation expressly lays down responsibility for the entity in addition to responsibility for natural persons - both in Legislative Decree 231/2001 and in other legal provisions.

In order to provide a full overview of the offences for which responsibility is assumed under the Decree, there is a list below of the offences which, to date, may give rise to responsibility being

assumed by an entity. It should be noted, however, that the list is constantly evolving and may be subject to change in the future.

For example, the following changes have recently been made to regulations:

I) Legislative Decree no. 184, dated 8th November 2021, implementing Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019, on combating fraud and counterfeiting of non-cash means of payment, resulted in the predicate offences for entity responsibility under Legislative Decree 231/2001, **art. 25 octies. 1**, entitled "**Crimes relating to non-cash means of payment**" being added to the list. This article covers the following types of offences:

1. improper use and counterfeiting of non-cash means of payment (art. 493-*ter* of the Italian Criminal Code) – imposing sanctions on the improper use and counterfeiting of non-cash means of payment;
2. possession and distribution of equipment, devices or computer programmes for the purposes of committing offences relating to non-cash means of payment (art. 493-*quater* of the Italian Criminal Code) - imposing sanctions on the conduct of parties who import, export, produce or sell etc. software or equipment made primarily to commit offences relating to non-cash means of payment for the purposes of using them to commit these types of offences;
3. computer fraud, aggravated by transfers made with monetary value or in virtual currency (art. 640-*ter* of the Italian Criminal Code).

II) Legislative Decree no. 195 dated 8th November 2021, implementing Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering, which partially redefines the offences of handling stolen goods (art. 648 of the Italian Criminal Code), money laundering (art. 648-*bis* of the Italian Criminal Code), use of money, goods or other benefits of unlawful origin (art. 648-*ter* of the Italian Criminal Code) and self-laundering (art. 648-*ter*.1), extending the criminal implications to include matters involving goods, money or things originating even from petty crimes, punished with a period of detention exceeding one year at the maximum and six months at the minimum, and also extending the scope of money laundering and

self-laundering to include exchanging or transferring goods originating even from crimes committed without criminal intent;

III) Law no. 238 of 23rd December 2021, establishing the "*Provisions for fulfilling the obligations assumed by Italy by being members of the European Union - European Law 2019-2020*", making changes to various types of predicate offences for entity responsibility as per Legislative Decree 231/2001 and namely:

a) Attacks against IT systems - art. 24 *bis* of Legislative Decree 231/2001

• art. 615 *quater* of the Italian Criminal Code: changes the heading to "*Unlawful possession, distribution and installation of equipment, code and other means of accessing IT or telecommunication systems*", adding to the list of criminal conduct and implementing stricter sanctions (imprisonment for up to two years);

• art. 615 *quinquies* of the Italian Criminal Code: changes the heading to "*Unlawful possession, distribution and installation of equipment, devices or programmes for harming or disrupting IT or telecommunication systems*", adding to the list of criminal conduct;

• art. 617 of the Italian Criminal Code: unlawful awareness, interruption or hindering of communications or conversations via telegraph or telephone: implementation of stricter sanctions (1st paragraph, sentences of six months to four years shall become one year and six months to five years; 3rd paragraph, a sentence of one to five years shall become three to eight years);

• art. 617 *bis* – heading is changed to "*Unlawful possession, distribution and installation of equipment and other means of intercepting, hindering or interrupting communications or conversations via telegraph or telephone"*; the entire 1st paragraph is replaced, the list of criminal conduct is expanded and the intent "*for the purposes of gaining knowledge of a communication... or hindering it... etc.*" is introduced;

• art. 617 of the Italian Criminal Code: "*Unlawful interception, hindering or interruption of IT communications and data transmission"*, implementation of stricter sanctions: in the 1st paragraph, sentences of six months to four years become "one year and six months to five years" and in the 4th paragraph, a sentence of "one to five years" become "three to eight years";

• art. 617 *quinquies*: heading is changed to "*Unlawful possession, distribution and installation of equipment and other means of intercepting, hindering or interrupting IT communications and data transmission"*; the 1st paragraph introduces the specific intent "*for the purposes of intercepting IT communications or data transmission etc.*" and the list of criminal conduct is expanded.

b) The fight against the sexual abuse and exploitation of minors and child pornography - art. 25 *quinquies* of Legislative Decree 231/2001

• Art. 600 *quater* of the Italian Criminal Code: the heading is changed to "*Possession or access to pornographic material*"; another paragraph has been added after the second paragraph to introduce sanctions for any parties who intentionally and unjustifiably access child pornography (to introduce punishment for instances in which parties are not in possession of this pornography but only stream it);

• Art. 602 *ter* of the Italian Criminal Code: an aggravating circumstance has been introduced for the instances specified in articles 600 *bis*, 600 *ter*, 600 *quater* and 600 *quinquies* of the Italian Criminal Code if a risk to the minor's life arises as a result of such instances.

c) Provisions governing sanctions for market abuse - art. 25 *sexies* of Legislative Decree 231/2001

• Art. 182 of Legislative Decree 58/1998 (Consolidated Law on Finance): this article has been entirely reformulated. In this way, the scope of application for criminal sanctions relating to market abuse has been redefined, in a broad sense, it being specified in paragraph 3 that the provisions in the article shall apply "*to any operation, instruction or other form of conduct regarding the financial instruments specified in paragraphs 1 and 2, independent of the fact that such operations, instructions or conduct may take place on a trading venue*";

• Art. 183 of the Consolidated Law on Finance: the article has been supplemented; trading in own shares for stabilisation purposes shall not be subject to sanctions, where this is carried out in compliance with that stated in art. 5 of Regulation (EU) 596/2014 (MAR);

• Art. 184 of the Consolidated Law on Finance (Insider Trading) - a new section has been added, "*Misuse or unlawful disclosure of confidential information*. *Influencing or inducing others to misuse confidential information*"; paragraph 3 has been added, so that if parties misuse information they

know to be confidential and of which they gained knowledge for reasons different to those indicated in paragraphs 1 and 2 of art. 184, this is now classed as insider trading regardless of their position, albeit with less strict sanctions (imprisonment from one year and six months to ten years);

- Art. 185 of the Consolidated Law on Finance - market manipulation: paragraphs 2 *bis* and 2 *ter* have been voided, as per Legislative Decree 107/2018;

IV) Lastly, Legislative Decree no. 13 of 25th February 2022, establishing "*Urgent measures to combat fraud and for safety on building sites and with regard to the electricity produced by systems with renewable energy sources*", introduced changes to some cases described by art. 24 of Legislative Decree 231/2001, including:

- Art. 316 *bis* of the Italian Criminal Code: the title of the crime has been changed to "*Misappropriation of public funds*"; the scope of application has been extended to include special-rate loans or other similar disbursements, whatever they may be called, for one or more objectives;
- Art. 316 *ter* of the Italian Criminal Code: the heading has been changed to "*Undue receipt of public funds*"; "grants" are now included as an offence;
- Art. 640 *bis* of the Italian Criminal Code: aggravated fraud for obtaining public funds: "grants" are now included under this type of offence.

It should also be noted that entity responsibility also comes into play when it comes to crimes committed abroad, provided that the country in which the crime was committed does not initiate proceedings and as long as the conditions established in art. 4 of the Decree are in place. In particular, this relates to crimes against Italy, forgery of the Italian seal, counterfeiting of money as legal tender across Italian territory, crimes committed by public officials in service of their country (art. 7 of the Italian Criminal Code); in addition to other political crimes not indicated in art. 7 of the Italian Criminal Code (art. 8 of the Italian Criminal Code); finally, crimes committed by an Italian citizen for which Italian law stipulates a life sentence or imprisonment of no less than three years (art. 9 of the Italian Criminal Code).

The offences included in the Decree can be divided into the following categories:

I. Crimes committed in relations with the Public Administration (articles 24 and 25)

- fraud to the detriment of the State, another public body or the European Communities (art. 640, para. II, no. 1. of the Italian Criminal Code);
- computer fraud to the detriment of the State or another public body (art. 640 *ter*, reference to 640, paragraph II of the Italian Criminal Code);
- embezzlement (art. 314 of the Italian Criminal Code);
- embezzlement by profiting from third-party error (art. 316 of the Italian Criminal Code);
- misappropriation of public funds (art. 316 *bis* of the Italian Criminal Code);
- undue receipt of public funds (art. 316 *ter* of the Italian Criminal Code);
- abuse of office (art. 323 of the Italian Criminal Code);
- fraud in public supply (art. 356 of the Italian Criminal Code);
- fraud in agriculture (art. 2 of Law 898/1986);
- aggravated fraud for obtaining public funds (art. 640 *bis* of the Italian Criminal Code);
- official misconduct (art. 317 of the Italian Criminal Code);
- corruption in the exercise of a role (art. 318 and 321 of the Italian Criminal Code);
- corruption in the performance of an act contrary to official duties (art. 319 and 321 of the Italian Criminal Code);
- corruption in legal proceedings (art. 319 *ter* of the Italian Criminal Code);
- unlawful incitement to give out or promise benefits (art. 319 *quater* of the Italian Criminal Code);
- corruption of a public service employee (art. 320 of the Italian Criminal Code);
- incitement to commit corruption (art. 322 of the Italian Criminal Code);
- international corruption (art. 322 *bis* of the Italian Criminal Code);
- influence peddling (art. 346 *bis* of the Italian Criminal Code).

II. Computer crimes and unlawful data processing (art. 24 *bis*)

- falsehoods in public or private digital documents used effectively as evidence (art. 491 *bis* of the Italian Criminal Code);
- unauthorised access to an IT or telecommunication system (art. 615 *ter* of the Italian Criminal Code);
- unlawful possession, distribution and installation of equipment, code and other means of accessing IT or telecommunication systems (art. 615 *quater* of the Italian Criminal Code);
- unlawful possession, distribution and installation of equipment, devices or software for harming or disrupting IT or telecommunication systems (art. 615 *quinquies* of the Italian Criminal Code);
- interception, hindering or interruption of IT communications and data transmission (art. 617 *quater* of the Italian Criminal Code);
- unlawful possession, distribution and installation of equipment and other means for intercepting, hindering or interrupting IT communications and data transmission (art. 617 *quinquies* of the Italian Criminal Code);
- damage to computerised information and data and IT programmes (art. 635 *bis* of the Italian Criminal Code);
- damage to computerised information and data and IT programmes used by the State or another public body, or in the public interest (art. 635 *ter* of the Italian Criminal Code);
- damage to IT or telecommunication systems (art. 635 *quater* of the Italian Criminal Code);
- damage to IT or telecommunication systems which are in the public interest (art. 635 *quinquies* of the Italian Criminal Code);
- computer fraud by individuals who provide electronic signature certification services (art. 640 *quinquies* of the Italian Criminal Code);
- cyber security offences (art. 1, paragraph 11 of Legislative Decree 105/2019).

III. Organised crime offences (art. 24 *ter*)

- criminal conspiracy aimed at reducing individuals to and maintaining them in slavery, human trafficking, purchasing and selling slaves and offences violating provisions on illegal immigration as per art. 12 of Legislative Decree 286/1998 (art. 416, 6th paragraph of the Italian Criminal Code);
- mafia-type organisations, including when foreign (art. 416 *bis* of the Italian Criminal Code);
- electoral exchanges between politicians and the Mafia (art. 416 *ter* of the Italian Criminal Code);
- kidnappings for ransom (art. 630 of the Italian Criminal Code);
- criminal conspiracy aimed at illegally trafficking in drugs or psychotropic substances (art. 74 of Presidential Decree 309/90);
- criminal association (art. 416, excluding the 6th paragraph of the Italian Criminal Code);
- crimes involving producing and trafficking illegal military weaponry, explosives and arms (art. 407, paragraph 2, lett. a), no. 5) of the Italian Code of Criminal Procedure).

IV. Counterfeiting cash, legal tender, stamps and instruments or marks of identification (art. 25 *bis*)

- counterfeiting cash, spending and introducing counterfeit money in Italy, in an organised manner (art. 453 of the Italian Criminal Code);
- altering currency (art. 454 of the Italian Criminal Code);
- spending and introducing counterfeit money in Italy, on an individual basis (art. 455 of the Italian Criminal Code);
- spending counterfeit money received in good faith (art. 457 of the Italian Criminal Code);
- counterfeiting stamps, introducing counterfeit stamps into Italy, acquiring or possessing them or entering them into circulation (art. 459 of the Italian Criminal Code);
- forging watermarked paper used to create legal tender or stamps (art. 460 of the Italian Criminal Code);
- making or possessing watermarks for the purposes of counterfeiting cash, stamps or watermarked paper (art. 461 of the Italian Criminal Code);
- using counterfeit or altered stamps (art. 464 of the Italian Criminal Code);

- forging, altering or using trademarks or distinguishing signs, or patents, models and designs (art. 473 of the Italian Criminal Code);
- introducing products with false markings into Italy and marketing them (art. 474 of the Italian Criminal Code).

V. Crimes against industry and commerce (art. 25 bis. 1)

- disrupting the freedom of trade or industry (art. 513 of the Italian Criminal Code);
- unlawful competition through threats or violence (art. 513 *bis* of the Italian Criminal Code);
- fraud against national industries (art. 514 of the Italian Criminal Code);
- fraud in the exercise of trade (art. 515 of the Italian Criminal Code);
- selling non-genuine food items as genuine (art. 516 of the Italian Criminal Code);
- selling industrial products with misleading markings (art. 517 of the Italian Criminal Code);
- manufacturing and marketing goods made in violation of industrial property rights (art. 517 *ter* of the Italian Criminal Code);
- falsifying geographic indications or names denoting the origin of agricultural food products (art. 517 *quater* of the Italian Criminal Code).

VI. Corporate crimes (art. 25 *ter*)

- false business communications (art. 2621 of the Italian Civil Code);
- false business communications - events of minor importance (art. 2621 *bis* of the Italian Civil Code);
- false business communications issued by listed companies (art. 2622 of the Italian Civil Code);
- falsehoods in reports or communications issued by auditing firms (art. 2624 of the Italian Civil Code);
- auditing activities hindered (art. 2625, paragraph 2 of the Italian Civil Code);
- unlawful return of capital contributions (art. 2626 of the Italian Civil Code);

- unlawful allocation of profits and reserves (art. 2627 of the Italian Civil Code);
- unlawful transactions with stocks and shares in the company or parent company (art. 2628 of the Italian Civil Code);
- transactions to the detriment of creditors (art. 2629 of the Italian Civil Code);
- failure to disclose a conflict of interests (art. 2629 *bis* of the Italian Civil Code);
- fictitiously paid-up capital (art. 2632 of the Italian Civil Code);
- unlawful distribution of company assets by liquidators (art. 2633 of the Italian Civil Code);
- corruption among private individuals (art. 2635 of the Italian Civil Code);
- inciting corruption among private individuals (art. 2635 *bis* of the Italian Civil Code);
- unlawful influence over shareholders' meetings (art. 2636 of the Italian Civil Code);
- market manipulation (art. 2637 of the Italian Civil Code);
- obstructing the activities of public supervisory authorities (art. 2638, paragraphs 1 and 2 of the Italian Civil Code).

VII. Crimes with the purpose of terrorism or subversion of the democratic order as per the Criminal Code and specific laws (art. 25 *quater*)

- any crimes specified in the Criminal Code and specific laws with the purpose of terrorism or subversion of the democratic order.

VIII. Female genital mutilation practices (art. 25 quater. 1)

- female genital mutilation practices (art. 583 *bis* of the Italian Criminal Code).

IX. Crimes against the individual (art. 25 *quinquies*)

- reducing an individual to and keeping them in slavery or servitude (art. 600 of the Italian Criminal Code);

- child prostitution (art. 600 *bis* of the Italian Criminal Code);
- child pornography (art. 600 *ter* of the Italian Criminal Code);
- possessing or accessing pornographic material (art. 600 *quater* of the Italian Criminal Code);
- virtual pornography (art. 600 *quater*. 1 of the Italian Criminal Code);
- tourism initiatives designed to aid and abet child prostitution (art. 600 *quinquies* of the Italian Criminal Code);
- human trafficking (art. 601 of the Italian Criminal Code);
- purchasing and selling slaves (art. 602 of the Italian Criminal Code);
- illegal intermediation and exploitation of labour (art. 603 *bis* of the Italian Criminal Code);
- child grooming (art. 609 *undecies* of the Italian Criminal Code).

X. Market abuse (art. 25 *sexies*)

- misuse or unlawful disclosure of confidential information. Influencing or inducing others to misuse confidential information (art. 184 of Legislative Decree 58/98);
- market manipulation (art. 185 of Legislative Decree 58/98).

In order to provide a complete overview of the situation, it should be noted that, in addition to entity responsibility for the offences listed above, with reference to the provisions governing the sanctions placed on market abuse, we must bear in mind that:

- art. 187 *quinquies* of Legislative Decree 58/98 provides for an entity's administrative responsibility for administrative offences relating to misusing confidential information and manipulating the market in their interests or to their benefit, as per articles 187 *bis* and 187 *ter* of the aforementioned Decree;
- art. 187 *ter*.1 states that an entity shall, in any case, assume administrative responsibility in the event that the obligations specified in articles 16, 17, 18, 19 and 20 of EU Regulation no. 596/2014 (known as MAR) are violated.

XI. Manslaughter, serious or very serious negligent injuries, committed in violation of the rules protecting health and safety in the workplace (art. 25 *septies*)

- manslaughter (art. 589 of the Italian Criminal Code);
- serious bodily injury (art. 590 of the Italian Criminal Code).

XII. Handling stolen goods, money laundering and use of money, goods or benefits of illicit origin, as well as self-laundering (art. 25 *octies*)

- handling stolen goods (art. 648 of the Italian Criminal Code);
- money laundering (art. 648 *bis* of the Italian Criminal Code);
- using money, goods or benefits of illicit origin (art. 648 *ter* of the Italian Criminal Code);
- self-laundering (art. 648 *ter*-1 of the Italian Criminal Code).

XIII. Crimes relating to non-cash means of payment (art. 25 *octies* 1)

- improper use and counterfeiting of non-cash means of payment (art. 493-*ter* of the Italian Criminal Code);
- possession and distribution of equipment, devices or computer programmes for the purposes of committing offences relating to non-cash means of payment (art. 493-*quater* of the Italian Criminal Code);
- computer fraud, aggravated by transfers made with monetary value or in virtual currency (art. 640-*ter* of the Italian Criminal Code).

XIV. Other offences relating to non-cash means of payment (art. 25 *octies* 1, paragraph 2)

XV. Crimes relating to the violation of copyright (art. 25 *novies*)

- art. 171, l. 22nd April 1941, no. 633;
- art. 171 *bis*, l. 22nd April 1941, no. 633;
- art. 171 *ter*, l. 22nd April 1941, no. 633;
- art. 171 *septies*, l. 22nd April 1941, no. 633;

- art. 171 *octies*, l. 22nd April 1941, no. 633.

XVI. Crimes against justice (art. 25 *decies*)

- inducement not to make statements or to make false statements to the judicial authority (art. 377 *bis* of the Italian Criminal Code).

XVII. Environmental offences (art. 25 *undecies*)

- pollution of the environment (art. 452 *bis* of the Italian Criminal Code);
- environmental catastrophes (art. 452 *quater of the Italian Criminal Code);*
- crimes against the environment due to negligence (art. 452 *quinquies* of the Italian Criminal Code);
- aggravated organised crime (art. 452 *octies* of the Italian Criminal Code);
- trafficking and neglecting highly radioactive materials (art. 452 *sexies* of the Italian Criminal Code);
- activities organised for the purpose of illegal waste trafficking (art. 452 *quaterdecies* of the Italian Criminal Code);
- killing, destroying, capturing, removing or possessing protected wild animal or plant species (art. 727 *bis* of the Italian Criminal Code);
- destroying or deteriorating habitats within a protected site (art. 733 *bis* of the Italian Criminal Code);
- art. 137, paragraphs 2, 3, 5, 11, 13 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 256, paragraphs 1, 2, 3, 4, 5, 6 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 257, paragraphs 1, 2 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 258, paragraph 4, clause 2 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 259, paragraph 1 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 260 *bis*, paragraphs 6, 7, 8 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 279, paragraph 5 of Legislative Decree no. 152 dated 3rd April 2006;
- art. 1, l. no. 150 dated 7th February 1992;
- art. 2, paragraphs 1, 2 l. no. 150 dated 7th February 1992;

- art. 6, paragraph 4 l. no. 150 dated 7th February 1992;
- art. 3 *bis*, paragraph 1 l. no. 150 dated 7th February 1992;
- art. 3, paragraph 6 l. no. 549 dated 28th December 1993;
- art. 8 of Legislative Decree no. 202 dated 6th November 2007;
- art. 9 of Legislative Decree no. 202 dated 6th November 2007.

XVIII. Offences relating to immigration (art. 25 *duodecies*)

- employing illegal third-country nationals (art. 22, para. 12-*bis* of Legislative Decree no. 286 dated 25th July 1998);
- transporting foreign nationals into Italian territory (art. 12, para. 3, 3-*bis* and 3-*ter* of Legislative Decree no. 286 dated 25th July 1998);
- aiding and abetting the stay of foreign nationals in Italian territory (art. 12, para. 5 of Legislative Decree no. 286 dated 25th July 1998).

XIX. Racism and xenophobia (art. 25 *terdecies*)

- promoting and inciting the act of committing a crime for reasons of religious, ethnic or racial discrimination (art. 604-*bis* of the Italian Criminal Code).

XX. Cheating in sporting competitions, abusive practice of gaming and betting activities, gambling performed using forbidden instruments (art. 25 quaterdecies)

- cheating in sporting competitions (art. 1 of l. 401/1989);
- abusive practice of gaming and betting activities, gambling performed using forbidden instruments (art. 4 of l. 401/1989).

XXI. Tax offences (art. 25 *quinquiesdecies*)

- fraudulent declaration by way of false invoices or other documents for non-existent transactions (art. 2 of Legislative Decree no. 74 dated 10th March 2000);

- fraudulent declaration by way of other methods of deceit (art. 3 of Legislative Decree no. 74 dated 10th March 2000);
- false declaration (art. 4 of Legislative Decree no. 74 dated 10th March 2000);
- failure to make a declaration (art. 5 of Legislative Decree no. 74 dated 10th March 2000);
- issuing invoices or other documents for non-existent transactions (art. 8 of Legislative Decree no. 74 dated 10th March 2000);
- concealing and destroying accounting documents (art. 10 of Legislative Decree no. 74 dated 10th March 2000);
- unlawful compensation (art. 10 *quater* of Legislative Decree no. 74 dated 10th March 2000);
- fraudulent subtractions for tax payments (art. 11 of Legislative Decree no. 74 dated 10th March 2000).

XXII. Smuggling (art. 25 *sexiedecies*)

- smuggling goods across land borders and through customs areas (art. 282 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling goods across lake borders (art. 283 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling goods via sea (art. 284 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling goods via air (art. 285 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling within non-customs zones (art. 286 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling for improper use of goods imported with eased customs procedures (art. 287 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling within customs warehouses (art. 288 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling port to port and via road (art. 289 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling as part of exporting goods admitted to surrender allowances (art. 290 of Presidential Decree no. 43 dated 23rd January 1973);

- smuggling as part of temporary imports or exports (art. 291 of Presidential Decree no. 43 dated 23rd January 1973);
- smuggling tobacco processed abroad (art. 291 *bis* of Presidential Decree no. 43 dated 23rd January 1973);
- aggravating circumstances for the crime of smuggling tobacco processed abroad (art. 291 *ter* of Presidential Decree no. 43 dated 23rd January 1973);
- organised crime for the purposes of smuggling tobacco processed abroad (art. 291 *quater* of Presidential Decree no. 43 dated 23rd January 1973);
- other instances of smuggling (art. 292 of Presidential Decree no. 43 dated 23rd January 1973);
- aggravating circumstances for smuggling (art. 295 of Presidential Decree no. 43 dated 23rd January 1973);

Transnational crimes (art. 10 of l. 146/2006)

Art. 3 of l. 146/2006 defines transnational crimes as a crime punished with a maximum term of imprisonment of no less than four years where a criminal organisation is involved and:

a) the crime is committed in more than one state;
b) or it is committed is one state, but a substantial part of the preparation, planning, management and control takes place in another state;
c) or it is committed is one state, but a criminal organisation involved in criminal activity in more than one state is involved;
d) or it is committed is one state, but has a significant impact in another state.

Art 10 states that an entity's administrative responsibility, as provided for in art. 3, shall also be determined based on the following offences being committed, where they are transnational in nature:

1) criminal association (art. 416 of the Italian Criminal Code);
2) mafia-type organisations (art. 416 *bis* of the Italian Criminal Code);

3) organised crime for the purposes of smuggling tobacco processed abroad (art. 291 *quater* of Presidential Decree 43/1973);
4) criminal conspiracy aimed at illegally trafficking in drugs or psychotropic substances (art. 74 of Presidential Decree 309/1990);
5) offences relating to illegal immigration (Legislative Decree 286/1998);
6) inducement not to make statements or to make false statements to the judicial authority (art. 377 *bis* of the Italian Criminal Code);
7) aiding and abetting (art. 378 of the Italian Criminal Code).

Attempted crime (art. 26)

Article 26 of the Decree states that:

1. the fines and bans given out shall be reduced by between one third and one half in relation to how the crime, as indicated in this section of the Decree, was attempted to be committed;
2. the entity shall not assume any responsibility if they deliberately prevent the action from being taken or the event from happening.

1.4. Prerequisites for responsibility

The Decree defines the prerequisites for an entity to assume responsibility for a crime committed, breaking them down into objective and subjective requirements.

1.4.1. Objective requirements

The objective requirements for attributing responsibility to an entity are detailed in art. 5 of the Decree, which establishes that an entity is responsible **for the crimes committed in their interests or to their benefit** if:

- the crime has been committed by individuals who represent the entity or one of their organisational units with financial and functional independence, or individuals who have an administrative or managerial role therein, or individuals who manage or control, de facto, said entity (known as the senior management);
- the crime has been committed by individuals managed or supervised by one of the parties named in letter a) above (known as subordinate parties).

In the same art. 5, in paragraph II, it states that an entity shall not assume any responsibility if the individuals described in the paragraph above acted *exclusively in their own personal interests or those of third parties*.

1) Committing a predicate offence

The first objective requirement, therefore, is that an individual who has been defined as "senior management", or an individual who is "subordinate" thereto, has committed a predicate offence. However, entity responsibility completely disregards whether or not the individual who committed the crime is, in actual fact, subject to punishment. Art. 8 of Legislative Decree 231/2001, entitled "Independence of an entity's responsibility", states that "*an entity shall also assume responsibility if: a) the individual who committed the crime has not been identified or cannot be charged; b) the crime is no longer punishable for a reason other than an amnesty*". This means that a crime only constitutes an event which took place in the past and which is now used as a basis for determining

entity responsibility, whereby all the other conditions, objective and subjective, required by the Decree are in place.

2) Interest and benefit

The second objective requirement is that the predicate offence must have been committed in the interests or to the benefit of the entity. "**In the interests of**" refers to the objective the individual aimed to achieve by committing the crime, whilst the term "**to the benefit o**f" refers to any kind of economic gain the entity would receive, including indirectly, through the crime being committed.
As established in the last paragraph of art. 5, the entity shall not assume any responsibility under the Decree if an individual acts ***exclusively*** in their own personal interests or those of third parties. Where the interests of the individual and the entity align, even if only in part, the entity shall still assume responsibility as per Legislative Decree 231/2001.

3) Individuals in senior management

Art. 5, paragraph I, lett. a) refers to crimes committed by individuals in a senior management position. This refers to individuals who represent the entity or one of their organisational units with financial and functional independence, or individuals who have an administrative or managerial role therein, or individuals who manage or control, including de facto, said entity (executive directors, general managers etc.).

4) Individuals in subordinate roles

Individuals in subordinate roles, as described in lett. b) of art. 5, are those who are managed and supervised by individuals in senior management, even if they have been given some form of independence. This category also includes partners who collaborate with the entity and are therefore supervised and managed by the entity themselves.

5) De facto individuals

Responsibility is still attributed to an entity when a crime is committed by an individual who, regardless of their official position, de facto acts in a managerial and supervisory role within the entity itself.

That specified in art. 2639 of the Italian Civil Code can come in useful here, whereby it specifies that, with regard to corporate offences, individuals who have been officially assigned a certain role or who hold a certain position in accordance with the law, hold the same status as the following parties:

a) those who must perform the same role, albeit classified differently;
b) those who exercise the powers typical of and inherent to the role or position on a continuous basis and to a significant extent.

1.4.2. Subjective requirements

1) "Organisational liability"

Art. 6 of the Decree forms the indisputable cornerstone of all matters relating to the responsibility an entity assumes for a crime. As a matter of fact, this provision states that, if a crime is committed by an individual in a senior management position, an entity may be exempt from responsibility, but only if they have adopted, and effectively implemented, organisation, management and control models which are suitable for preventing crimes of the type that has been committed. This refers to what are known as organisation and management models (MOG, *Modello di Organizzazione e Gestione*), partially based on the Compliance Programs implemented in Anglo-Saxon systems.

The same article 6 also states that, in order for an entity to be exempt from responsibility, in addition to having implemented an organisational model, they must also have tasked a Supervisory Body with monitoring the regulations specified by the model and any updates thereto. This Body must have been granted autonomous powers to take action and exercise control, and they must not fail to carry out their supervisory role.

This therefore gives rise to the subjective aspect of entity responsibility, acknowledged under what is known as "**organisational liability**". That is to say, an entity can be blamed for not having implemented an organisational structure capable of preventing a crime like the one which has occurred from being committed.

The Italian legislative body, therefore, made a radical decision in line with the principles of the Constitution on matters of criminal responsibility. In fact, no legal provisions have been drawn up to stipulate a form of objective responsibility as part of the Italian system, even if the administrative nature of entity responsibility has been formally recognised within the meaning of Legislative

Decree 231/2001. As such, this means that responsibility should be linked to a form of guilt also for entities, taking into account the specific characteristics of a collective body in comparison to a natural person. Considering the principle of personality involved in criminal responsibility, as per art. 27 of the Constitution, and in view of what regulations say on the concept of guilt, consisting in a wide-ranging, comprehensive decision on whether an individual can be blamed for an act and subjected to sanctions, an entity cannot, therefore, be blamed for the fact that someone committed a crime in their own interests or to their own benefit, but for that fact that they had not implemented an organisational structure (with reference to an organisational model and supervisory body) capable of acting as a concrete obstacle to the crime being committed.

An entity shall, therefore, assume responsibility for something they themselves have done, and not for a crime committed by a natural person which, as previously mentioned, only constitutes an event which took place in the past and which is now used as a basis for determining the responsibility/culpability of the entity themselves.

It is therefore a matter of a form of responsibility which is, in some ways, comparable to the responsibility recognised under the criminal system for guarantors, for complicity through the failure to act in accordance with art. 40, paragraph II of the Italian Criminal Code, with the main difference, however, that whilst the individual providing the guarantee under criminal law has the legal obligation to prevent the event or crime from happening, an entity must only place adequate obstacles in front of the individual who intends to commit a crime in their own interests or to their own benefit.

In fact, if an entity's organisation is actually deemed to be adequate and the crime, as per art. 6 of the Decree, is committed by an individual through fraudulent non-observance of the provisions laid down in the organisational model and avoidance of the surveillance of the Supervisory Body, the link between the willingness of the party who committed the crime and any participation of the entity determining complicity and, therefore, the susceptibility to punishment, would be null and void. In this way, the crime being committed becomes a "personal event" for the individual, who acted exclusively on their own initiative, without any "encouragement" from the entity who, on the contrary, implemented measures to hinder criminal activity.

Legislation has, therefore, stipulated a form of responsibility based on the ability of an entity to be blamed for a crime committed by parties connected to them, recognising a form of guilt similar to guilt under criminal law, as compatible with the constitutional principles on responsibility as possible.

2) Art. 6 of the Decree: crimes committed by individuals in senior management

With particular regard to the crimes committed by individuals in a senior management position, legislation introduced a rebuttable presumption (or *iuris tantum*, which allows, therefore, proof to the contrary), that crimes have an affinity with the company's organisation and policy, with the burden of proof being shifted to the party on which the blame falls, in contrast to the general rules of criminal proceedings.

Art. 6 of the Decree states that, when a crime is committed by individuals in senior management, an entity shall not assume responsibility if proof can be given that:

- the management body adopted and effectively implemented, before the crime was committed, a **management and organisation model** (hereinafter referred to as the Model or MOG) suitable for preventing the same type of crime from being committed;
- the task of monitoring whether models work and are up to date, and making sure that these models are up to date, was entrusted to a body of the entity with autonomous powers to take action and exercise control (Supervisory Body);
- the crime was committed through fraudulent non-observance of that stated in the Model;
- the supervisory body did not fail to exercise their supervisory duties or did not exercise them inadequately.

3) ...and for individuals in subordinate roles.

With regard to individuals in subordinate roles, however, the accusing body shall be responsible for proving "organisational liability".

In fact, art. 7 of the Decree states that, in the event a crime is committed by individuals in subordinate roles, an entity shall be held responsible if it was possible for the crime to be committed due to a failure to fulfil managerial and supervisory obligations and, in any case, responsibility shall

not be assumed if the entity, before the crime was committed, had adopted and effectively implemented an **organisation, management and control model** suitable for preventing this type of crime.

1.5. Protection for whistleblowers

Law no. 179 dated 30th November 2017 entered into force on 29th December 2017, laying down the provisions on the protection of those who report crimes or wrongdoings they have become aware of as part of a private or public employment relationship.

With the introduction of three new paragraphs in art. 6 (c. 2-*bis*, c. 2-*ter* e c. 2-*quater*), the law has been extended, for the very first time, to cover the protection of what are known as "whistleblowers" who work within the private sector, stipulating the specific obligations for companies as part of organisational models.

As required by the new regulations, **paragraph 2-*bis* of the Decree** stipulates that the organisation, management and control model must provide for:

- one or more channels - guaranteeing that the identity of the whistleblower remains secret - which enable all individuals in senior management or individuals managed or supervised thereby to provide detailed and justified information on concrete events which point to relevant unlawful conduct as per Legislative Decree 231/2001, or to report violations of that stated in the MOG, of which they have become aware due to the role they carry out;
- at least one alternative reporting channel which is suitable for guaranteeing, **with electronic means**, that the identity of the whistleblower remains secret.

The same paragraph also states that:

- acts of retaliation or discriminatory, where direct or indirect, against the whistleblower for reasons connected, directly or indirectly, to the report they made are prohibited;
- as part of the disciplinary system adopted as per paragraph 2, letter e) of the same article 6 in Legislative Decree 231/2001, sanctions shall be placed on those who violate the measures put in place to protect whistleblowers, as well as those who make reports that prove to be unfounded due to wilful misconduct or gross negligence.

Paragraph 2-*ter* of art. 6 states that whistleblowers shall also be protected under employment law: if the whistleblower is discriminated against, this may be reported to the National Labour Inspectorate, both by the whistleblower themselves, as well as by the trade union indicated thereby, so that this Inspectorate may take the action within their area of competence.

Paragraph 2-*quater* states that if a whistleblower is dismissed as a means to get revenge or to discriminate against them, this shall be null and void, as shall any change in their role as per article 2103 of the Italian Civil Code and any other form of revenge or discrimination against them: in the event of any disputes arising in relation to these matters, the employer will have to prove that the action taken with regard to the employee is based on grounds which have nothing to do with the report they made.

However, it should be noted that art. 23 of Law no. 53 dated 22nd April 2021 states that the government shall be responsible for implementing EU Directive 2019/1937 on the protection of persons who report breaches of Union law: it can therefore be expected that the current framework governing whistleblowing may, in the future, be subject to change and result in this Model having to be updated.

1.6. Sanctions

Legislative Decree 231/2001 outlines a rather comprehensive, varied framework for sanctions. In accordance with that stated by art. 9 of the Decree, the following types of sanctions are applicable to entities:

a) fines;

b) bans;

c) judgement publication;

d) seizure.

Besides fines, which are typical to denote administrative responsibility, the Decree provides for an array of bans which are particularly harsh, in addition to judgement publication and the seizure of the proceeds and profit from the crime.

Moreover, as per art. 45 of Legislative Decree 231/2001, bans may be applied at the request of the public prosecutor as a precautionary measure whilst the preliminary investigations are going on.

1.6.1. Fines

Art. 10 of the Decree stipulates that, for the unlawful conduct carried out as part of a crime, a fine is always applied, in parts of no less than one hundred and no more than one thousand, whereby the minimum amount is €258 and the maximum is €1,549.

The subsequent art. 11 states that, when calculating a fine, the judge shall determine the number of parts by taking into account the severity of the crime, the degree to which the entity is responsible and the action taken to eradicate or mitigate the consequences of the crime and to prevent more crimes from being committed.

The amount of these parts shall, however, be determined based on the entity's economic situation and value of its assets, with the objective of ensuring that the sanction imposed is effective.

Art. 12 of the Decree states, in the first paragraph, that a fine can be cut in half and, in any case, may not amount to more than €103,291 if:

a) the individual who committed the crime did so primarily in their own interests or those of third parties and the entity did not reap any, or reaped minimal benefit;
b) the damage caused is minor in nature.

In the second paragraph of the same art. 12, it states that a fine can be reduced by between one third to one half if the following took place before first instance proceedings are declared to have been instigated:

a) the entity has paid damages in full and eradicated the harmful or dangerous effects of the crime, or has, in any case, taken effective action in this regard;
b) an organisational model suitable for preventing crimes of the type that was committed has been adopted and effectively implemented.

In the third paragraph, it states that, if both the conditions indicated in the paragraph above have been fulfilled, then the fine is reduced by between one half to two thirds.

Finally, the fourth paragraph states that a fine may be no less than €10,329.00.

1.6.2. Bans

Legislative Decree 231/2001 stipulates the following types of bans:

- ban on conducting business;
- suspension or cancellation of the permissions, licences and authorisations used to commit the offence;
- ban on entering into agreements with Public Administration;
- exclusion from relief, funding, contributions or subsidies and potential withdrawal of any amounts already granted;
- ban on advertising goods and services.

In contrast to fines, bans are only implemented where expressly provided for in relation to those crimes specifically defined by the Decree, and otherwise, when at least one of the following conditions is met:

a) when an entity has made a profit of significant magnitude from the offence and the offence has been committed either by individuals in senior management or by individuals subordinate thereto and the crime was facilitated by serious organisational shortcomings;
b) in the event of repeat offences.

Art. 15 of the Decree states that if there are grounds for a ban to be implemented, with this preventing the entity from continuing to conduct business, the judge may, instead of applying the sanction, order the entity's business to be carried on by a **court appointed administrator**.

As per art. 16 of Legislative Decree 231/2001, if the entity has made a profit of significant magnitude from the offence and has already been ordered to stop conducting business on a temporary basis at least three times within the last seven years, they may be permanently banned from conducting business. In the same way, the judge may impose a definitive ban on the entity with regard to entering into agreements with Public Administration.

Art. 17 of the Decree, however, states that bans may not be applied if the following conditions have been fulfilled before first instance proceedings are declared instigated:

a) the entity has paid damages in full and eradicated the harmful or dangerous effects of the crime, or has, in any case, taken effective action in this regard;

b) the entity has resolved the organisational shortcomings that resulted in the crime being committed by way of adopting and implementing organisational models suitable for preventing the same type of crime from occurring;

c) the entity has made any profits made as a result of the offence available to be seized.

With regard to bans, it is necessary to make express reference to the amendments made with Law no. 3 dated 9th January 2019 (known as the anti-corruption law), which introduced a regime of exceptional nature with regard to some crimes committed against Public Administration: as currently provided for by art. 25, paragraph 5 of Legislative Decree 231/2001, in the event of a conviction for one of the offences indicated in paragraphs 2 and 3 of the same art. 25, the bans specified in art. 9, paragraph 2, shall be applied for a duration of no less than four and no more than seven years if the crime was committed by the parties named in art. 5, paragraph 1, lett. a) - i.e. by individuals who have the power to represent the entity or one of their organisational units with financial and functional independence, or individuals who have an administrative or managerial role therein, as well as by individuals who, de facto, manage or control the entity - and for a duration of no less than two and no more than four years if the crime was committed by the individuals described in art. 5, paragraph 1, lett. b) - i.e. by individuals who are managed or supervised by the parties specified in the aforementioned letter a).

Nevertheless, the new provision of 2019 also introduced that stated in paragraph 5 *bis*, that bans shall be imposed for the standard duration specified in art. 13, paragraph 2 (no less than three months and no more than two years) in the event that the entity has taken effective action in order to achieve the following before a sentence is issued at first instance:

a) prevent the criminal conduct from giving rise to further consequences;

b) ensure evidence of the crime is available;

c) identify who is responsible;

d) ensure that any sums or other benefits gained have been confiscated;

or

e) the entity has resolved the organisational shortcomings that made it possible for the crime to be committed, by way of adopting organisational models suitable for preventing the same type of crime from occurring.

1.6.3. Judgement publication

As per art. 18 of Legislative Decree 231/2001, if a ban is imposed on an entity, this judgement may also be made public. The judgement shall be published in accordance with article 36 of the Italian Criminal Code - that is to say, by being posted within the municipality where the judgement was passed, where the crime was committed and where the party convicted last resided - as well as by being posted within the municipality where the entity is headquartered. This judgement shall also be published on the website of the Ministry of Justice, in full or in part.

1.6.4. Seizure, also by way of equivalent measures

As per art. 19 of the Decree, the proceeds and profit from the crime are always seized when judgement has been passed and an entity deemed responsible. However, should seizure not be possible, the punishment may be implemented by way of seizing sums of money, goods or other assets of the same value as the proceeds and profit from the crime. This is known as seizure "by way of equivalent measures", also implemented in regard to entity responsibility for crime. This means that it is not necessary for the goods gained as profit from a crime to be identified, but it is sufficient to determine the value thereof in order to confiscate goods of equivalent value.

1.6.5. Precautionary action

The sanction system outlined by the Decree also provides for the possibility to apply some sanctions to entities as a precautionary measure. In particular, art. 45 states that "*when there is strong evidence pointing to the fact that an entity should assume responsibility for an administrative offence, and there are specific, well-founded grounds indicating that there is a concrete risk that further crimes will be committed of the same nature as the crime which has already occurred, the public prosecutor may request that precautions be taken by applying one of the bans specified in art. 9, paragraph 2*".

At the same time, in accordance with that specified in art. 321 of the Italian Code of Criminal Procedure, whilst preliminary investigations are going on, the public prosecutor may implement the preventative seizure of the sums which would subsequently be seized if a sentence were implemented, or they may take precautionary action by way of equivalent measures.

The Preliminary Investigations Judge may therefore implement any bans and seizure, including equivalent measures, to an entity as a precautionary measure at the request of the public prosecutor.

2. ADOPTING AN ORGANISATIONAL MODEL

2.1. Description of the corporate structure and management of Liu.Jo S.p.A.

Liu.Jo S.p.A. is a joint stock company whose corporate purpose is to carry out the following activities: production and trade of external knitwear, clothing and accessories in general, corsetry, underwear, beachwear, household linen, footwear, eyewear, kinds of watches, jewellery, gifts and related items such as gadgets, stationery and perfumery items.

The company's style concept is, in fact, evolving to create a total look. To this end, in addition to the womenswear range, the company has also launched the following lines: accessories, kidswear, sportswear, home linen, menswear, women's and kids' footwear, watches and jewellery, perfume and eyewear.

Liu Jo is made up of the following bodies:

General Meeting

The ordinary shareholders' meeting resolves the matters reserved to it by the law and by this statute.

The following are strictly reserved to the competence of the ordinary assembly:

1. approval of the financial statements;
2. the appointment and dismissal of directors; the appointment of the statutory auditors and the chairperson of the board of statutory auditors and, when required, the person to whom the accounting control is delegated;
3. the determination of the remuneration of the directors and statutory auditors, if not established by the Articles of Association;
4. the resolution on the responsibility of directors and statutory auditors.

The following are the responsibility of the extraordinary shareholders' meeting:

1. amendments to the Articles of Association;
2. the appointment, replacement and determination of the powers of liquidators;

3. the issuance of convertible and non-convertible bonds;
4. the constitution of destined assets pursuant to art. 10 of the Articles of Association;
5. other matters attributed to it by law and by the Articles of Association.

Board of Directors

The Company's administrative body is its Board of Directors, which is currently formed of two members:

- a chairperson - the Managing Director, legal representative of the Company, who has all extraordinary and ordinary powers of administration;
- a board member, who performs administrative tasks and is in charge of drawing up the company's accounting documents.

Board of Statutory Auditors

The board of statutory auditors has the duties and powers referred to in articles 2403 and 2403-*bis* of the Italian Civil Code and also carries out auditing.

Auditing firm

The Company has tasked an external firm (Pricewatherhouse Coopers S.p.a) with performing the independent audit.

DPO

In compliance with the provisions of the General Data Protection Regulation (GDPR) (EU) 2016/679, the DPO (Data Protection Officer) has been identified, with the tasks of:

a) monitoring compliance with the GDPR, evaluating the risks of each instance of processing in light of the nature, scope, context and purpose;
b) collaborating with the Data Controller/Manager, where necessary, in conducting a data protection impact assessment (DPIA);
c) informing the Data Controller or Manager, as well as the employees thereof, and making them aware of the obligations deriving from the Regulations and other provisions on data protection;

d) cooperating with the Supervisory Authority and acting as a point of contact for them on any matter related to Processing;
e) acting as a point of contact for the interested party for the exercise of the rights referred to in art. 15-22 of the GDPR;
f) supporting the Data Controller or Manager in any activity related to the Processing of Personal Data, also with regard to the possible keeping of a register of processing activities (Article 30 of the GDPR).

Committees

A significant role is played by the following committees who have an advisory role on priority issues for the Company or coordination of operational or functional areas.

These Committees provide for the participation of permanent members and, in some cases, participants upon request, including external consultants, who may from time to time be involved as experts in situations that require particular skills.

In particular, the following management meetings have been set up:

- ***Steering and Coordination Committee (CIC, SCC)*** with the following tasks: approval of new projects and their progress, presentation of strategic issues and sharing of economic business data;
- ***Steering Committee*** with the following tasks: assessment of the progress of projects aimed at the listing process (frequency: monthly);
- ***SPT Committee with the following tasks***: monitoring the application of the SA8000[1] management system, and in particular, compliance with the SA8000 Social Responsibility standard, also through periodic audits and reviewing company performance. Identifying and assessing risks regarding actual, or potential, non-compliance with the standard, verifying the effectiveness of actions taken to satisfy the social responsibility policies adopted and the requirements of the standard, collaborating on the identification of possible non-

[1] Liu Jo obtained the SA8000:2014 certification on 2nd August 2019.

conformities and corrective actions. It should be noted that the SPT committee is made up of worker and management representatives.

- ***Retail Development Committee*** with the following tasks: presenting the shops next in line to be opened to the company divisions (both direct outlets and stores managed by third parties through a franchising or affiliation regime). It should be noted that the Managing Director, Management Secretariat, Management Control, Store Planning Office and the relevant sales representatives also take part in this Committee.

Furthermore, inter-functional operational meetings are set up both relating to the creativity and realisation of products and to their distribution quality, in addition to the internal Committee "Better Team" which develops social and environmental sustainability projects.

Distribution Organisation

The Company offers its products on the market through various distribution channels.

From the point of view of the final consumer, the Group is present on the market through:

- the Retail distribution channel, i.e. the direct distribution channel (retail) for which we make use of stores managed directly by the Company (DOS), outlets and the e-commerce channel (managed by the third-party affiliate company Digital Boite S.r.l.);
- the monobrand channel, which consists of monobrand stores managed in collaboration with commercial partners, and the multi-brand wholesale channel, which includes multi-brand stores and dedicated spaces in department stores (shop in shop and corners).

For sales to single-brand and multi-brand customers, the Group makes use of a network of agents/representative offices and distributors.

The control and organisational system

The Company has an internal control system (hereinafter referred to as the "Internal Control System") whose aim is to oversee the typical risks involved in the business conducted by the company over time.

The Internal Control System has the purpose of monitoring compliance with strategies and the achievement of the following goals:

1. effectiveness and efficiency of processes and operations;
2. quality and reliability of economic and financial information;
3. compliance with laws and regulations, rules and internal procedures;
4. safeguarding the value of the company's operations and assets.

Liu Jo has adopted a system of proxies and powers of attorney characterised by elements of "security" for the purposes of crime prevention (traceability and highlighting of sensitive activities) which, at the same time, allows the Company's operations to be efficiently managed.

2.2. The role of the organisation, management and control model and the objectives pursued through correct compliance

2.2.1 Introduction – The organisation and management model (MOG)

With the Decree entering into force, the entity essentially takes on the role of guarantor for containing the risk that crimes will be committed as part of the specific operations carried out by parties who act in the name and on behalf of the entity, regardless of the formal roles assumed by these parties. In this respect, the objective pursued through the MOG can be basically defined as the construction of a structured, organic system of rules, instructions, procedures, protocols and monitoring activities aimed at governing and streamlining the entity's operations and preventing any crimes from being committed.

This, therefore, is nothing innovative from this perspective, as any complex, structured entity has, as a matter of course, a set of procedures, whether official or not, which govern how it works, and this was the case well before and regardless of that stated in Legislative Decree 231/2001. No complex entity can function without rules; it's a question of business organisation that goes beyond preventing crimes or unlawful conduct in general. The implementation of procedures to govern production and management processes is, above all, a sign of efficiency and quality.

Legislative Decree 231/2001 adds that the Model must also be used as a **means of monitoring and control** that is effective in preventing certain categories of crimes. This further defines the

procedures which must be laid down in the Model and be effective also in terms of controlling. For this very reason, all operations carried out with the entity, or at least those defined as sensitive as per Legislative Decree 231/2001, must be formalised and traced, and it must be possible to monitor them. Furthermore, with a view to more effective monitoring and control, it is important that no business division is entirely independently, but they should be split up and segregated so that the decision-making processes involved in sensitive operations do not rely on one person alone.

Finally, the Decree states that the **organisational model must be adopted and effectively implemented, and that it must really be suitable for preventing the same type of crime that has occurred**. This means that it is not sufficient for an entity to simply adopt an organisational model, but it needs to be effectively implemented in practice and really be suitable for preventing crime.

For an entity to be exempt from responsibility, it is necessary to check, as per articles 6 and 7 of the Decree, whether the organisational model adopted is suitable for preventing crime.

This must be done by making a judgement based on forecasts, or namely, ex ante.

More specifically, in paragraph II of art. 6, it sets out some of the conditions that organisational models must fulfil in order to be theoretically suitable for preventing predicate offences from being committed. This provision stipulates that models must:

a) *identify the operations as part of which crimes may be committed.* This refers to what is known as “risk mapping”. Before an organisational model is drafted, a thorough analysis must be carried out on the business environment, business conducted by the entity and the methods used therefor. The procedures and protocols put in place to govern how this business is conducted should also be analysed. Risk mapping will make it possible to identify what are known as “sensitive areas”, that is to say, the types of operations which are more likely to involve crime, as well as the ways in which crime may be committed. In general, this preliminary work carried out before the model is drawn up is then **formalised in a risk mapping, or risk assessment, document**, which highlights any shortcomings identified in the entity's organisation (known as gap analysis) and the remedial action to take in order to resolve these shortcomings (known as the remediation plan);

b) *set out specific protocols for the purposes of planning the development and implementation of the entity's decisions in relation to the crimes to be prevented.* This refers to the protocols and procedures indicated above;

c) *identify the methods for managing financial resources, suitable for preventing crimes from being committed.* This is actually a matter of specifying that stated in the point above, with specific reference to the management of financial resources, a task considered by the legislative body to be particularly sensitive with regard to corruption;

d) *establish obligations to inform the supervisory body tasked with overseeing how the models work and compliance therewith.* This refers to the information transferred to the Supervisory Body, which must involve constant communication between the entity and the body tasked with overseeing that the organisational model functions properly and is observed. The Supervisory Body is, in fact, a body independent from the entity and is not involved in the management or administration thereof. Where the information being transferred between the entity and supervisory body is insufficient, there is the concrete risk that this body will be unable to properly monitor and control as it should;

e) *introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model.* As already mentioned, art. 6 states that an entity, in addition to having adopted an organisational model, must have also effectively implemented it. One sign that an organisational model has been effectively and efficiently implemented is when an entity has its own disciplinary system. If the provisions laid down in the model are violated, the entity must impose sanctions, based on that indicated in the relevant national collective agreements, as a matter of course. If the provisions laid down in the model are violated and no sanctions are imposed, this would mean that the entity is entirely indifferent towards the organisational model adopted and, therefore, it is not being effectively implemented.

There is, however, one provision laid down in art. 6 that would appear to play a larger part than others in the role played by organisational models and the content thereof. In fact, art. 6 states that an entity shall only be exempt from responsibility **if the individual who has committed the crime**

did so through the fraudulent non-observance of the provisions laid down in the model. Two things can be derived from this provision:

1) the first is that the objective of the organisational model is certainly not to simply prevent crimes from being committed, as it is up to the same legislative body to consider the possibility that a crime may be committed without the entity taking responsibility therefor;
2) the second is that a model may only be considered suitable under the Decree if a natural person who wishes to commit a crime is forced to fraudulently violate the provisions therein.

A predicate offence being committed is only an indication that the Model is unsuitable, certainly not proof thereof. In short, therefore, the organisational model must place obstacles in the way of whoever is intending to commit a crime in the interests or to the benefit of the entity in order to create a fracture in the joint participation between entity and natural person which forms the basis for responsibility as per Legislative Decree 231/2001.

2.2.2 Legal consequences

The legal consequences arising from the Model being adopted are expressly indicated in the Decree.

In detail:

a) based on that stated in art. 6, if a crime were to be committed by an individual in senior management, the fact that a Model suitable for preventing this type of crime had been adopted and effectively implemented would mean that the entity would be exempt from responsibility;
b) based on that stated in art. 7, if a crime were to be committed by an individual in a subordinate position, the fact that a Model suitable for preventing this type of crime had been adopted and effectively implemented would mean that the entity would be exempt from responsibility;
c) based on that stated in art. 11, when calculating a fine, the judge shall determine the number of parts by taking into account, among other things, the action taken by the entity to prevent any further unlawful conduct;

d) based on that stated in art. 12, after a crime has been committed, but before proceedings are instigated, if the entity adopts and implements a Model suitable for preventing this type of crime, the sanction imposed would be reduced by between one third to one half;
e) based on that stated in art. 13, adopting a model that, even if not completely suitable to prevent the same type of crime as that which has been committed, ensures that there are no major organisational shortcomings within the entity, shall prevent bans from being imposed - only if the crime is committed by an individual in a subordinate position;
f) based on that stated in art. 17, bans shall not be applied if the entity has paid damages in full and if they have taken action to resolve the organisational shortcomings that allowed the crime to be committed by implementing and adopting a Model.

The organisational model, therefore, has various functions:

1) preventing a crime from being committed in the interests or to the benefit of the entity;
2) exempting the entity from responsibility for any crimes committed in their interests or to their benefit;
3) lessen the sanctions which may be applied.

Liu Jo S.p.A. is aware that they are required to ensure accuracy, legality and transparency when conducting business, performing business operations and in their relations with third parties, in order to protect their position and image, shareholder expectations and the jobs of their employees. They are also aware of the importance of having an organisation, management and control model suitable for preventing unlawful conduct from being carried out by their directors, employees or partners controlled and coordinated by the Company.

Even if adopting a Model is not a legal obligation, for the reasons mentioned above, Liu Jo has decided to fulfil the requirements set out by the Decree, launching a project involving the analysis of their organisation, management and control structures, aimed at checking that the behavioural principles and procedures adopted correspond to the objectives set out in the Decree and, where necessary, that they have been correctly integrated into the current system.

This analysis took into account the specific inherent characteristics of Liu Jo S.p.A.'s organisational structure, as well as their business operations and processes.

The Model, in its first draft, was adopted and approved by the Company's Sole Director, with a resolution dated 3rd August 2018. This version, approved by the Board of Directors on 9th March 2022, has been updated in line with the regulatory changes made in the meantime and the Company's current organisational structure.

The objectives set out by adopting the Model can only be achieved by being extremely precise in the identification of what are defined as "risk areas" and, within these areas, what are known as "operational processes and sensitive activities", that is to say, the activities and business processes as part of which, when they are being carried out, the crimes specified in the Decree may be committed.

As such, the Model has been designed in line with the following principles:

- The management, staff and any individuals who collaborate with the Company, or who have business relations therewith, should be made aware that Liu Jo fully condemns any conduct which contradicts legislation, as well as the ethical principles the Company strives to observe when conducting business. The target audience of the Model, acting in the name and on behalf of Liu Jo within risk areas, in the event that the provisions laid down in the Model are violated, must be aware that, in doing so, they are exposing the entity to responsibility punishable under criminal law, as well as of the fact that the Company does not tolerate such behaviour in any way;
- it is necessary to take prompt action in order to prevent and hinder potential crimes from being committed, with the areas considered at risk being subject to continuous monitoring;
- it is necessary to impose sanctions in order to effectively quash any conduct in violation of that stated in the Model.

2.3. The content required in the organisation, management and control model: rules, Confindustria (General Confederation of Italian Industry) guidelines and the principles established by law

Art. 6, paragraph II of the Decree states that the Model must do the following:

a) identify the operations as part of which crimes may be committed;
b) set out specific protocols for the purposes of planning the development and implementation of the entity's decisions within the scope of the activities defined as sensitive and in relation to the crimes to be prevented;
c) identify the methods for managing financial resources, suitable for preventing crimes from being committed;
d) establish obligations to inform the supervisory body tasked with overseeing how the models work and compliance therewith;
e) introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model.

In order to meet these requirements, the Model must:

- indicate the code of conduct with which Liu Jo must comply;
- identify (map) the operational areas "at risk", that is to say the areas in which it is most likely that crimes would be committed;
- identify the Supervisory Body which is to be tasked with controlling and monitoring the Model, operations and conduct of individual parties;
- identify the business resources, of an adequate number and value in proportion to the results expected and reasonably achievable, in order to support the Supervisory Body in carrying out the tasks assigned to them;
- define the powers of authorisation in line with the responsibilities assigned;
- guarantee that the principle of having the divisions separated and segregated will be observed;
- specify the instruments used for raising awareness of and circulating the code of conduct and established procedures, across the entire company.

2.4. Confindustria guidelines

The same Decree, in art. 6, paragraph III, states that the organisation, management and control model may be adopted "*based on codes of conduct drawn up by associations which represent entities*". The document most representative of that stated in this provision, on a national scale, is most definitely the Confindustria guidelines on drawing up organisation, management and control models.

The Confindustria guidelines set out the most relevant aspects of a control system in order to guarantee that the organisational model will be effective:

Control system for the prevention of intentional crimes

- the adoption of ethical principles that regulate and govern an entity's operations, aimed at preventing any conduct which may be involved in the offences named in the Decree, included in the Liu Jo Code of Ethics;
- a clear, official organisational system, with particular regard to the allocation of responsibility, the reporting lines and the description of tasks, with specific provision for principles of control;
- manual and/or electronic procedures that govern how operations are carried out, including the necessary checks;
- authorisation and signatory powers granted in line with defined organisational and managerial responsibilities, with limits on powers of expenditure;
- managerial control systems capable of giving prompt warning of actual or possible general and/or specific critical situations;
- staff communication and training.

Control systems for the prevention of crimes of manslaughter and negligent bodily injury, committed in violation of the rules protecting occupational health and safety

In addition to the specific requirements indicated in art. 30 of Legislative Decree 81/2008 regarding matters of occupational health and safety, and that already indicated in relation to intentional crime, entities must make sure that:

- they have an organisational structure with tasks and responsibilities relating to occupational health and safety, officially defined in line with the company's functional and organisational framework;
- they train and educate staff in order to ensure that all members, at every level, are aware of the importance of observing the requirements set out in the organisational model and of the potential consequences of any conduct contrary to the rules laid down in the model;
- there is communication with and engagement from all parties concerned in order to guarantee that there is sufficient awareness and commitment, at all levels;
- the management of occupational health and safety risks is integrated into and fits with how business processes are managed as a whole;
- there is a monitoring system capable of checking that the action taken to prevent and protect against risks is maintained.

The Confindustria guidelines also state that the components involved in the control system, as specified above, must conform to a series of control principles, including:

- **it must be possible to verify and document every operation,** transaction and action **and these must be coherent and consistent**;
- the principle of **separating divisions and segregating tasks** should be applied (no one should be able to manage an entire process alone);
- **the checks and monitoring performed must be documented.**

These guidelines - initially issued by Confindustria on 7th March 2002 and updated on multiple occasions (31st March 2008 and March 2014) - were finally approved by the Ministry of Justice on 8th June 2021 in their latest version, having been most recently updated for the following purposes, among others:

- to examine the offences most recently introduced;
- to analyse the field of whistleblowing, defining the role and prerogatives of the Supervisory Body when managing the reports made;
- to advocate the management of compliance with various regulations relating to the business conducted by the entity by implementing an integrated system for managing risks, an

instrument aimed at streamlining compliance operations (in terms of resources, staff and systems etc.), making these operations more efficient and effective and making it easier to share information through an integrated approach to the different requirements for risk management, as well as by way of carrying out combined risk assessments and periodic maintenance on the different compliance programmes.

2.5. Legal principles

When drawing up a Model that is actually suitable for achieving the objectives defined by the Decree, one should not disregard what the law states on matters of entity responsibility for crime.

In particular, the law sets out the following requirements that an effective organisational model should meet:

- the risks of the crimes indicated in the Decree being committed should be specifically and exhaustively **mapped**, with the related individual areas of risk and sensitive processes being identified with regard to the character and size of the organisation, as well as the kind of business conducted;
- the Model should be **effective**. Where the requirements on **practicality**, **efficiency** and **ability to change and evolve** are satisfied, only then is a model deemed to have been effectively implemented;
- the **protocols and procedures** relating to sensitive areas and specifically linked to the management of economic resources, participation in tenders and execution of contracts, should be identified in order to guarantee that resources are managed transparently;
- staff should receive compulsory **tailored training**, distinguishing between general staff training and more specialised training for those who work in specific risk areas, the supervisory body and those in charge of internal control;
- parties with **decision-making powers** within the entity should be precisely identified as should the parameters to be abided by when making various decisions. **Tasks should also be divided up** between individuals who work in the decisive stages of a process which is considered as risk;

- the **disciplinary sanctions** imposed on individuals who do not comply with the requirements laid down in the Model should be expressly indicated;
- **routine** and spot checks should be scheduled for sensitive areas;
- **systematic research procedures** should be planned for and risks under particular circumstances should be identified, such as if it surfaces that there have been previous violations or if the staff member achieves a higher turnover;
- the supervisory body should be **autonomous** and **independent**. This should be ensured through particular requirements on the professionalism and integrity of the members, who must possess specific skills. Members should also be ineligible for or lose their position, also permanently, if they are convicted of one of the offences indicated in the Decree;
- entity employees and directors should be under the **obligation to provide information**, informing the supervisory body of any relevant news concerning the workings of the entity, non-observance of the Model and any crimes committed. In particular, the Model must provide concrete information on the ways in which anyone who becomes aware of a crime being committed can report to the supervisory body.

2.6. The target audience of the organisational model

The provisions laid down in this Model are binding for anyone who represents the Company or acts in an administrative or managerial role therein, as well as anyone who performs management and control, including de facto, for employees (referring to anyone linked to the Company through an employment relationship, including managers), and for external partners in contractual relations with the Company (hereinafter referred to as the "Target Audience").

2.7. The stages involved in drawing up the organisational model

This Model has been created taking the following into consideration:

- the operations and processes as part of which it is regarded as most likely that crimes as per the Decree will be committed;
- the verification and documentation of the operations at risk;

- compliance with the principle of having separated roles;
- the definition of the powers of authorisation in line with the responsibilities assigned;
- the verification of corporate conduct and its compliance with the code of ethics adopted;
- the introduction of a disciplinary system which imposes appropriate sanctions on non-compliance with the measures indicated in the Model.

The way the organisation, management and control model is put together can largely be split into two stages:

a. identifying the areas at risk and what are known as "sensitive areas", subsequently determining the level of risk. This stage includes an analysis of business operations, aimed at identifying the areas at risk of crimes being committed, followed by identifying the potential ways in which a crime may be committed and the probability of this happening, and evaluating the impact the crimes themselves will have.

b. designing the control system. This stage involves a preliminary evaluation of the pre-existing internal control system, followed by an upgrade and integration phase by way of adopting specific protocols aimed at guaranteeing effective preventative action.

2.8. Structure of the organisational model

Liu Jo's Model is structured as follows.

General Section

The General Section of the Model includes basic information explaining the company's circumstances and that stated in Legislative Decree 231/2001. In particular, the General Section includes:

- the content of the Decree;
- a brief description of the Company;
- the basic principles and objectives of the Model;
- the tasks of the Supervisory Body and the flows of information;

- the methods used to circulate and update the Model;
- the disciplinary system.

Special Section

The Special Section of the Model includes the risk areas and sensitive activities described in relation to the crimes which, taking into account Liu Jo's specific circumstances, may hypothetically be committed, in the interests or to the benefit of the entity, whether by individuals in senior management or individuals in subordinate roles.

The Special Section is aimed at defining guidelines, rules and principles governing conduct, that every person in the Model's target audience should observe in order to prevent, within the scope of the specific sensitive activities carried out by the Company, the crimes indicated in the Decree from being committed, as well as for the purposes of ensuring accuracy and transparency in the conduct of business.

Annexes

The Annexes to the Model specify the procedures relating to the functioning of the Model itself. These Annexes are as follows:

- ANNEX A - Risk assessment document
- ANNEX B - Code of Ethics

2.9. The concept of acceptable risk

The concept of "acceptable risk" is fundamental in drawing up any organisational model that can actually be suitable for preventing the crimes indicated in the Decree, whilst also ensuring that the entity remains operational.

In fact, it is of great importance to define a threshold which makes it possible to set a limit on the quantity and quality of the preventative measures to adopt in order to prevent crimes from being committed. It is evident that managing certain risk areas and carrying out operations which are intrinsically risky make it impossible to get the risk of an adverse event occurring down to absolute zero.

Risk, therefore, must be deemed acceptable when any additional means of control would cost the entity more than the resource to be protected and more than any consequences which may arise as a result of the event to be prevented occurring. It is evident that the probability of the adverse event (crime) occurring, the costs involved in the Company being named responsible and the costs involved in control are among the variables to be taken into consideration.

If the acceptable risk is not determined in advance, there is no doubt that the quality/quantity of the preventative controls to be carried out would be virtually infinite, and it's then easy to imagine the consequences this would have for business operations.

On the other hand, the same Decree states that the way the entity manages risk doesn't have to completely eradicate the possibility that an adverse event could occur.

As per art. 6 of Legislative Decree 231/2001, to ensure that the Company is exempt from responsibility, it would, in fact, be sufficient to have a Model which would force the party concerned to fraudulently avoid observing that specified herein.

As such, in terms of characteristics, an effective control system must be capable of:

- excluding the possibility that any party working in Liu Jo could justify their conduct by claiming to be unaware of the requirements laid down in the Model;
- ensuring that, if a crime were to be committed, it could only be a case of fraudulent non-observance of the requirements laid down in the Model and the surveillance system in place.

2.10. Updating the organisational model

The organisational model is a document issued by the Company's senior executives. As such, any subsequent substantial amendments and additions are referred exclusively to the Liu Jo Board of Directors and should be adopted through a specific resolution. However, it is the supervisory body's task, as specified in the relevant section, to continuously check that the Model is up to date and to immediately notify the Company's Board of Directors if it needs to be amended or supplemented.

By way of example, amendments and additions may include:

- updating the Model following changes in the company's organisational structure;
- updating the Model in line with current regulations;

- inserting or deleting sections of the Model;
- the identification and subsequent analysis of new risk areas;
- if various business divisions change name, tasks or responsibilities.

3. THE SUPERVISORY BODY

3.1. The Supervisory Body

Art. 6 of Legislative Decree 231/2001 states that, for an entity to be exempt from responsibility, the Supervisory Body must have been granted autonomous powers to take action and exercise control, and must have been effectively and concretely able to exercise the powers of supervision granted to them by the Model on the functionality and observance thereof.

As such, the Supervisory Body must satisfy the following requirements in order to be able to properly carry out their assigned role:

a) autonomy and independence;
b) skill and professionalism;
c) neutrality and integrity;
d) effectiveness;
e) continuity of action;
f) composition

a) Autonomy and independence

The requirement that the Supervisory Body must be autonomous and independent refers to how the body is composed and its positioning within the entity's structure. In fact, it is clear that the Supervisory Body should not in any way be directly or indirectly involved in any business processes or managerial activities that the body themselves must monitor.

Over and above this, it is crucial that the Supervisory Body be positioned as highly as possible within the hierarchy, answering only to the Board of Directors with regard to the work they have performed. The Board, however, may only disband or change the composition of the Supervisory Body in cases where this has been expressly defined as mandatory.

b) Skill and professionalism

The members of the Supervisory Board must possess specific technical and professional skills with regard to the subjects of corporate compliance and criminal responsibility for legal entities, as well as with regard to the specific business conducted by the entity.

c) Neutrality and integrity

There are two specific grounds for members being ineligible for or losing their position which guarantee that this requirement is satisfied: a) they have a conflict of interest, of any kind, with the supervisory role; b) they have been convicted, even if not by way of a final conviction, for any one of the crimes indicated in the Decree, or for any other crime committed with or without intent, the nature of which renders the party unsuitable for assuming a position within the Supervisory Body.

d) Effectiveness

In addition to the requirements above, the Supervisory Body must also exercise the powers conferred to them by the Board of Directors effectively. Furthermore, any work they perform must be documented in the designated register.

e) Continuity of action

The Supervisory Body must:

- constantly monitor the Model, using the necessary investigative powers;
- be positioned within the company so as to guarantee constant surveillance;
- ensure that the Model is implemented and kept constantly up to date.

Taking into account the particular nature of the work the Supervisory Body has to perform as well as the specific professional prerequisites, this Body shall, from time to time, be joined by the heads of the different departments concerned so as to help them carry out their work.

As mentioned above, the Supervisory Body shall be vested with all the powers required to complete their work, including the freedom to take action within the entity and a specific expenditure allocation within a predefined budget.

The Supervisory Body's performance criteria and the specific allocation of tasks and responsibilities, besides the power of expenditure as defined above, shall be decided upon by the Board of Directors.

f) Composition

The Supervisory Body may have one or multiple members, which in turn may be internal and/external to the entity.

In order to ensure that the Supervisory Body is as skilled and independent as possible and to, at the same time, guarantee that they can effectively carry out surveillance and remain in constant dialogue with the administrative body, Liu Jo S.p.A.'s Supervisory Body includes at least one external professional who is an expert in entity responsibility for crime.

3.2. Appointments and changes

Members of the Supervisory Body are appointed by way of a resolution issued by the Board of Directors. Changes in the structure or composition of the Supervisory Body shall not require the Model to be re-approved.

3.3. Tasks and powers of the Supervisory Board

Liu Jo's Supervisory Body is tasked with the following:

- checking that directors, representatives, employees, partners and, in general, any individual who acts in the name and on behalf of the company, observes the requirements laid down in the Model;
- checking that the Model is adequate and up to date;

These tasks involve a series of specific jobs, a brief list of which can be found below:

- setting the information criteria to suit them, in order to identify and constantly monitor what are known as "risk areas" and "sensitive processes";
- checking that the documentation requested is available, properly kept and effective;
- looking into business operations, instigating control procedures in conjunction with the department's operational management;
- carrying out periodic checks on operations and specific actions undertaken within the "risk areas";
- helping the Model to be circulated and understood through training and education;

- identifying, collecting, drafting and saving all information relevant to compliance with the Model;
- defining, together with the Board of Directors, the instruments to be used to implement the model and conducting periodic checks on the adequacy thereof;
- conducting internal investigations into violations of the Model;
- submitting requests for sanctions to be imposed on those responsible for any violations of the Model.

The Supervisory Body is also tasked with:

a) conducting periodic checks on the system of proxies in force, with the support of other competent departments, recommending any changes in the event that the management powers and/or qualification do not correspond to the powers of representation conferred;

b) conducting periodic checks on the Model, aimed at evaluating how it works and if it is up to date;

c) creating a database (on paper or electronic) concerning the checks carried out, any information and training provided and the documentation relevant as per the Decree.

The Supervisory Body is therefore assigned the following powers and obligations:

1) <u>having knowledge of the Model and evaluating its suitability for preventing the crimes indicated in the Decree.</u>

   As soon as they take office, the members of the Supervisory Body must analyse the Model, issuing an expert opinion on the suitability thereof for preventing the crimes indicated in the Decree.

2) <u>helping to raise awareness of the Model.</u>

   The Supervisory Body shall help with all necessary initiatives for circulating and raising awareness of the Model;

3) <u>monitoring risk areas.</u>

   The Supervisory Body shall conduct periodic checks on operations or specific actions performed within risk areas.

4) <u>establishing a confidential reporting system.</u>

The Supervisory Body is tasked with collecting, drafting and saving all information relevant in determining whether the Model is effective and adequate;

5) checking that the Model is up to date and adequate, ensuring it is updated where required.

The Supervisory Body shall conduct periodic checks on whether the Model works and is up to date, ensuring that it is updated on a periodic basis, or when required.

3.4. The Supervisory Body's reporting obligations

In order to guarantee that the Supervisory Body is entirely autonomous and independent when performing its work, the Body shall communicate directly with the Company's administrative body and the Board of Statutory Auditors.

In particular, the Supervisory Body shall report to the Board of Directors and Board of Statutory Auditors on how the Model is being implemented, the outcome of the supervisory activities carried out and any appropriate action to be taken with regard to implementing the Model:

- on a continuous basis with regard to the Board of Directors, submitting a written report at least every six months;
- on a periodic basis with regard to the Board of Statutory Auditors, or upon request;
- on an occasional basis with regard to the Board of Statutory Auditors, in the event of alleged violations by senior executives, the Board of Statutory Auditors may request information or clarification.

4. INFORMATION TRANSFERRED TO THE SUPERVISORY BODY

4.1. System of proxies and powers of attorney

The Supervisory Body must be provided with documents, kept constantly up to date, concerning the system of proxies and powers of attorney in force at Liu Jo.

4.2. Reports made by company representatives or third parties

The Model, as expressed indicated in the Decree, must introduce obligations to provide information to the Supervisory Body.

In particular, corporate bodies must provide the Supervisory Body with any information relevant to how the Model works and compliance therewith.

The Target Audience of the Model must provide the Supervisory Body with any information they have regarding conduct which may involve a crime or a violation of the requirements laid down in the Model.

In order to ensure that the information remains confidential, the Company has set up an email address, **odv@liujo.it**, to which information and reports may be sent, including anonymously. In addition, reports can also be sent by post to the following address: Organismo di Vigilanza [Supervisory Body], Viale J.A. Fleming 17, Carpi, Italy.

The Supervisory Body shall evaluate the reports they have received and may summon, where necessary, the individual who made the report, as well as the alleged individual who has committed the violation, conducting any assessments and investigations required to ascertain whether the report made is truthful.

In addition to making a report as indicated above, including unofficially, the following details must also be provided to the Supervisory Body:

- measures and/or information regarding the existence of criminal proceedings, including involving unknown individuals, with regard to matters of interest to the Company;
- measures and/or information regarding the existence of administrative proceedings or civil disputes in relation to requests or initiatives from Independent Administrative Authorities, Financial Authorities, Local Authorities and Public Administration regarding contracts, requests and/or the management of public funds;
- requests for legal assistance which staff have submitted to the Company in the event that criminal or civil proceedings are instigated against them;
- reports issued by heads of division/department within the scope of supervisory activities, which may highlight details relevant to Model compliance.

In accordance with that recently stated in the regulations on matters of whistleblower protection (as mentioned above in **paragraph 1.5**), reports made on Model violations and/or strong suspicions thereof may be brought to the attention of the Supervisory Body in writing, on paper or electronically via the email indicated above.

In this regard, the following rules apply:

- reports on the crimes indicated in the Decree potentially being committed or, in any case, on conduct in violation of corporate procedures and that specified in the Model, must be collected;
- the Supervisory Body shall evaluate the reports received and take the appropriate action after having spoken to, where appropriate, the individual who submitted the report and the individual responsible for the alleged violation;
- reports must be submitted in writing and be in regard to any violation or suspected violation of the Model and the corporate procedures adopted. The Supervisory Body shall take action so as to guarantee whistleblowers protection against any form of retaliation, discrimination or penalisation, also ensuring that their identity remains confidential.

With regard to such communications, the Supervisory Body shall take action so as to guarantee whistleblowers protection against any form of retaliation, discrimination or penalisation, also ensuring that their identity will remain confidential, without prejudice to legal obligations and the protection of the rights of the Company or of the persons wrongly accused and/or accused in bad faith.

5. CIRCULATION OF THE MODEL AND STAFF TRAINING

In accordance with that stated in the Decree, Liu Jo has set up a plan for communication and training, aimed at guaranteeing that the Model, and the code of conduct laid down therein, are correctly circulated and understood by current and future employees, with a different level of detail depending on how involved employees are in risk areas. This involves the organisation of specific training sessions on entity responsibility for crime, as part of which the general principles of the rules laid down in the Decree are explained, as is the content of the model.

The system for information and training is supervised and implemented by the Supervisory Body, in conjunction with Human resources and the heads of department when they are involved in how the Model is applied.

Furthermore, the Model (both general and special sections) and the Code of Ethics for Liu Jo are published on the company's Intranet and on the website, www.liujo.com, so that it is widely available to the target audience.

In any case, the training provided so as to raise awareness and create understanding of the rules laid down in the Decree varies in content and method depending on the qualification of the participants, the role they carry out and the level of risk in the area they work, and whether or not they act in representation of the Company.

Documentation is kept by the Supervisory Body, as well as by Human Resources, on the initial information provided to staff and the periodic training they receive.

6. THE DISCIPLINARY SYSTEM

Art. 6, paragraph II of the Decree states, in addition to the elements which make up the Model, that the entity should adopt a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model.

The principles laid down in the Model and the related rules/procedures governing conduct constitute a set of rules which must be observed by all members of corporate bodies, Liu Jo employees - including managers - external consultants and anyone who has contractual relations with the Company. If the provisions of the Model are violated, sanctions shall be imposed according to the general principles set out herein.

First of all, all Liu Jo employees, as identified in art. 2094 of the Italian Civil Code and including employees in managerial positions, are subject to the disciplinary system.

With particular regard to managers, positions may be reorganised as per art. 2103 of the Italian Civil Code and, if need be, the working relationship may be terminated as per articles 2118 and 2119 of the same Code.

With regard to partners of the company as per art. 2222 of the Italian Civil Code (self-employed individuals) or as per art. 409 of the Italian Code of Civil Procedure (semi-subordinate individuals) who provide services to the Company and, in general, external consultants as well as anyone who has contractual relations with Liu Jo, their contract shall be terminated.

The disciplinary system is applicable in the event that violations of the Model have been ascertained, regardless of whether any criminal proceedings have been instigated or the outcome thereof.

The severity of the violation shall be evaluated taking the following into consideration:

I. whether the conduct was intentional or how negligent it was, as well as the level of carelessness and malpractice, also taking into consideration how foreseeable the event was;
II. the overall conduct of the individual responsible for the violation, including with reference to any prior violations;
III. the work carried out and the role undertaken by the individual responsible for the violation.

By way of example, violations may include types of behaviour:

1) lack of compliance, including the failure to act and acting in cooperation with others, with the general code of conduct and procedures outlined in the Code of Ethics and the Model;
2) failure to draw up and/or incorrectly drawing up the documentation required by procedures and protocols;
3) violating or evading the control systems required by the Model, in any way, including removing, destroying or altering documentation relating to procedures, as well as obstructing controls and hindering individuals and bodies in the exercise of their control functions in any way;
4) if supervisors fail to monitor the conduct of those who report to them with regard to the correct and effective implementation of the principles laid down in the Model;
5) any other conduct, whether it be actions or the failure to act, which damages the interest Liu Jo has in effectively and correctly implementing the Model, or puts this in harm's way.

As per art. 6, paragraph 2 *bis*, lett. d) (recently introduced with Law no. 291 dated 30/11/2017), if the measures taken to protect whistleblowers who report unlawful conduct or violations of the Model are not observed, sanctions may be imposed, as is the case in the event that reporting is

abused, where reports are made, whether through intention or gross negligence, that then turn out to be unfounded.

The Supervisory Body must be informed of these violations and any sanctions imposed as a result.

Liu Jo's bodies and/or internal departments who have the right or have been given the right to do so, can exercise disciplinary powers over Liu Jo employees - this must be done in compliance with art. 7 of Law 300/1970 and with the applicable collective agreements.

The disciplinary sanctions which may be imposed are specified below:

- **Disciplinary sanctions for subordinate employees**

If company employees violate legal regulations, the provisions laid down in Liu Jo's Code of Ethics or the requirements set out in the Model and, generally, evidence behaviour which may expose Liu Jo to the administrative sanctions specified in the Decree, this may result, based on defined criteria, in conservative sanctions being applied or in dismissal, within the limits defined in art. 2106 of the Italian Civil Code, in accordance with articles 7 and 18 of Law 300/1970 and as governed by the relevant CCNL (*Contratto Collettivo Nazionale del Lavoro* [National Collective Bargaining Agreement]).

- **Subordinate employees with a managerial role**

Considering that there is more trust involved when employing an individual in a managerial position, if Liu Jo managers violate legal regulations, the provisions laid down in the Code of Ethics or the requirements set out in the Model and, generally, evidence behaviour which may expose Liu Jo to the administrative sanctions specified in the Decree, this may result in certain measures being taken as per the relevant collective agreement (CCNL-DAI) as well as in accordance with articles 2118 and 2119 of the Italian Civil Code and art. 7 of Law 300/1970. If it is ascertained that violations have been committed, that supervision was inadequate and that the Supervisory Body was not informed in a timely manner, managers may be provisionally suspended, without prejudice to their right to receive pay, or assigned to a new role in accordance with art. 2103 of the Italian Civil Code.

- **Self-employed individuals, external consultants and partners**

Contracts that Liu Jo enters into with self-employed workers, external consultants and business partners must contain a declaration indicating awareness of the Code of Ethics and Model and the obligation to observe that specified therein, or if the contract is with a party who is foreign or works abroad, to observe both local and international regulations on the prevention of risks that may result in Liu Jo taking responsibility for a crime being committed. Contracts entered into with these parties shall include a specific clause on contract withdrawal and/or termination related to the failure to fulfil these obligations, without prejudice to the Company's right to compensation for any damages arising as a result of this conduct, including damage caused with the application of the sanctions specified in the Decree.

- **Directors**

Directors are in a very delicate position: in the event that directors act in such a way that violates the requirements laid down in the Model, the Supervisory Body shall promptly inform the Board of Statutory Auditors so that they can, without delay and in accordance with the powers provided for by law and/or the Articles of Association, call the Shareholders' Meeting in order for appropriate measures to be taken.