

# **Organisation, Management and Control Model**

**(pursuant to Legislative Decree 231/01)**  
of Nardò Technical Center s.r.l.

**[Abstract]**

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## 1. Legislative Decree no. 231 of 8 June 2001 on administrative liability of legal entities, companies and associations, also without legal status

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### 1.1 Administrative Liability of Legal Entities

Legislative Decree no. 231 of 8 June 2001, in implementation of Delegated Law no. 300 of 29 September 2000, introduced in Italy the “Regulations governing the administrative liability of legal entities, companies and associations also without legal status” (hereinafter, for brevity, also “**Legislative Decree 231/2001**” or the “**Decree**”), part of a broad process of anti-corruption legislation and aligning Italian legislation concerning the liability of legal entities with certain International Conventions previously signed by Italy.

Legislative Decree 231/2001 therefore establishes a system of administrative liability (substantially comparable to criminal liability), for legal entities<sup>1</sup> (hereinafter, for brevity, “**Entity/Entities**”), in addition to the liability of the natural person (described more fully below), materially committing the crime and which has the objective of involving, in punishing the same, the Entities in whose interest or to whose advantage such crime was committed. Such administrative liability only exists for the crimes listed in said Legislative Decree 231/2001.

Article 4 of the Decree also states that in certain cases and under the conditions provided for in articles 7, 8, 9 and 10 of the Penal Code, the administrative liability of Entities that have their headquarters in Italy for crimes committed abroad by natural persons (as described more fully below) providing that the State of the place where the criminal act was committed does not take action against such Entities.

### 1.2 Persons subject to Legislative Decree 231/2001

The persons who, by committing a crime in the interest or to the advantage of the Entity, may determine liability of the same are listed below:

- (i) natural persons holding top management positions (representation, administration or management of the Entity or of its organisational units with financial and functional autonomy or persons exercising de facto control and management: hereinafter, for brevity, “**Top Management**”),
- (ii) natural persons subject to management or supervision by Top Management (hereinafter, for brevity, “**Subordinates**”).

In this regard, it should be noted that it is not necessary that Subordinates have an employment relationship with the Entity, this notion also including “*those providers of services who, while not being ‘employees’ of the entity, have a relationship with the latter such as to deem that there is an obligation of supervision by the top management of the entity itself: for example, agents, partners in joint ventures,*

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<sup>1</sup> Art.1 of Legislative Decree 231/2001 limited the scope of those to whom the regulations are addressed to “*legal entities, companies and associations also without legal status*”. In light of this, the legislation applies to:

- private entities or entities with legal status and associations “also without” legal status;
- public entities or public entities devoid of public powers (so-called “economic public entities”);
- mixed public/private entities (so-called “mixed companies”).

Excluded from the target audience are: the State, local public entities (Regions, Provinces, Municipalities and Mountain Communities), non-economic public entities and, in general, all entities that perform functions of a constitutional nature (Chamber of Deputies, the Senate, the Constitutional Court, the General Secretariat of the Presidency of the Republic, the Superior Council of the Judiciary, etc.).

those with an employee-like relationship in general, distributors, suppliers, consultants, collaborators”<sup>2</sup>.

In fact, according to the prevailing doctrine, of relevance for the purposes of administrative liability are those situations in which a particular assignment is entrusted to external collaborators, required to carry it out under the management or control of Top Management.

It is nevertheless appropriate to reiterate that the Entity is not liable, pursuant to express legislation (article 5, paragraph 2, of the Decree), if said persons have acted exclusively in their own interest or that of third parties. In any case, their conduct must refer to that “organic” relationship for which the acts of the natural person may be attributed to the Entity.

### 1.3 Predicate Crimes

The Decree refers to the following types of crime (hereinafter, for brevity, also the “**Predicate Crimes**” :

- (i) crimes against Public Administration (articles 24 and 25 of Legislative Decree 231/2001), introduced by the decree and subsequently modified by Law 190 of 6 November 2012;
- (ii) computer crimes and unlawful processing of data, introduced by article 7 of Law no. 48 of 18 March 2008, which introduced article 24-bis in Legislative Decree 231/2001;
- (iii) organised crimes, introduced by article 2, paragraph 29, of Law no. 94 of 15 July 2009, which introduced article 24-ter in Legislative Decree 231/2001;
- (iv) crimes concerning forgery of money, public credit cards, revenue stamps and identity documents, introduced by article 6 of Law no. 406 of 23 November 2001, which introduced article 25-bis in Legislative Decree 231/2001, subsequently supplemented by article 15, paragraph 7, point a), of Law no. 99 of 23 July 2009;
- (v) crimes against industry and commerce, introduced by article 15, paragraph 7, point b) of Law no. 99 of 23 July 2009, which introduced article 25 bis. 1 in Legislative Decree 231/2001;
- (vi) corporate crimes, introduced by Legislative Decree no. 61 of 11 April 2002, which introduced article 25-ter in Legislative Decree 231/2001, subsequently supplemented by Law no. 190 of 6 November 2012,
- (vii) crimes connected with terrorism or the subversion of democracy, introduced by Law no. 7 of 14 January 2003, which introduced article 25-quater in Legislative Decree 231/2001;
- (viii) practice of female genital mutilation, introduced by Law no. 7 of 9 January 2006, which introduced art. 25-quater.1 in Legislative Decree 231/2001;
- (ix) crimes against the individual, introduced by Law no. 228 of 11 August 2003, which introduced article 25-quinquies in Legislative Decree 231/2001;
- (x) crimes of market abuse, provided for by Law no. 62 of 18 April 2005, which introduced article 25-sexies in Legislative Decree 231/2001 and, in the Consolidated Finance Act, article 187-quinquies “*Liability of the Entity*”;
- (xi) crimes of manslaughter or serious or very serious injury, committed with violation of legislation on the protection of health and safety at work, introduced by Law no. 123 of 3 August 2007, which

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<sup>2</sup> Quoted from: Assonime circular no. 68 dated 19 November 2002.

introduced article 25-septies in Legislative Decree. 231/2001;

- (xii) crimes concerning receiving of stolen goods, money laundering and the use of money, assets or benefits of illegal origin, introduced by Legislative Decree no. 231 of 21 November 2007, which introduced article 25-octies in Legislative Decree 231/2001;
- (xiii) crimes concerning infringement of copyright, introduced by article 15, paragraph 7, point c, of Law no. 99 of 23 July 2009, which introduced article 25-novies in Legislative Decree 231/2001;
- (xiv) crime of induction to not make statements or make false statements to judicial authorities, introduced by art. 4 of Law no. 116 of 3 August 2009, which introduced article 25-decies in Legislative Decree 231/2001<sup>3</sup>;
- (xv) environmental crimes, introduced by Legislative Decree no. 121 of 7 July 2011, which has introduced article 25-undecies in Legislative Decree 231/2001;
- (xvi) transnational crimes, introduced by Law no. 146 of 16 March 2006, "*Law of ratification and implementation of the United Nations Convention and Protocols against transnational organised crime*";
- (xvii) crime of use of third-country nationals whose stay is irregular, introduced by Legislative Decree no. 109 of 16 July 2012, concerning "*Implementation of Directive 2009/52/EC introducing minimum legislation relating to sanctions and measures against employers who employ third-country nationals whose stay is irregular*", which introduced article 25-duodecies in Legislative Decree 231/2001.

#### 1.4 The Penalties provided for in the Decree

Legislative Decree 231/2001 provides for the following types of penalties applicable to the target audience of the legislation:

- (i) fines;
- (ii) disqualification penalties;
- (iii) confiscation of the price or profit of the crime;
- (iv) publication of the sentence.
- (v) A **Fine**, governed by articles 10 et seq. of the Decree, constitutes the "basic" penalty to be necessarily applied, payment of which is the responsibility of the Entity with its equity or with the mutual fund.

The Legislator has adopted an innovative policy of assessing the penalty, obliging the Court to carry out two different and subsequent assessments. This results in better alignment of the penalty with the gravity of the act and the financial situation of the Entity.

The first assessment requires the Court to determine the number of quotas (in any case not less than one hundred and not more than one thousand)<sup>4</sup>, taking into account:

- the severity of the fact;
- the degree of responsibility of the Entity;

<sup>3</sup> Originally 25-novies and thus renumbered by Legislative Decree 121/2011.

<sup>4</sup> With reference to crimes of *market abuse*, the second paragraph of article 25-sexies of Legislative Decree 231/2001 provides that: "*If as a result of commission of the crimes referred to in paragraph 1, the product or profit earned by the entity is of a significant amount, the penalty is increased by up to ten times the product or profit*".

- the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offences.

During the second assessment, the Court determines, within the minimum and maximum values predetermined in relation to the crimes sanctioned the value of each quota from a minimum of 258.00 euros to a maximum of 1,549.00 euros. This amount is determined “based on the financial situation of the entity in order to ensure the effectiveness of the penalty” (articles 10 and 11, paragraph 2, Legislative Decree 231/2001).

As stated in point 5.1. of the Report to the Decree, “As regards the procedures for ascertaining the financial situation of the entity, the Court may make recourse to financial statements or other accounting documents capable of photographing such situation. In certain cases, evidence may also be acquired by taking into account the size of the entity and its position on the market. (...) The court cannot but immerse itself, with the help of consultants, in the reality of the enterprise, where it can also acquire information on the financial solidity of the entity”.

Article 12 of Legislative Decree 231/2001 provides for a number of cases in which the penalty is reduced. These are summarised in the table below, with an indication of the reduction applied and of the assumptions for application of the reduction itself.

<b>Reduction</b>	<b>Assumptions</b>
1/2 (and in any case cannot exceed 103,291.00 euros)	<ul style="list-style-type: none"> <li>• The offender committed the fact mainly in his/her own interest or that of third parties <u>and</u> the Entity did not obtain an advantage or obtained a minimum advantage;</li> </ul> <u>or</u> <ul style="list-style-type: none"> <li>• the financial damage caused is particularly slight.</li> </ul>
from 1/3 to 1/2	<p>[<u>Before</u> the beginning of proceedings of first instance]</p> <ul style="list-style-type: none"> <li>• The Entity has fully compensated the damage and has eliminated the harmful or dangerous consequences of the crime or has effectively acted in this sense;</li> </ul> <u>or</u> <ul style="list-style-type: none"> <li>• an organisational model suitable for preventing the kind of crimes committed has been implemented and made operational.</li> </ul>
from 1/2 to 2/3	<p>[<u>Before</u> the beginning of proceedings of first instance]</p> <ul style="list-style-type: none"> <li>• The Entity has fully compensated the damage and has eliminated the harmful or dangerous consequences of the crime or has effectively acted in this sense;</li> </ul> <u>and</u> <ul style="list-style-type: none"> <li>• an organisational model suitable for preventing the kind of crimes committed has been implemented and made operational.</li> </ul>

(i) The following **disqualification penalties** are provided for by the Decree and apply only in relation

to the crimes for which they are expressly envisaged:

- disqualification from conducting business activity;
- suspension or revocation of authorisations, licenses or permits instrumental to commission of the crime;
- prohibition of dealing with the public administration sector, save for obtaining a public service;
- exclusion from benefits, financing, contributions and subsidies and/or possible revocation if already granted;
- prohibition of advertising goods and services.

For disqualification penalties to be imposed require the existence of at least one of the conditions provided in article 13 of Legislative Decree 231/2001, namely:

- *“the entity has obtained a significant profit from the crime and the crime was committed by persons in top management positions or by subordinates subject to management by others, in which case commission of the crime was determined or facilitated by serious organisational deficiencies”*; or
- *“in the case of reiteration of the crimes”*<sup>5</sup>.

Moreover, disqualification penalties may also be requested by the public prosecutor and applied to the Entity by the Court as a precautionary measure when:

- there are serious grounds for suspecting the existence of liability of an Entity for administrative offence resulting from a crime;
- specific and founded elements emerge for suspecting the existence of the real danger that offences of the same nature as that for which action is being taken may be committed;@@
- the Entity has obtained a significant profit.

In any case, disqualification penalties are not applied when the crime was committed in the prevalent interest of the offender or that of third parties, and the Entity has obtained little or no benefit or the financial damage caused is particularly slight.

Application of disqualification penalties is also excluded by the fact that the Entity has put in place remedial conduct provided for in article 17 of Legislative Decree 231/2001 and, more precisely, when the following conditions are met:

- *“the entity has fully compensated the damage and has eliminated the harmful or dangerous consequences of the crime or has effectively acted in this sense”*;
- *“the entity has eliminated the organisational deficiencies that led to the crime by adoption and implementation of appropriate organisational models suitable for preventing the type of crimes committed”*;
- *“the entity has made available the profit obtained for the purposes of confiscation”*.

Disqualification penalties have a duration of not less than three months and not more than two years and the choice of measures to be applied and their duration is made by the Court based on the criteria previously outlined for assessment of the fine, “taking into account the suitability of individual penalties in preventing offences of the type committed” (art. 14, Legislative Decree 231/2001).

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<sup>5</sup> Pursuant to article 20 of Legislative Decree 231/2001, *“reiteration occurs when an entity already finally sentenced at least once for an unlawful act resulting from a crime commits another within five years of the final sentence”*.

The Legislator has also clarified that disqualification from activities is of a residual nature compared to other disqualification penalties.

- (ii) Pursuant to article 19 of Legislative Decree 231/2001, with the sentence, **confiscation** - also for the equivalent amount - of the price (money or other financial benefit provided or promised to induce or cause another person to commit the crime) or profit (immediate financial benefit obtained) from the crime is imposed, except for the part that can be returned to the damaged party and without prejudice to the rights acquired by third parties in good faith.
- (iii) Publication of the sentence on one or more newspapers, as an extract or in full, may be ordered by the Court, together with affixation in the municipality where the Entity has its headquarters, when a disqualification penalty is applied. The publication is carried out by the Clerk of the Court and is at the expense of the Entity.

### 1.5 Attempted crimes

In the case of committing, in the form of an attempt, the predicate crimes of the Decree, the fines (in terms of amount) and the disqualification penalties (in terms of time) are reduced by one-third to a half, while the imposition of penalties is excluded in cases in which the Entity voluntarily prevents the completion of the action or occurrence of the event (article 26 of the Decree).

### Exempting Conduct

Articles 6 and 7 of Legislative Decree 231/2001 provide for specific forms of exemption from administrative liability of the Entity for crimes committed in the interest or to the advantage of the same both by Top Management as well as Subordinates (as defined in paragraph 1.2).

In particular, in the case of crimes committed by **Top Management**, article 6 of the Decree provides for exemption if the Entity itself demonstrates that:

- (a) the governing body has adopted and effectively implemented, before commission of the fact, an organisation and management model suitable for preventing the type of crimes committed (hereinafter, for brevity, the "**Model**");
- (b) the task of supervising the functioning and observance of the Model and ensuring its updating has been entrusted to a body of the Entity (hereinafter, for brevity, the "**Supervisory Board**" or "**SB**"), having autonomous powers of initiative and control;
- (c) the persons having committed the crime acted by fraudulently eluding the Model;
- (d) there was no omission or insufficient control by the Supervisory Board.

As regards **Subordinates**, article 7 of the Decree provides for exemption of liability in the event that the Entity has adopted and effectively implemented, prior to commission of the crime, a Model suitable for preventing the type of crimes committed.

Exemption from liability of the Entity however is not determined by mere adoption of the Model, but rather by its effective implementation to be carried out through the implementation of all the protocols and controls needed to limit the risk of committing the crimes that the Company intends to prevent. In particular, with reference to the characteristics of the Model, the Decree expressly provides, in article 6,

paragraph 2, for the following preparatory steps for successful implementation of the Model:

- (a) identification of activities in which there is the possibility that crimes may be committed;
- (b) implementation of specific protocols aimed at planning the Entity's decision-making process concerning the crimes to be prevented;
- (c) identification of procedures for the management of financial resources suitable to prevent such crimes being committed;
- (d) obligation of information to the Supervisory Board;
- (e) introduction of a disciplinary system suitable to sanction non-observance of the measures indicated in the Model.

## **1.6 Guidelines:**

At the express indication of the delegated Legislator, the Models can be adopted based on codes of conduct prepared by industry associations that have been communicated to the Ministry of Justice which, in conjunction with the competent Ministries, may, within 30 days, make comments on the suitability of the models for preventing crimes.

The preparation of this Model is based on the Guidelines for the construction of Organisation, Management and Control Models *pursuant* to Legislative Decree 231/2001, approved by Confindustria on 7 March 2002 and subsequently updated (hereinafter, for brevity, cumulatively defined as the "**Guidelines**").

The process specified in the Guidelines for preparation of the Model can be summarised in the following key points:

- identification of risk areas, aimed at verifying in which business areas/sectors crimes can be committed;
- establishment of a control system able to reduce the risks via the adoption of appropriate protocols. To support this requires the coordinated set of organisational structures, activities and operational rules applied - according to the indications of the top management - by *management* and by consultants, aimed at providing reasonable assurance concerning achievement of the objectives of a good internal control system.

The most important components of the preventive control system proposed by the Confindustria guidelines are, with regard to the prevention of intentional crimes:

- Code of Ethics;
- organisational system;
- manual and IT procedures;
- authorisation and signatory powers;
- control and management systems;
- communication to personnel and personnel training.

With regard to intentional crimes (crimes concerning occupational health and safety and - although subsequent to the promulgation of the Guidelines - most environmental crimes), the most important components identified by Confindustria are:

- Code of Ethics (or Conduct) with reference to the crimes in question;

- organisational structure,
- education and training,
- communication and involvement,
- operational management,
- safety monitoring system.

The control system must be inspired by the following principles:

- verifiability, ability of documentation, coherence and congruence of each operation;
- separation of functions (no one can independently manage all the steps in a process);
- documentation of controls;
- introduction of an adequate system of penalties for infringement of the regulations and protocols provided for in the Model;
- identification of a Supervisory Board whose main requirements are:
  - autonomy and independence,
  - professionalism;
  - continuity of action;
- obligation, on the part of company functions, and in particular those identified as most “exposed to crime risk”, to provide information to the Supervisory Board, both on a structured basis (periodic reporting on implementation of the Model itself), as well as to report anomalous or atypical situations identified in the context of the information available.

## 2. This Model

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### 2.1 Nardò Technical Center s.r.l.

Nardò Technical Center s.r.l. (hereinafter, for brevity, “**NTC**” or the “**Company**”) is a company of the Porsche Italia Group, leader in the automotive sector in the field of experimental testing and engineering. Built in 1975, the NTC facilities are one of the most famous and important technological centres and *proving grounds* in the world and NTC makes its test structures, technical expertise and experience in the testing field available to the world's leading manufacturers of cars, commercial vehicles and motorcycles, helping to improve the safety, reliability and quality of these vehicles.

NTC is able to operate over the entire test cycle, from road and track tests (reliability, resolution, homologation) to vehicle and component bench testing.

Within the NTC structure the following types of track are available:

#### **High-Speed Circuit:**

can be used to reach high speed in complete safety, thanks to its parabolic profile.

#### **Car Dynamic Platform:**

the dynamic car track is a square with 250 metre sides.

#### **Noise Track (Pass-by):**

also allows tire noise analysis testing (Directive 2001/43/EC).

#### **Special Pavements:**

This track includes an extraordinary variety of different surfaces for performing a wide variety of tests. Suspension comfort and fatigue are just some of the tests that can be performed. The area consists of a

series of stretches with different special surfaces: cobblestone, twists, heavy pavé, comfort stretch (positive and negative holes), binders.

### **Handling Track:**

designed to meet the needs of car manufacturers, especially high performance sports cars, and for subjective and instrumental handling activities, tire performance analysis and development, suspension development and set up, active component and system tuning, brake system testing.

### **Off-Road tracks:**

in NTC there are currently about 40 km of off-road tracks available, with a wide variety of test surfaces.

## **2.2 Adoption of the Model in the Porsche Group**

This Model has been developed based on the principles contained in the Guidelines and Model of the Parent Company, while respecting the autonomy accorded to each Group company.

The Company notifies the Parent Company of adoption of the Model and subsequent amendments that it deems appropriate to make to the same.

In accordance with the principles of autonomy and responsibility of each Group company, the Company:

- establishes its own Supervisory Board;
- defines the relationships of support and collaboration with the Supervisory Board of the Parent Company;
- strives to ensure, in implementation of support and cooperation activities between the Supervisory Board of NTC and that of the Parent Company, compliance with the obligations of loyalty and confidentiality.

## **2.3 Adoption of the Model in NTC**

NTC has implemented its Model, taking into account:

- organisational changes in the Company;
- evolution of the case law and doctrine;
- considerations arising from application of the Model (including experience from the criminal context);
- practices of Italian companies in relation to models;
- results of supervisory activities;
- evolution of the regulatory framework.

## **2.4 This Model**

### **2.4.1 Objectives of the Model**

The Model, drawn up by the Company on the basis of identification of the areas of possible risk in the company activity within which there is considered to be a greater possibility of crimes being committed, has the following objectives:

- provide a prevention and control system aimed at reducing the risk of perpetration of the crimes connected with the company activity;
- make all those who operate in the name and on behalf of NTC, and in particular those involved in the “areas of

activity at risk”, aware that run the risk, in the case of infringement of the provisions contained therein, of committing an offence subject to sanctions, at the criminal and administrative level, not only vis-à-vis themselves but also vis-à-vis the company;

- inform all those who work with the Company that infringement of the provisions contained in the Model will involve application of the appropriate sanctions such as, for example, termination of the contractual relationship;
- confirm that NTC does not tolerate unlawful conduct, of any type or for whatever purpose and that, in any case, such conduct (even if the Company appears to be in a condition to benefit from the same) is always contrary to the principles on which the Company's business is based.

#### **2.4.2 Construction of the Model**

Also based on the indications contained in the reference Guidelines, construction of the Model (and subsequent drafting of this document) was divided into the following phases:

- (i) preliminary examination of the business environment through analysis of the relevant corporate documentation and interviews with NTC managers informed on the structure and activities of the same, in order to define the organisation and activities carried out by the various company organisational units/functions, as well as the business processes which the activities are divided into and their concrete and effective implementation;
- (ii) identification of the areas of activity and business processes “at risk” or - limited to crimes against Public Administration – “instrumental” for the commission of crimes, carried out on the basis of the abovementioned preliminary examination of the business context (hereinafter, for brevity, cumulatively referred to as the “**Crime Risk Areas**”);
- (iii) hypothetical definition of possible ways of committing the Predicate Crimes in the individual Crime Risk Areas;
- (iv) identification of the Entity's control system for preventing the commission of Predicate Crimes.

#### **2.4.3 Concept of acceptable risk**

In drawing up an Organisation and Management Model such as this one, the concept of acceptable risk cannot be neglected. It is in fact essential to establish, for the purposes of compliance with the provisions introduced by Legislative Decree 231/2001, a threshold that limits the quantity and quality of the prevention tools which must be adopted in order to prevent the commission of the crime. With specific reference to the penalty mechanism introduced by the Decree, the acceptability threshold is represented by the effective implementation of an adequate prevention system which cannot be circumvented unless unintentionally, that is, for the purposes of exemption of the Entity from administrative liability, the persons having committed the crime acted by fraudulently eluding the Model and the controls adopted by the Company.

#### **2.4.4 Structure of the Model and relevant Predicate Crimes for its construction**

The Company has developed a Model which takes account of its particular business context, in accordance with its system of governance and able to exploit existing organisms and controls.

The Model, therefore, represents a coherent set of principles, rules and provisions which:

- influence the internal functioning of the Company and the ways in which the same relates with the outside world;
- regulate the diligent management of a system for controlling Crime Risk Areas, aimed at preventing the commission or attempted commission crimes referred to in the Decree.

#### **2.4.5 Adoption of the Model**

Adoption of this Model is delegated by the Decree itself to the management (and in particular to the Board of Directors), which is also assigned the task of integrating this Model with additional Sections of the Special Part concerning other types of Predicate Crimes newly introduced in Legislative Decree 231/2001.

#### **2.5 Documents connected with the Model**

The following documents form an integral and substantial part of the Model:

- Group Code of Ethics, containing the set of rights, duties and responsibilities of NTC vis-a-vis the target audience of the Model itself (hereinafter, for brevity, the **“Code of Ethics”**);
- disciplinary system and related penalties to be applied in the event of infringement of the Model (hereinafter, for brevity, the **“Penalty System”**);
- proxy system, as well as all documents describing and attributing responsibilities and/or duties to those who work in the Entity in Crime Risk Areas (e.g. organisation charts, duty instructions, etc.);
- system of procedures, protocols and internal controls to ensure adequate transparency and dissemination of decision-making and financial processes, as well as the conduct which must be kept by the addresses of this Model working in Crime Risk Areas.

(Hereinafter, for brevity, the proxy system, the procedures, protocols and internal controls mentioned above will be cumulatively defined as the **“Procedures”**).

#### **2.6 Management of financial resources**

Without prejudice to that specified in paragraph [2.5], bearing in mind that, in accordance with article 6, point c) of Legislative Decree 231/2001, among the requirements that the Model must meet is also identification of procedures for the management of financial resources suitable for preventing the commission of crimes, the Company has adopted specific protocols containing the principles and conduct to be followed in the context of management of such resources.

#### **2.7 Dissemination of the Model**

##### **2.7.1 Target Audience**

This Model takes into account the particular business context of NTC and represents a valid tool for raising the awareness and providing information to Top Management and Subordinates (hereinafter, for brevity, the **“Target Audience”**).

The purpose of the above is to ensure that, in the performance of their activities, the Target Audience abides by correct and transparent conduct in line with the ethical and social values of the Company in the pursuit of its business purpose and nevertheless such as to prevent the risk of commission of the crimes provided for by the Decree.

In any case, the competent business functions ensure transposition of the principles and rules of conduct contained in the Model and in the Code of Ethics of NTC in the Company's Procedures.

### **2.7.2 Personnel Education and Training**

NTC's objective is to ensure proper correct knowledge on the part of the target audience concerning the contents of the Decree and the obligations arising from the same.

For the purposes of effective implementation of this model, education and training for the target audience is managed by the Human Resources Department, in close cooperation with the Supervisory Board and the heads of other company functions from time to time involved in the application of the Model.

In order to ensure effective dissemination of the Model and information to personnel with reference to the content of the Decree and the obligations arising from implementation of the same, there is a specific section of the corporate internet site dedicated to the subject.

### **2.7.3 Information to Third Parties and dissemination of the Model**

NTC also ensures dissemination of the Model to those cooperating with the Company without an employment relationship, consultants, agents, representatives and those providing other professional services not of an employment nature, both on an occasional as well as continuous basis.

In particular, corporate functions from time to time involved generally provide third parties and service providers with which they come into contact appropriate information concerning adoption by NTC of the Model pursuant to Legislative Decree 231/2001. The Company also invites third parties to take note of the contents of the Code of Ethics and of the Extract of the Model on its website.

Specific clauses informing third parties of adoption of the model by NTC, which the former declare to have read and to be aware of the consequences of failure to comply with the related provisions, are included in the respective contracts.

## **3. Elements of the governance model and organisational structure of NTC**

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### **3.1 Governance Model of the Company**

NTC is a limited liability company and is currently managed by a Board of Directors composed of four members, as approved by the Shareholders' Meeting<sup>6</sup>.

Directors remain in office until the date of the shareholders' meeting called to approve the financial statements for the last financial year of their term.

The Board of Directors has the broadest powers for the ordinary and extraordinary management of the Company, without exception, with all powers for implementation and achievement of the business purpose.

It can therefore take any kind of obligation and dispose of assets without any limitations whatsoever, being within its responsibility everything which by law is not expressly reserved for shareholders' meeting resolutions.

The Board of Directors may appoint an Executive Committee, determining the number of members and the rules of operation and/or one or more Managing Directors, determining the content, limits and procedures for exercising the powers conferred.

The Board of Directors may delegate all those powers that can be delegated by law to the Chairman, Deputy Chairman, Managing Directors, Executive Committee and one or more Directors.

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<sup>6</sup> Data included in the Chamber of Commerce perusal filed on 30/04/2013.

The Board of Directors may appoint one or more General Managers as well as Special Attorneys for certain acts or categories of acts, determining their duties, responsibilities and powers, including representation, in compliance with statutory limitations.

Within the limits of their powers, the Chairman, any Deputy Chairman, any Managing Directors and any Executive Committee may also confer special powers of attorney on third parties for categories of acts of ordinary administration, as well as for certain acts of extraordinary administration.

The Chairman, Deputy Chairman and Managing Directors, where appointed, have representation of the Company severally among the same vis-à-vis third parties and in court, with the power to initiate actions, lawsuits and legal and administrative proceedings at any instance and also for rulings of revocation or appeal.

### 3.2 The NTC internal control system

NTC has adopted the following general decision-making tools (also in relation to crimes to be prevented):

- the ethical principles of the Company, also based on the provisions in the Group Code of Ethics;
- the proxy system;
- the documentation and provisions concerning the hierarchical and functional organisational and corporate structure;
- the internal control system and therefore the structure of corporate procedures;
- the procedures relating to the administrative, accounting and *reporting* system;
- corporate communications and circulars addressed to personnel;
- compulsory training, adapted and differentiated for all personnel;
- the penalty system pursuant to the National Collective Bargaining Agreement
- the national and foreign legislative and regulatory system, when applicable.

### 3.3 General control principles in all Crime Risk Areas

In addition to the specific controls described in each Section of the Special Part of this Model, the Company has implemented specific general controls applicable in all Crime Risk Areas.

These are the following:

- **Transparency:** every operation/transaction/action must be justifiable, verifiable, consistent and coherent;
- **Separation of functions/Powers:** no one can manage an entire process autonomously and be vested with unlimited powers; authorisation and signature powers must be defined in a manner consistent with organisational responsibilities assigned;
- **Adequacy of internal regulations:** the set of corporate regulations must be consistent with the activity carried out and the level of organisational complexity and such as to ensure the necessary controls to prevent the commission of crimes provided for by the Decree;
- **Traceability/Documentability:** every operation/transaction/action, as well as verification and control of the same, must be documented and the documentation must be properly filed.

## 4. Supervisory Board

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## 4.1 Characteristics of the Supervisory Board

In accordance with the provisions of Legislative Decree 231/2001 (articles 6 and 7), as well as the indications contained in the Confindustria Guidelines, the characteristics of the Supervisory Board, such as to ensure effective and efficient implementation of the Model, must be:

- (a) autonomy and independence;
- (b) professionalism;
- (c) continuity of action.

### (a) Autonomy and independence

The requirements of autonomy and independence are fundamental in order for the SB not to be directly involved in the management activities that constitute the subject of its activity and, therefore, not to be subject to constraints or interferences on the part of the management.

These requirements can be achieved by ensuring the Supervisory Board the highest hierarchical position possible and providing for *reporting* to the highest operating level within the company, i.e. to the Board of Directors as a whole. For the purposes of independence it is also essential that the SB is not assigned operational duties which would jeopardise its objectivity of judgement with reference to verification of conduct and effectiveness of the Model.

### (b) Professionalism

The SB must possess adequate technical and professional expertise for the functions it is called upon to carry out. These characteristics, combined with independence, guarantee objectivity of judgement<sup>7</sup>.

### (c) Continuity of action

The Supervisory Board must:

- carry out the activities necessary for supervision of Model on a continuous basis with adequate commitment and with the necessary powers of investigation;
- be a structure attributable to the Company in order to ensure due continuity of supervisory activities.

To ensure the effective existence of the requirements described above, it is appropriate that such persons should possess, in addition to professional skills, formal subjective requirements as a further guarantee of the autonomy and independence required by task (e.g. good standing, absence of conflicts of interest and kinship with corporate bodies and with top management, etc.).

## 4.2 Identification of the Supervisory Board

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<sup>7</sup> Reference is made, inter alia, to: risk analysis and assessment techniques; measures for containment of the same (organisational procedures, mechanisms for conflict of duties, etc.); *flow charting* of procedures and processes for identification of weaknesses, interview and questionnaire processing techniques; fraud detection methodologies; etc. The Supervisory Board must have powers of inspection (to ascertain how a crime of the type in question could be committed and who committed it); consulting skills (in order to adopt – when designing and subsequently amending the Model – the most appropriate measures to prevent, with reasonable certainty, commission of the crimes themselves or to ensure that daily conduct effectively complies with that defined) and legal skills. Legislative Decree 231/2001 is a criminal measure and since the activity of the Supervisory Board has the objective of preventing crimes, knowledge of the structure and the way in which crimes are committed is therefore essential (which can be ensured by the use of corporate resources or external consultancy).

The Board of Directors of NTC has appointed as the Supervisory Board of the Company a multi-person body consisting of 3 (three) members, all external to the company, with the following characteristics:

- (i) Emilio Battaglia, Chairman of the Supervisory Board, lawyer, Partner of the Legal Firm CMS Adonnino Ascoli & Cavasola Scamoni, expert in corporate criminal law and corporate compliance, author of several publications on the subject, member of the Supervisory Boards of other companies;
- (ii) Bruno Borgia, member, chartered accountant and auditor, Professor at the Centro Universitario di Organizzazione Aziendale (CUOA), former Partner in KPMG, Chairman of the Supervisory Boards of other companies;
- (iii) Dario De Vitis, member, chartered accountant and auditor, expert in control and monitoring and risk analysis and assessment.

This configuration ensures the autonomy of control initiatives with regard to any form of interference and/or influence on the part of any member of the organisation, at the same time ensuring sufficient continuity of action and, on the whole, meeting the requirement of professionalism with regard to the various categories of Predicate Crimes.

#### **4.3 Term of office and grounds for termination**

The Supervisory Board remains in office for the term indicated upon appointment and may be renewed.

**Termination** of office of the SB can occur for any of the following reasons:

- expiry of term;
- revocation by the Board of Directors;
- resignation of a member, formalised in writing to the Board of Directors;
- insurgence of one of the causes of forfeiture referred to in paragraph 4.4.

**Revocation** of the SB can take place only for just cause, including but not limited to the following cases:

- the case in which a member is involved in criminal proceedings concerning the commission of a crime;
- infringement of the confidentiality obligations of the SB;
- gross negligence in the performance of duties related to the office;
- involvement of the Company in criminal or civil proceedings related to a lack of or insufficient supervision, also due to negligence.

Revocation is by resolution of the Board of Directors, subject to the binding opinion of the Board of Statutory Auditors of the Company.

In the event of expiry, revocation or resignation, the Board of Directors without appoints the new member of the SB without delay, while the outgoing member remains in office until replaced.

#### **4.4 Cases of ineligibility and forfeiture**

The following constitute grounds for ineligibility and/or forfeiture of the member of the SB:

- (a) disqualification, disablement, bankruptcy or in any case criminal conviction, also without final sentence, for one of the crimes provided for by the Decree or, in any case, with a sentence involving disqualification, even temporary, from holding public office or inability to hold managerial positions;
- (b) the existence of relations, marriage or kinship within the fourth degree with members of the Board of Directors or of the Board of Statutory Auditors of the company, or with external parties assigned with auditing;
- (c) the existence of relationships of a financial nature between the member and the Company such as to jeopardise the independence of the member.

If, during the term of office, there might be the grounds for forfeiture, the member of the Supervisory Board must immediately inform the Board of Directors.

#### **4.5 Functions, duties and powers of the Supervisory Board**

In accordance with the indications provided by the Decree and by the Guidelines, the **function** of the Supervisory Board generally consists of:

- supervising the effective application of the Model in relation to the various types of crimes taken into consideration by the same;
- verifying the effectiveness of the Model and its real capacity to prevent the crimes in question being committed;
- identifying and proposing to the Board of Directors, updates and amendments to the Model itself in relation to changing legislation or to changing business needs or conditions;
- verifying that the proposed updates and amendments formulated by the Board of Directors have effectively been incorporated in the Model.

In the context of the function described above, the SB has the following **duties**:

- periodically verify the map of Crime Risk Areas and the adequacy of control points in order to allow their alignment with changes of activity and/or organisational structure. For this purpose, the target audience of the Model, as described in more detail in the Special Parts of the same, must notify the SB of any situations which could expose NTC to crime risk. All communications must be made in writing and sent to the appropriate e-mail address activated by the SB;
- periodically, based on the predefined activity plan of the SB, carry out verifications and inspections focused on certain operations or specific acts, put in place in Crime Risk Areas;
- collect, process and retain information (including the reports referred to in the paragraph below) concerning compliance with the Model, as well as update the list of information that must be sent to the SB itself;
- carry out internal investigations to ascertain presumed infringements of the provisions of this Model brought to the attention of the SB by specific reports or emerging during the supervisory activities of the same;
- verify that the elements provided for in the Model for the different types of crimes (*standard* clauses, procedures and related controls, proxy system, etc.) are effectively adopted and implemented and meet the needs of compliance with Legislative Decree 231/2001, otherwise proposing corrective actions and updates of the same.

In order to carry out the functions and duties mentioned above, the following **powers** are attributed to the SB:

- broad and capillary access to various corporate documents and, in particular, those relating to contractual and other types of relationships established by the Company with third parties;
- ability to make recourse to the support and cooperation of the various company structures and corporate bodies which might be the subject of or otherwise involved in control activities;
- ability to also confer specific professional consultancy and support assignments to professionals outside the Company.

#### **4.6 Supervisory Board resources**

The Board of Directors assigns to the SB the human and financial resources deemed necessary for the purposes of carrying out the assigned task. In particular, the Supervisory Board is vested with autonomous spending powers, as well as the power to stipulate, modify and/or terminate professional assignments to third parties in possession of the specific skills required for optimal execution of the assignment.

#### **4.7 Supervisory Board information flows**

##### **4.7.1 Obligations of information to the Supervisory Board**

In order to facilitate supervisory activities on the effectiveness of the Model, the SB must be informed, by means of specific reports from the target audience (and, where applicable, third parties) concerning events that may lead to the liability of NTC pursuant to Legislative Decree 231/2001.

Information flows towards the SB are divided into information of a general nature and specific compulsory information.

In the first case, the following requirements apply:

- the Target Audience is required to notify the SB concerning any crimes committed or reasonably believed to have been committed or practices not in line with the procedures and rules of conduct issued or to be issued by NTC;
- Third Parties are required to report any crimes committed or reasonably believed to have been committed within the limits and according to the procedures contractually provided for;
- Third Parties are required to make any reports directly to the SB.

In addition to the reports concerning violations of a general nature described above, information relating to the following must be promptly transmitted to the SB:

- measures and/or information originating from the police or any other authority concerning investigations involving NTC or members of corporate bodies;
- any reports prepared by other bodies (e.g. Board of Statutory Auditors) within the scope of their control activities and from which facts, events or omissions of a critical nature with regard to compliance with Legislative Decree 231/2001 could emerge;
- information concerning disciplinary proceedings as well as any penalties imposed or the filing of such proceedings with the corresponding reasons, should these be related to the commission of crimes or infringement of the conduct or procedural rules of the Model;

- inquiry commissions or internal reports/communications from which liability for crimes pursuant to Legislative Decree 231/2001 emerges;
- organisational changes;
- updates to the proxy and powers system;
- particularly significant operations carried out in Crime Risk Areas;
- changes in Crime Risk Areas or those potentially at risk;
- any communications of the Board of Statutory Auditors with regard to aspects which may indicate deficiencies in the internal control system, lamentable facts, observations on the financial statements of the Company;
- declaration of truthfulness and completeness of information contained in corporate disclosures;
- copy of the minutes of Board of Directors' and the Board of Statutory Auditors' meetings.

The Company adopts specific dedicated information channels (dedicated telephone lines or *mail box created ad hoc*) in order to guarantee confidentiality and facilitate the flow of reports and information to the SB.

The SB assesses reports received with discretion and responsibility. To this end it may hear the author of the report and/or the person responsible for the alleged violation, justifying in writing any decision not to proceed. In any case, those making reports in good faith will be protected from any form of retaliation or penalisation and will be ensured utmost confidentiality, without prejudice to legal obligations and the requirements of protection of the Company or of persons wrongly or maliciously accused.

#### **4.7.2 Obligations of information on the part of the Supervisory Board**

Whereas the responsibility for effective adoption and implementation of the Model lies with the Board of Directors of the Company, the SB reports on the implementation of the Model and on the occurrence of any problems.

In particular, the Supervisory Board is responsible towards the Board of Directors for:

- communicating, at the beginning of each financial year, the plan of activities which it intends to carry out in order to fulfil the assigned tasks. This plan will be approved by the Board of Directors itself;
- periodically communicating the progress of the programme, together with any changes made to the same;
- promptly communicating any issues related to the activities, where significant;
- reporting, at least every six months, on the implementation of the Model.

The SB is required to periodically report, in addition to the Board of Directors, to the Board of Statutory Auditors concerning its activities.

The SB may ask to be heard by said bodies to report on the functioning of the Model or on specific situations. Minutes must be taken of meetings with corporate bodies to which the SB reports. A copy of these minutes must be kept by the SB and by the bodies from time to time involved.

Without prejudice the foregoing, the Supervisory Board may, in addition, communicate, evaluating the individual circumstances:

- (i)** the results of its investigations to function and/or process managers should aspects susceptible to improvement emerge from their activities. In such cases it will be necessary for the SB to obtain an action plan from process managers, with related timing, for implementation of activities susceptible to improvement as well as the results of such an implementation;
- (ii)** notify the Board of Directors and the Board of Statutory Auditors of conduct/actions not in line with the Model in order to:

- (a) acquire from the Board of Directors all the elements for communications to the departments responsible for assessment and application of disciplinary measures;
- (b) provide indications for the removal of deficiencies in order to avoid a repetition of the occurrence.

Finally, the SB has the obligation to immediately inform the Board of Statutory Auditors should the infringement involve members of the Board of Directors.

## **5. Penalty system for failure to comply with this Model and rules-provisions referred to herein**

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### **5.1 General principles**

NTC acknowledges and declares that putting in place an adequate penalty system for infringement of the regulations contained in the Model, in its Attachments and in the Procedures is an essential condition to ensure the effectiveness of the Model itself.

In this regard, in fact, article 6 paragraph 2, point e) of the Decree provides that the organisation and management models must *“introduce a suitable disciplinary system to punish failure to comply with the measures indicated in the model”*.

The application of disciplinary sanctions is independent of the outcome of any criminal proceedings, since the rules of conduct imposed by the Model and by the Procedures have been adopted by the Company in total autonomy and regardless of the type of offences referred to in Legislative Decree 231/2001 that the infringements in question may give rise to.

More precisely, failure to comply with the regulations contained in the Model and in the Procedures in fact damages per se the relationship of trust with the Company and involves disciplinary measures regardless of any criminal proceedings in situations in which the infringement constitutes a crime. This is also in compliance with the principles of timeliness and immediacy of notification of disciplinary measures and the imposition of penalties, in accordance with current legislation.

### **5.2 Definition of “Infringement” for the purposes of this Penalty System**

In general terms and by mere way of example, the following constitutes an **“Infringement”** of this Model and the related Procedures:

- the implementation of actions or conduct not compliant with the law and with the provisions contained in the Model itself and in the related Procedures, which involve merely the risk of any of the crimes contemplated by Legislative Decree 231/2001 being committed;
- omission of actions or conduct prescribed in the Model and in the related Procedures which involve merely the risk of any of the crimes contemplated by Legislative Decree 231/2001 being committed.

### **5.3 Penalties for employees**

#### **5.3.1 Employees in non-managerial positions**

The conduct of employees in violation of the regulations contained in this Model and in Company Procedures is defined as a *disciplinary offence*.

With reference to the type of penalties which can be imposed on said employees, these fall among those provided for by the Industry and Engineering National Collective Bargaining Agreement (hereinafter, for brevity, the “**NCBA**”), in compliance with the procedure provided for by article 7 of Law no. 300 of 1970 (hereinafter, for brevity, the “**Workers' Statute**”) and any special applicable legislation.

Infringement on the part of employees, pursuant to the preceding paragraph 5.2 of this Model, may give rise, according to the severity of the Infringement itself, to the following measures, which are established in accordance with the principles of proportionality, as well as criteria of correlation between infringement and penalty and, nevertheless, in compliance with the procedures provided for by current legislation.

Without prejudice to that indicated in the Disciplinary System in use at NTC, the penalties which may be imposed on employees are among those provided for by the NCBA, as far as “factory workers”, “office workers” or “middle managers” are concerned.

The disciplinary system is constantly monitored by the Supervisory Board and by the Human Resources Department.

### **5.3.2 Senior Managers**

In the event of: (a) Infringement pursuant to paragraph 5.2, or (b) adoption, in performance of activities in Crime Risk Areas, of conduct not compliant with the provisions of the abovementioned documents on the part of senior managers, the most appropriate disciplinary action in accordance with the provisions of the National Collective Bargaining Agreement for Senior Managers will be applied.

## **5.4 Directors**

In the event of infringement of the rules referred to in paragraph 5.2. by one or more Directors of NTC, the Supervisory Board will promptly inform the Board of Directors and the Board of Statutory Auditors of the Company for the appropriate assessments and measures.

If of one or more Directors, presumed perpetrators of a crime involving administrative liability of the Company are indicted, the Chairman of the Board of Directors of NTC (or, acting on his behalf, another Director) must call the Shareholders' Meeting to decide on revocation of office.

## **5.5 Statutory Auditors**

In the event of infringement of the rules referred to in paragraph 5.2. by one or more members of the Board of Statutory Auditors, the Supervisory Board informs the Board of Directors and the Board of Statutory Auditors itself and, at the request of the Chairman of the Board of Directors, the Shareholders' Meeting is called in order to adopt the appropriate measures.

## **5.6 Third Parties: contract workers, agents and external consultants**

In the event of infringement of the rules referred to in paragraph 5.2. by contract workers, agents or external consultants or, more generally, by Third Parties, the Company, depending on the severity of the infringement: (i) reminds those involved of the need for strict compliance with the provisions provided for therein; or (ii) has the right, according to the different types of contract, to terminate the same for just cause or to terminate it for breach by those indicated above.

To this end, NTC has provided for the inclusion of specific clauses in the same which envisage:

- (a) a policy statement to Third Parties on adoption of the Model and the Code of Ethics by NTC, which the same declare to be aware of, undertaking to comply with the related contents and not engage in conduct that could lead to an infringement of the law, of the Model or commission of any of the Predicate Crimes;
- (b) the right of the Company to withdraw from or terminate the contract (with or without the application of penalties), in the event of failure to comply with these obligations.