

HITACHI RAIL

# Organizational, Management and Control Model

(D.L 231/01)



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# 1 SCOPE

## 1.1 Purpose

This document describes the integrated Hitachi Rail Organizational, Management and Control Model pursuant to Legislative Decree No. 231 of 8 June 2001.

## 1.2 Applicability

This document applies to the whole RSBU.

## 1.3 Effective Date

This document is effective as soon as it is published.

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## 2 TERMS

### 2.1 Acronyms and Abbreviations

CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
CSO	Chief Strategy Officer
SB	Supervisory Body
RSPP	Responsabile Servizio Prevenzione e Protezione (Prevention and Protection Service Manager)
SPP	Servizio Prevenzione e Protezione (Prevention and Protection Service)
RSBU	Railway Systems Business Unit
SEC	Senior Executive Committee
STS	Hitachi Rail STS S.p.A.

### 2.2 Definitions

<b>Corporate</b>	Hitachi, Ltd.
<b>EVP</b>	Hitachi, Ltd. Executive Vice President and Executive Officer of Building and Railway Systems Business Unit

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## 3 REFERENCES

### 3.1 GBMS Reference Documents

None.

### 3.2 Non-GBMS Reference Documents

None.

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## 4 GENERAL PARTS

### 4.1 ITALIAN LEGISLATIVE DECREE NO. 231/2001 AND RELEVANT LEGISLATION

#### 4.1.1 The System of Liability of Legal Entities

- Italian Legislative Decree no. 231 of June 08, 2001 (hereinafter “Decree” or (“Leg. Decree 231/01”), issued based on the Government Delegation Law no. 300 of September 29, 2000, introduced the “*Regulations on the administrative liability of legal entities, companies and associations, including those without legal personality*”, adjusting Italian legislation governing the liability of legal entities to comply with the international conventions previously stipulated by Italy.

The Decree introduced into the Italian legal system liability for companies and associations with or without legal personality (hereinafter “Entities”), for crimes committed, in their interest or to their advantage, by:

- natural persons who are representatives, directors, or managers the Entities or one of its organizational units with financial and functional autonomy and natural persons who exercise, even on a *de facto* basis, management and control thereof,
- natural persons managed or supervised by any of the foregoing persons.

The liability of the legal entity comes in addition to that of the natural person that materially committed the crime, and they are both examined during the same proceedings brought before the criminal court.

The Entity’s liability in any case remains autonomously, even if the natural person who perpetrated the crime has not been identified or cannot be punished.

Not all crimes committed in the interests or to the benefit of the Entity, however, give rise to liability in accordance with Decree 231, but only those listed. Over the years, this list, which is also termed the “Catalogue of predicate offenses”, initially comprising just a few crimes mainly against the Public Administration, has been gradually supplemented and today includes the following types of crimes:

Art. 24 (undue receipt of funds, fraud against the State, other public agency, or the EU or for the purpose of obtaining public funds, computer fraud against the State or other public agency and fraud in public procurement),

- Art. 24-bis (cybercrimes and unlawful processing of data),
- Art. 24-ter (organized crime),
- Art. 25 (embezzlement, bribery, extortion to give or obtain benefits, corruption and abuse of office),
- Art. 25-bis (counterfeiting currency, legal tender, duty stamps, and distinctive signs or marks,
- Art. 25-bis.1 (crimes against industry and trade),
- Art. 25-ter (corporate crimes),

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- Art. 25-quater (crimes with the purpose of terrorism or subversion of the democratic order),
- Art. 25-quater.1 (female genital mutilation),
- Art. 25-quinquies (crimes against the person),
- Art. 25-sexies (market abuse),
- Art. 25-septies (involuntary manslaughter and serious or grievous bodily harm committed in breach of workplace health and safety regulations)
- Art. 25-octies (money laundering and using illegally obtained money, assets or other ill-gotten gains, and self-laundering, as well as self-laundering),
- Art. 25-octies1 (non-cash means of payment),
- Art. 25-novies (crimes involving breach of copyright),
- Art. 25-decies (incitement to not testify or to bear false testimony before the courts),
- Art. 25-undecies (environmental crimes) and Art. 256-Bis, Italian Leg. Decree 152/2006 (illegal incineration of waste),
- Art. 25-duodecies (employing foreign nationals without a valid residence permit),
- Art. 25-terdecies (racism and xenophobia),
- Art. 25-quaterdecies (fraud in sporting competitions, illegal gambling or betting and games of chance using prohibited devices),
- Art. 25-quinquiesdecies (tax crimes),
- Art. 25-sexiesdecies (smuggling),
- Art. 25-septiesdecies (crimes against the cultural heritage),

Art. 25-duodevicies (laundering of cultural assets, destruction and looting of cultural assets and landscapes). Other types of crimes may be added to the Decree in the future by the legislator, extending the liability of the Entity to include new types, for which the Company will assess the potential impact on its business.

Finally, please note that crimes not included amongst the predicate offenses for the application of the sanctions of Leg. Decree no. 231/2001 could be connected to crimes that are included, such as criminal conspiracy or money laundering. Examples may include conspiring to commit crime established to tamper with tenders (353 of the Italian Criminal Code) The need therefore follows to supervise and take a cautious approach in regulating all relations with the Public Administration and, in general, with the Company’s counterparties, regardless of the crimes that may, in theory, be committed.

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### 4.1.2 Sanctions

The sanctions that Leg. Decree no. 231/2001 assigns to the Company for administrative offenses depending on the crime for the case of assessing liability are prohibitory sanctions

- financial penalties,
- disqualification penalties,
- confiscation of the price or profit of the crime,
- publication of the judgment.

Prohibitory sanctions concern the specific activity to which the crime of the Entity refers and consist of:

- disqualification from exercising the activity,
- a ban on contracting with the public administration,
- suspension or revocation of the authorizations, licenses or permits used to commit the offense,
- exclusion from benefits, loans, grants and subsidies and/or withdrawal of those already granted,
- prohibition on publicizing goods or services.

Due to their particular severity, the disqualifying sanctions deserve some further consideration, since they are only applicable when they are expressly provided for in the Decree and if at least one of the following conditions is met:

- the entity has made a significant profit from the crime and the crime has been committed by a person in a senior position or by persons acting under the instructions of others, in which case serious organizational shortcomings determined or facilitated the offence being committed, or
- in the event of repeat offenses.

The type and duration of the disqualifying sanction is established by the courts, considering the seriousness of the crime, the extent of the entity's liability and the actions taken to eliminate the consequences of the crime and to prevent other offences from being committed.

Specifically, if the entity has paid full compensation for the loss and has organizational shortcomings that made the crime possible and has made the proceeds of the crime available for compensation, the disqualifying sanctions will not be applied, without prejudice to the application of fines.

Failure to comply with the prohibitions imposed by the disqualifying sanctions constitutes a different and additional offence on the part of the entity.

If the conditions exist for the application of a disqualifying sanction, determining the suspension of business operations, in lieu of the sanction, the court may order the continuation of the business operations by a commissioner when:

- the entity performs a public service or a service of public necessity, suspension of which may cause serious harm to the community,
- the suspension may cause significant repercussions on employment.

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Disqualifying sanctions are applied in the hypothesis strictly indicated in the Decree only if at least one of the following conditions exists:

the Entity gained considerable profit from the crime and the crime was committed by:

- a person or persons in a senior position, or
- persons acting under the instructions and supervised by others when serious organizational shortcomings made it possible or easier to commit the crime, or
- in the event of repeat offences.

The Entity may also be disqualified as a precautionary measure, i.e., at the investigation stage and even before the commencement of the trial, if there is strong evidence of its liability in committing the crime and there are reasonable grounds and specific elements that would seem to indicate the likelihood that crimes of the same kind as the one before the courts may be repeated.

#### **4.1.3 Attempted Crimes**

The Entity is also liable for offences connected to attempted crimes.

In the case of attempting to commit the crimes under the Decree, the applicable sanctions are reduced by between one third and one half. If, of its own volition, the Entity prevents the action or event from occurring, sanctions will not be imposed.

#### **4.1.4 Crimes committed abroad**

Under Art. 6 of the Italian Criminal Code, a crime is considered as committed in Italy “*when the action or omission comprising it took place entirely or partly there or the event occurred there*”.

Still, Entities with their main place of business in Italy also answer for crimes committed abroad as long as the foreign government does not take action against them. The definition considering a crime committed in Italy as one in which the act or omission took place on national territory greatly reduces the application of the rules on crimes committed abroad.

The basis for liability of the Entity for crimes committed abroad are:

- a) the crime must be committed abroad by an individual who is operationally connected to the Entity, in accordance with Article 5(1) of the Decree
- b) the Entity must have its main place of business in Italy
- c) the Entity may be liable only in the cases and under the conditions envisaged in Articles 7, 8, 9, 10 of the Italian Criminal Code.

If the cases and conditions under the foregoing articles of the criminal code exist, the Entity is liable as long as the foreign government where the crime was committed does not take action against it.

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#### 4.1.5 Procedure for the assessment of the crime and verification of the adequacy of the model by the court

Liability for the administrative offences relating to crimes is investigated as part of criminal proceedings that, where possible, are the same criminal proceedings with which action is taken against the natural person who committed the crime, with the provisions of the Code of Criminal Procedure being observed *mutatis mutandis* and the provisions relating to the accused being applied to the Entity.

The assessment of the liability of the Entity takes place through:

- verification of the existence of the predicate offense for the company's liability,
- assessment of the existence of the interest or benefit of the Entity in the perpetration of the crime by its employee or senior management,
- union of suitability on the organizational models adopted,
- establishment of actual implementation of the provisions of the Model.

The Court's examination of the abstract suitability of the organizational model to prevent the crimes pursuant to the Decree is carried out according to the criterion of "post facto prognosis". The opinion of suitability is formulated according to a substantively *ex ante* criterion, for which the court falls ideally in the corporate context when the crime took place to test the suitability of the model.

#### 4.1.6 Conditions that determine the exclusion of administrative liability

Articles 6 and 7 of the Decree envisage specific forms of exoneration from the administrative liability of the Entity for the crimes committed in the interests or to the benefit of the Entity by both senior managers and employees.

In brief, the Entity is exempt from liability if it can prove that:

- before the offense was committed, the management body adopted and effectively implemented an organizational and management model suitable for preventing offenses of the type committed (hereinafter the "Model"),
- an internal body vested with independent powers to act on its own initiative and to monitor compliance (hereinafter "Supervisory Body" or "SB") was set up to assure the functioning and observance of the Model and to keep it updated,
- the persons committed the offence by fraudulently circumventing the aforementioned Model,

the Supervisory Body performed its compliance and oversight responsibilities in full and adequately. The Model must comply with the following demands:

- to identify the activities in which there is the possibility that the criminal offenses could be committed,
- to provide specific protocols (included in the system of corporate instructions or procedures) for planning the formation and implementation of the Entity's decisions concerning the offenses to be prevented,
- to identify procedures for managing financial resources appropriate to prevent the commission of offenses,
- to envisage information obligations regarding the SB,
- to introduce an internal disciplinary system suited to punishing failure to observe the measures indicated in the model.

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- Case law has attached particular importance to the specific protocols or procedures aimed at prevention, training of the addressees, the disciplinary system and, above all, the effective implementation of the provisions of the Model, since in practice it has been found that the adequacy of the rules established in the abstract often does not correspond to a sufficient degree of their application in practice.

Finally, it is established that in controlled Companies a specially appointed Committee may exercise oversight activities.

## **4.2 ADOPTION OF THE ORGANIZATIONAL AND MANAGEMENT MODEL BY HITACHI RAIL STS**

The preparation of this Model is inspired by the *Confindustria Guidelines* (hereinafter the “Guidelines”).

The Company Hitachi Rail STS S.p.A. has adopted an Organization and Management Model in accordance with Italian Legislative Decree no. 231/2001 from when the provision came into force, ensuring the necessary adjustments when the regulatory, jurisprudential context and corporate structures change.

More specifically, this Model is the consequence of the risk assessment conducted after the merger by incorporation of the company Hitachi Rail S.p.A. by the company Hitachi Rail STS S.p.A., as amended. Both companies had adopted each their own Model, able to prevent the crimes considered by the Decree, meaning that the prevention measures activated in the respective areas in the form of procedures, service orders or instructions to personnel, have not required any radical revisions to preserve their prevention effectiveness.

However, while the Company has confirmed all procedures, service provisions and safety documents in force at the time of the merger with the respective areas, at the same time, it launched processes for the adjustment and standardization meaning that similar problems are, in all contexts, met with symmetrical responses.

The Company Hitachi Rail STS S.p.A. adopted this model during the Board of Directors meeting held on May 24, 2023.

### **4.2.1 Corporate Mission and Objectives**

Hitachi Rail STS is an industrial company with a single shareholder. It is subject to the management and coordination of Hitachi Ltd. and leads the high technology sector for railway and underground railway transport. The Company operates in the design, development and management of rail and underground rail traffic supervision and signaling systems and services, also as lead contractor and in the construction of rolling stock and after-sales assistance and maintenance services.

The Company Hitachi Rail STS S.p.A. has its registered office in Naples, at via Argine 425, as well as plants and/or offices in Genoa, Piossasco (TO), Pistoia, Naples, Reggio Calabria and Tito (PZ). It has branches and sites in various different countries across the globe and more than 3500 employees.

Hitachi Rail STS is subject to continuous corporate changes, dictated by the business in which it operates and this leads it to have a complex, ever-evolving organization.

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On this basis, for the purpose of the application of this Organization, Management and Control Model, due consideration is given to the organization as reported over time on the corporate intranet.

#### 4.2.2 Governance Model

In adopting the governance model, the Company incorporated the rules of the Parent Company Hitachi Ltd., and in particular those implemented within the Railway Systems Business Unit, to which the Company belongs. The present corporate governance model is always prepared on the basis of international best practice in compliance with the provisions, it is based on the traditional model, is compliant with applicable corporate legislation and is structured as follows:

- Shareholders' Meeting, competent to resolve in ordinary and extraordinary session on matters to it by reserved the law or the Articles of Association,
- Board of Directors, assigned the most extensive powers for the Company administration, with the faculty to act in all ways appropriate to achieving the corporate purposes, with the exception of acts reserved - by the law and articles of association - to the Shareholders' Meeting,
- Board of Auditors, assigned the task of monitoring: a) compliance with the law and the deed of incorporation as well as with standards of correct administration, b) the suitability of the Company's organizational structure in terms of all aspects coming under its purview, of the internal control system and accounting administrative system and the reliability of the latter in providing a correct representation of management events, d) the suitability of the instructions given to Subsidiaries in respect of the information to supply in order to fulfil the communication obligations, e) the financial disclosure process and effectiveness of the internal control, internal audit and risk management systems, f) the statutory auditing of the accounts and the independence of the auditing firm, and g) compliance of the procedures adopted on related party transactions,
- Independent auditing firm, the accounts are audited, as envisaged by current legislation, by an independent auditing firm registered on the special list, appointed to this end by the Shareholders' Meeting.

#### 4.2.3 Organizational Structure

The Company's organizational structure is inspired by the principle of the separation of duties, roles and responsibilities between the operational and control functions.

The corporate organizational structure is defined on the basis of the organizational provisions, roles and appointments, and the internal communications.

The organizational documents that describe the aim and main areas of responsibility of the individual aspects of the organizational structure are available from the relevant sections of the corporate intranet.

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#### **4.2.4 Reasons of Hitachi Rail for adopting the Organization, Management and Control model pursuant to Italian legislative decree no. 231/01**

In order to make sure that the conduct of everyone operating on behalf or in the interests of the Company is always compliant with legislation, regulations and standards of correctness and transparency in the conduct of corporate business, Hitachi Rail STS has chosen to adopt an Organization and Management Model in line with the Decree and on the basis of the Confindustria Guidelines.

This initiative, coupled with the adoption of the Code of Ethics, has been taken in the firm belief that the adoption of this Model - aside from the provisions of the Decree which clarify that the Model is an optional item and not mandatory - can constitute a valid tool for raising awareness in all those operating in the interests and to the benefit of Hitachi Rail STS.

More specifically, the following are the Model Addressees and, as such and under the scope of the specific competences, required to be aware of it and observe it:

- the members of the Board of Directors, in setting the objectives, decide on the activities, develop the projects, propose investments and in any decision or action relative to the Company performance,
- the members of the Board of Auditors, in the control and verification of correctness,
- the Managers, in concretely managing the Company, in handling internal and external activities,
- the employees and all collaborators with whom contracts are stipulated, for any reason, even if only on an occasional and/or temporary basis,
- all those who entertain relations of any kind with the Company.

#### **Purpose of the Model**

The Model prepared by Hitachi Rail STS is based on a structured, organic system of procedures and control activities that:

- identify the areas/processes of possible corporate business risk, i.e. those activities under the scope of which it is considered that there is a greater likelihood of the crimes being committed,
- define the internal regulatory system, aimed at the prevention of crimes, which includes, amongst others:
  - the Hitachi Rail Group Code of Ethics, which expresses the commitments and ethical responsibilities in the conduct of business and corporate activities made and accepted by employees, directors and collaborators of various types of the Company,
  - the system of delegations, powers of signature and powers of attorney for signing corporate deeds that assures a clear, transparent representation of the process by which decisions are made and implemented,
  - formalized procedures aimed at regulating the operating procedures in the areas at risk,
- are based on an organizational structure that is consistent with the corporate business, aimed at inspiring and controlling the correctness of conduct, guaranteeing a clear,

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organized attribution of duties, applying a suitable segregation of duties and making sure that the systems desired by the organizational structure are properly implemented through:

- a formally defined, clear, suitable organizational chart establishing the activities to be carried out,
- a system of delegations of internal functions and powers of attorney to represent the Company externally, which assures a clear, consistent segregation of duties,
- the Hitachi Global Compliance Program manual: consisting of Policies regulating certain compliance aspects at Group level, the Code of Ethics for Suppliers, the Code of Conduct, the Control Model and a system of controls on processes with a finance impact,
- identification of the management and control processes used for the financial resources in the risk activities,
- attribution to the SB of the task of monitoring the functioning and observance of the Model and propose its update,
- application of the segregation of duties principle and a control system pursuant to J-Sox compliance, as well as the controls implemented in the SAP and network systems architecture.

Therefore, the Model's aim is to:

- improve the Corporate Governance system,
- prepare a structured, organized system of prevention and control aimed at eliminating or minimizing the risk of the committing of crimes connected with the corporate business, with specific regards to the reduction of any unlawful conduct,
- determine, in all those operating for and on behalf of Hitachi Rail STS in the “risk activity areas”, the awareness of potentially incurring, in the event of breach of the provisions set out therein, an offense liable to both criminal and administrative sanction, not only for themselves but also in regard to the company,
- inform all those operating for any reason for, on behalf of or in any case in the interests of Hitachi Rail STS, that the breach of the provisions of the Model shall entail the application of specific sanctions and/or termination of contract,
- stress that Hitachi Rail STS will not tolerate any unlawful conduct, in no way pursuing this end or the incorrect belief of acting in the interests or to the benefit of the Company, insofar as such conduct is in any case in conflict with the ethical principles applied by Hitachi Rail STS and, therefore, in conflict with its interests,
- effectively censure any conduct in breach of the Model through the application of disciplinary and/or contractual sanctions.

### **The Model preparation process**

In consideration of the provisions of the Decree, Hitachi Rail STS has envisaged an internal process, in which the Supervisory Body plays an active and advisory role aimed at guaranteeing the constant update of this Model.

Consequently, preparation of this Model has been preceded by a series of activities, divided up into different phases, aimed at constructing a system for the prevention and management of the risks described below.

#### A) Mapping of activities at risk

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This phase aims to analyze the business context, in order to map all areas of activity of the Company and, of these, identify the processes and activities during which - abstractly - the crimes envisaged by the Decree could potentially be committed.

- B) The identification of the corporate activities and activities/processes exposed to risk has been implemented with the support of consultants specialized in conducting risks assessments through the prior examination of the corporate documentation (organizational charts, main business processes, powers of attorney, organizational provisions, etc.) and the subsequent holding of a series of interviews with key players in the company structure.

The result of this activity has been laid out in a document that contains a map of all corporate activities, indicating those at risk, which may be:

- A) areas at risk of crime, i.e. activities under the scope of which the opportunity may hypothetically arise to act unlawfully as set out in the Decree,
- B) processes that are “instrumental” to the perpetration of crimes, i.e. processes under the scope of which, abstractly, the conditions may be created that would facilitate the committing of crimes or be functional to their perpetration.

The analysis of the possible ways in which crimes of manslaughter and bodily harm committed in breach of health and safety at work legislation, has been carried out also taking into account the working risk assessment performed in accordance with the criteria envisaged by Italian Legislative Decree no. 81/08, and also giving due consideration to the British Standard OHSAS 18001:2007 and the UNI-INAIL Guidelines for a health and safety at work management system.

- C) Analysis of potential risks

With reference to the mapping of activities, carried out on the basis of the specific context in which Hitachi Rail STS operates and the related representation of the sensitive or at risk activities/processes, the crimes that could potentially be committed under the scope of the corporate business have been identified, and for each crime, the possible opportunities, purpose and methods of perpetration of the unlawful conduct identified.

The result of this activity is then set out in the documentation supporting the risk assessment, which shows the analysis of potential risks and the related controls, with regard to the possible methods by which the crimes may be perpetrated within the specific corporate context.

- D) “As-is analysis”

Having identified the potential risks, the system of preventive controls in place in the processes/activities at risk was analysed, in order to thereafter issue an opinion on its suitability in terms of capacity to prevent the risk of the crime.

During this phase, the current in-house control measures were noted (formal procedures and/or practices adopted, verifiability, potential documentation or “traceability” of the operations and controls, separation or segregation of duties, etc.) through the information supplied by the corporate structures and the analysis of the documentation it has supplied.

As regards the risk of possible breach of legislation governing health and safety at work, the analysis in question necessarily considered current preventive legislation and, in particular, Italian

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Legislative Decree no. no. 81/08 and British Standard OHSAS 18001:2007 and UNI-INAIL Guidelines for a health and safety at work management system.

Accident prevention legislation, in fact, not only outlines the potentially relevant risks but also sets out a set of requirements with which the employer must comply. The concrete adoption and implementation of this system of measures has, for the purpose of this Model, been integrated to minimize the risk of conduct potentially forming the crime of manslaughter or bodily harm committed through breach of prevention rules.

#### E) “Gap analysis”

Based on the results obtained during the previous phase and the comparison with a reference theoretical model (consistent with the Decree, with the Confindustria Guidelines and with national and international best practices), the Company has identified a series of areas of integration and/or improvement in the system of controls, in the face of which suitable action to be taken has been defined.

#### F) Preparation of the Model

Following the issue of Italian Legislative Decree no. 231/01, Hitachi Rail STS adopted the Code of Ethics, (December 12, 2005) and the Organizational Model (June 27, 2006), thereafter updating the relevant contents following operative, organizational or legislative changes and in connection with specific needs seen Lastly, it adopted the Hitachi Group Code of Ethics and Code of Conduct.

In order to concretely implement the Decree and correctly and completely map the areas at risk of certain offenses being committed, assessment activities involved a recognition of the corporate activities in order to identify areas in which a risk of crime could be hypothesized, intended as any event or conduct that may determine and/or facilitate the perpetration, or attempted perpetration, of any of the crimes envisaged by the Decree in the Company’s interests.

The areas of activities at risk also include those that not only are directly involved as an activity that could form criminal conduct, but also those which may indirectly result in the committing of other crimes, being instrumental to their perpetration. With reference to all areas at risk, including instrumental areas, any indirect relations have also been examined, namely those that Hitachi Rail STS entertains, or could entertain, through third parties.

In addition, the risk profiles were considered connected with the hypotheses whereby company representatives act in concert with subjects outside the Company, both on an occasional and temporary basis (persons acting in concert) and in an organized fashion with the specific aim of committing an indeterminate series of crimes (crimes of association). The analysis also concerned the possibility that the crimes considered could be committed abroad, or in a transnational manner.

In this regard, the analysis has been carried out on the organizational structure, the missions and responsibilities of all corporate structures, in order to achieve a preliminary identification of the potential areas at risk.

With reference to the areas at risk, as identified above, interviews have then been held with the managers of the relevant structures, with the twofold aim of verifying and better defining the area of activities at risk and analysing the existing preventive control system, to identify, where necessary, the appropriate improvements.

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Risk assessment included an analysis of the following components of the preventive control system:

- organizational system,
- operating procedures,
- authorization system,
- management control system,
- documentation management and monitoring system,
- formalized ethical principles,
- disciplinary system,
- communication with and training of personnel.

In particular, the analysis and assessment of said components takes the following form.

#### Organizational system

The verification of the adequacy of the organizational system was carried out based on the following criteria:

- formalization of the system,
- clear definition of the responsibilities assigned and the hierarchical lines,
- existence of the segregation and juxtaposition of duties,
- correspondence of activities effectively carried out and that envisaged by the missions and responsibilities described in the Company's organizational provisions.

#### Operating procedures

In this area, attention was paid to the verification of the existence of formal procedures intended to regulate the activities carried out by the structures in the areas at risk, considering not only the business phases but also those of the preparation and formation of the company decisions.

#### Authorization system

The assessment was carried out based on the examination of the powers of attorney applicable at the time of assessment, and the internal management powers of attorney, in light of the corporate organizational chart. The authorization system is kept in a special register managed by the Legal function.

#### Management control system

In this area, the current management control system has been analysed in Hitachi Rail STS, the subjects involved in the process and the capacity of the system to provide timely indication of the existence and onset of any general and/or specific critical situations.

#### Documentation management and monitoring

The analysis regarded the existence of a suitable system for the monitoring of processes to verify the results and any non-conformities, as well as the existence of a suitable document management system such as to allow for the traceability of the operations.

#### Formalized ethical principles

In connection with the individual activities at risk of crime envisaged by Italian Legislative Decree no. 231/01 by the legislator, the contents have been verified of the Hitachi Group Code of Ethics and Code of Conduct, most recently adopted by resolution of the Board of Directors dated March 21, 2023.

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### Disciplinary system

The analyses performed aimed to verify the suitability of the disciplinary system currently in force and aimed at sanctioning any breach of the standards and provisions seeking to prevent the perpetration of crimes by both employees of the Company - managers and otherwise - and Directors, Auditors and external collaborators.

### Communication with and training of personnel

The verifications aimed at ascertaining the existence of forms of personnel communication and training. Considering the need for initiatives aiming to implement the Decree, a specific plan has been established to communicate the Code of Ethics and Model and the consequent specifically targeted personnel training.

### Activities carried out through service companies

The verifications of the control system also involved activities carried out by external companies. These checks were performed on the basis of the following criteria:

- the formalization of the services provided under specific service contracts,
- the provision for suitable control measures on the activities concretely performed by service companies on the basis of contractually defined services,
- the existence of formalized procedures/company guidelines relative to the definition of the service contracts and the implementation of control measures, also with reference to the criteria used to determine fees and the methods of payment authorization.

## **4.2.5 Document structure**

This Model consists of

- General Part
- Special Parts prepared for the various types of crimes considered as possible risk for Hitachi Rail STS
- Annexes:
  - 1) procedures issued by the Company to establish the rules of conduct provided for each category exposed to risk,
  - 2) current company organization chart,
  - 3) the risk assessment adopted pursuant to Italian Legislative Decree 81/08,
  - 4) list of individuals in charge of transmitting flows of information to the Body,
  - 5) Code of Ethics,
  - 6) By-laws of the Supervisory Body.

In the “General Part”, after reference to the principles of the Decree, the essential components of the Model with specific reference to the Supervisory Body, the training of personnel and distribution of the Model within and outside the company, the disciplinary system and the measures to be adopted in the event of failure to observe the provisions therein and principles for preparing the document.

The Special Parts, prepared for the various types of crime of possible risk, indicate the areas of risk and the related control measures. These Special Parts are as follows:

- Special Part “A” for crimes to the detriment of the public administration (Articles 23, 24 and 25 of the Decree),

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- Special Part “A1” for crimes committed with the purpose of terrorism or subversion of the democratic order (Art. 25-quater of the Decree),
- Special Part “B” for corporate crimes (Art. 25-ter, Art. 25-sexies of the Decree,
- Special Part “B1” for the crime of corruption between private individuals (Art. 25-ter, paragraph 1, letter s-bis of the Decree),
- Special Part “C” for manslaughter and grievous and grievous bodily harm committed in breach of health and safety at work legislation (Art. 25-septies of the Decree),
- Special Part “C1” for the crimes of employment of citizens of third countries with invalid residency and enslavement or maintaining in slavery (Art. 25-duodecies and Art. 25-quinquies of the Decree),
- Special Part “D” for the crimes of fencing, money laundering and using illegally obtained money, assets or other ill-gotten gains, as well as self-laundering, fraud and counterfeiting means of payment (Art. 25-octies of the Decree),
- Special Part “E” on cybercrimes and unlawful processing of data, and crimes involving breach of copyright (Articles 24-bis and 25-novies of the Decree),
- Special Part “F” on organized crime (Art. 24-ter of the Decree),
- Special Part “G” relative to crimes in breach of environmental standards (Art. 25-undecies of the Decree) and crimes against the cultural heritage and looting of landscapes (Articles 25-septiesdecies and 25-duodevicies of the Decree),
- Special Part “H” on crimes concerning obstruction of justice (Art. 25-decies of the Decree and Art. 10, paragraph 9 of Italian Law no. 146/2006),
- Special Part “I” on crimes against industry and trade (Art. 25-bis1, letter f-bis and art. 25-bis of the Decree) and crimes of counterfeiting currency, legal tender, duty stamps, and distinctive signs or marks pursuant to Art. 473 of the Italian Criminal Code,
- Special Part “L” on tax crimes (Art. 25-quinquiesdecies of the Decree),
- Special Part “M” on smuggling (Art. 25-sexiesdecies of the Decree).

#### 4.2.6 Adoption and management of the model in Hitachi Rail STS

Wherever Hitachi Rail finds itself holding direct or direct controlling stakes in Italian companies and they are consolidated, these companies shall have their own Organization, Management and Control Model in line with the provisions of the Decree.

In doing so, these companies will establish their own Supervisory Body with the primary task of controlling implementation of the Model according to the procedures described therein and based on the indications given in Articles 6 and 7 of the Decree.

The Supervisory Body of the Italian subsidiaries that the Parent Company Hitachi Rail STS may find itself holding:

- shall liaise with Hitachi Rail STS so as to guarantee the adoption of an Organization, Management and Control Model in line with the provisions of the Decree, with the Confindustria Guidelines and with the principles of this Model,
- shall promote the transmission to Hitachi Rail STS of the Organization, Management and Control Model adopted and any subsequent updates thereto.

Non-Italian direct or indirect subsidiaries of Hitachi Rail STS and consolidated by Hitachi Rail STS (the Group’s foreign companies) adopt all the organizational and structural provisions that make

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it possible to correctly and promptly incorporate the provisions of local regulations incorporating the international agreements as per paragraph 1.1 above.

In any case, all the Group's foreign companies shall standardize their conduct as far as possible, assuring it is in line with the control principles set forth in this Model. In addition, the foreign companies shall adopt the Code of Ethics of the parent company Hitachi Rail STS S.p.A, specifying the procedures for local adoption in a specific paragraph.

#### 4.2.7 Elements of the model

As mentioned above, the components of the preventive control system that must be implemented at a corporate level to guarantee the effectiveness of the Model are:

With reference to the criminal offenses:

- ethical principles aimed at preventing the crimes envisaged by the Decree,
- formalized, clear organizational system,
- manual or computerized operating procedures aimed at regulating the activities in the corporate areas at risk with suitable control measures,
- updated, consistent powers of authorization and signature with the organizational and managerial responsibilities defined,
- management control system able to provide prompt reports of the existence and onset of critical situations,
- personnel training and communication system regarding all elements of the Model, including the Code of Ethics,
- disciplinary system able to sanction the breach of the rules of the Code of Ethics and other indications of the Model.

as regards the crimes of manslaughter and bodily harm committed through breach of rules protecting health and safety in the workplace and crimes consisting of the breach of rules protecting the environment:

- Code of Ethics with reference to the crimes considered,
- an organizational structure with tasks and responsibilities relating to health and safety at work and environmental protection defined formally in line with the company's organizational and functional structure,
- teaching and training of employee/worker must be adequately trained, with particular reference to his or her own function and duties.
- communication, aimed at assuring the circulation of information within the company to foster the involvement of all those involved and allow for awareness and suitable commitment on all levels,
- control system, relative to risks to health and safety at work and environmental protection, integrated and consistent with the comprehensive management of the corporate processes,
- monitoring system, aimed at verifying the suitability and adoption of prevention and protection measures,
- ISO 14001 certifications for the environment and OHSAS 45001 for occupational and environmental safety for all production units.

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Below, therefore, is a description of the control measures on which the Hitachi Rail STS Model is based with characteristics that apply to all types of offenses envisaged by the Decree, whilst - in any case without prejudice to the provisions of this paragraph - reference is made to the Special Parts for information about protocols with specific characteristics for each type of crime.

As regards the Code of Ethics, the Supervisory Body, the disciplinary system and the personnel communication and training system, reference is made to the following chapters of the Model, specifically dedicated to these subjects.

- Organizational system

The company's organizational system ensures consistency with the corporate business, correctness of conduct, guaranteeing a clear, organized attribution of duties, in application of a suitable segregation of duties.

- Authorization system

The Company's Authorization System is based on the following principles:

- definition of roles, responsibilities and controls in the process of conferring and revoking powers of attorney,
- monitoring of existing powers of attorney and related update,
- assignment and revocation of powers of attorney in line with the roles held in the organization,
- clear definition of powers of the proxy and limits for the exercise of the powers, in line with corporate objectives,
- need to confer powers of attorney to operate regarding third parties and in particular the Public Administration.

Specifically, the system envisages the attribution of:

- powers of permanent representation, attributable through notary powers of attorney registered in connection with the performance of activities connected with the permanent responsibilities envisaged in the corporate organization. The powers of attorney that confer powers of permanent representation are conferred only by the Chief Executive Officer,
- powers relative to individual and/or multiple affairs, conferred with notary powers of attorney or other forms of delegation in relation to their content, the attribution of such powers is regulated by Company practice as well as by the laws defining the forms of representation, in line with the types of individual deeds to be stipulated.

In order to ensure the constant update and consistency between the authorization system of the powers of company signature and representation and the organizational and managerial responsibilities defined, the appointed company departments act in such a way as to guarantee the constant update of the system of powers, also during:

- the revision of the corporate macro-organizational structure (establishment/surpassing of level one organizational units, etc.),
- significant changes in responsibilities and events involving key positions in the structure,
- the leaving from the corporate organization of subjects with company powers or the entrance of those requiring company powers.

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- Corporate procedures in areas at risk

The internal procedures that also apply with regards to areas at risk are characterized by the following elements:

- separation, within each process, of the party making the decision (decision-making), the party authorizing it, the party executing the decision and the subject in charge of controlling the process (i.e. segregation of duties),
- documented evidence of each relevant step of the process, including control (referred to as “traceability”),
- adequate level of formalization.

- Management control and cash flows

The management control system adopted by Hitachi Rail STS is structured into the various phases of preparation of the annual budget, analysis of periodic balances and processing of forecasting.

The system guarantees:

- multiple subjects involved, in terms of a fair segregation of duties for the preparation and transmission of information in such a way as to guarantee that all outlays are requested, carried out and controlled by independent departments or subjects insofar as possible that differ to whom, moreover, no responsibilities are assigned such as to determine potential conflicts of interest. The double signature is also required by company managers for the banking payment arrangement.
- capacity to provide timely notice of the existence and onset of critical situations through a suitable, timely system of information flows and reporting.
- the protection of assets with related prohibition to implement financial transactions at risk.

- Documentation management

All the internal and external documentation of Hitachi Rail is managed in ways that regulate, as applicable, the update, distribution, registration, archiving and management of the security of documents and records, on the basis of the following principles:

- definition of roles and responsibilities in the preparation and conveyance of documentation and information,
- definition of controls on the merits and form of the incoming and outgoing documentation and information,
- definition of criteria of traceability and archiving of the incoming and outgoing documentation.

#### 4.2.8 Model amendments and supplements

As this Model is a “deed issued by the management body” (in compliance with the provisions of Art. 6, paragraph 1, letter a of the Decree), its adoption, implementation and update, as well as subsequent amendments and supplements, are left to the competence of the Board of Directors of Hitachi Rail STS.

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In particular, with respect to defining the Model 231, the Board of Directors is responsible for the following matters:

- preliminary examination and approval of the Model or its updates, amendments or supplements, including on the proposal of the SB,
- assessment of any significant critical issues in terms of Italian Legislative Decree no. 231/01 and implementation of corrective action aimed at removing, remedying, or mitigating such critical issues, including on the report of the SB,
- approval of the SB Articles of Association and amendments or supplements thereto,
- appointment, revocation and replacement of the members of the SB and determination of the related fees,
- attribution to the SB, on its indication, of funds to be used to cover the costs and expenses to be incurred in the exercise of its duties,
- application of the disciplinary sanctions, in the cases in which the intervention of the Board of Directors is envisaged.

For the fulfillment of the above, the Board of Directors seeks the assistance of specific corporate structures.

More specifically, the Hitachi Rail STS Board of Directors is in charge, including on the proposal of the Supervisory Body, of supplementing this Model with additional Special Parts relative to other types of crimes that, as a result of new legislation, may be further connected to the scope of application of the Decree and present risk profiles for the Company.

All the above amendments and supplements will be promptly notified to the various Italian subsidiaries for any adjustment of the respective organizational, management and control models.

## 4.3 SUPERVISORY BODY

### 4.3.1 Identification of the Supervisory Body

Art. 6 of Italian Legislative Decree no. 231/2001, which covers the Supervisory Body, has clarified the nature, characteristics and duties, indicating that:

- the Supervisory Body is the entity's body but which has autonomous powers of both initiative and control,
- its tasks are to monitor the operation and observance of the Model and to take the initiative to update it,
- failure or insufficient monitoring by the Body nullify the whole prevention system implemented by the entity.

In order to assure the autonomy, independence and competence of the Supervisory Body, the Hitachi Rail STS Board of Directors has approved specific Articles of Association, annexes to this Model, whereby it has established rules for the appointment, membership and operation of the Body, the term of office, the suspension and replacement of its Members, the duties and powers and the reports to the corporate bodies and senior management.

For details, refer to the Articles of Association. Here, it suffices to stress that the Articles of Association establishes that the Body shall comprise multiple members, including external

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members, one of whom shall act as Chairman, identified from scholars and professionals of proven skill and experience in legal, economic and financial matters and at least one internal member.

In turn, the Body has a specific Regulation, an expression of its operative and organizational autonomy, aimed at regulating in particular the function of its business.

The Supervisory Body reports directly to the Chief Executive Officer and Board of Directors and informs the Board of Auditors of its activities.

#### **4.3.2 Duties and powers of the Supervisory Body**

The information flows to the SB are of three types:

- Periodic information flows
- Ad hoc information flows
- Reports

##### **Periodic information flows**

The periodic information flows consist of information sent to the Supervisory Body by the heads of corporate departments identified by the Company by agreement with the Supervisory Body and according to the frequency it has established. The list of people in charge of the periodic flow, the information to be provided and the rules for defining the flow itself constitutes an annex to the Model, updated by the Company in consultation with the SB and in accordance with the Model.

The information sent serves to allow the SB to direct its investigations and analyses aimed at assessing the degree of suitability and effectiveness of the Model for preventing predicate offenses for the application of Italian Legislative Decree no. 231/2001 as well as the level of concrete implementation of the provisions of the Model.

Each of the supervisors shall answer for the aspects relative to the area of competence and the persons who depend on him, acquiring the information necessary from the offices and guaranteeing the correctness.

The information sent shall, insofar as competent, answer the following questions:

- Name, surname, department and area of corporate competence,
- Training on the organizational and management model received during the period from him and the personnel who depend on him,
- Degree of knowledge acquired on the contents of the Model and effectiveness of the measures envisaged,
- Changes to the corporate organizational structure, the structure of powers and the system of delegations that may impact the effectiveness of the Model,
- The indication of relations entertained by their offices with subjects of the Public Administration, indicating the name of officers, their position in the PA and the subject of their relations,
- The request or disbursement of public finance, indicating if so, the reasons and amounts,
- The infra-group relations for the purchase or sale of goods or services or for financial transactions not on the market, indicating amounts and reasoning,
- Commercial or financial transactions with specific reference to transactions implemented in countries regulated by privileged financial legislation,

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- Changes to protocols, procedures and documents on security with impacts on the measures to protect health and safety in the workplace,
- The changes to the Environmental Management System, protocols, procedures and documents on environmental protection matters,
- The results of the monitoring and verification of health and safety at work,
- The results of the monitoring and verification of environmental protection against pollution,
- The data regarding hazardous situations or events that may be symptomatic of weaknesses or shortcomings in the prevention system,
- Indication of any other situation or event that took place in the area of competence that may become relevant for the concrete implementation of the Model.

### **Ad hoc information flows**

Ad hoc information flows include information that the heads of the company departments, identified as under the point above, shall direct to the SB when current critical issues occurring in their offices or learned during the exercise of their activities, need, in view of their severity and importance, to be notified to the SB immediately and without respecting the pre-established frequency. The information in any case includes:

- Provisions passed by the legal authority or other authorities relating to the existence of criminal proceedings for predicate offenses for the application of Italian Legislative Decree no. 231/2001,
- Requests for legal assistance submitted by directors, employees or managers for events that are relevant in accordance with Leg. Decree no. 231/2001,
- The results of the verifications carried out by the internal audit department on themes relating to the risk profiles pursuant to Italian Legislative Decree 231/01 or compliance with 231 protocols,
- The reports and notifications prepared by the corporate departments and any reports received, including anonymous reports, which reveal critical issues in respect of observance of Leg. Decree no. 231/2001 or that established by the Model,
- Information relative to any serious injuries that have occurred,
- Information relative to episodes concerning risks or serious damage to the environment,
- Particularly important situations that show risks of the perpetration of predicate offenses for the application of Italian Legislative Decree no. 231/2001.

### **Reports and Whistleblowing**

Hitachi Rail is committed to conducting its activities in full compliance with the Law and for this reason, encourages all those who are aware of illicit conduct or suspect illicit conduct to report it. Reports are managed according to the regulatory requirements regarding "Whistleblowing" predicted by the Legislative Decree. 24/2023 which transposes EU Directive 2019/1937.

Reports may concern:

- administrative, accounting, civil or criminal offences;
- relevant illicit conduct pursuant to Legislative Decree no. 231/2001, or violations of the Code of Ethics applicable to the Company from time to time, or violations of the organization, management and control models provided therein.

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The reports may also concern well-founded suspicions regarding violations committed or which, based on concrete elements, could be committed, as well as information relating to conduct aimed at concealing the violations.

The individual, internal and external to the company, as identified by the art. 3 paragraph 3 Legislative Decree. 24/2023 has various reporting channels available, and in particular:

- Company workers can report in writing or orally to the "Human Resources" and "Legal and Compliance" functions of the Company.
- All interested parties, internal and external, can submit an online report to the Hitachi Group's "compliance hotline" at "hitachi.ethicspoint.com". The hotline is available 24 hours a day, 7 days a week;
- All interested parties, internal and external, can submit a report by mobile using one of the numbers available on the "hotline" at "hitachi.ethicspoint.com";
- All interested parties, internal and external, can submit a report to the Supervisory Body at the address «odv@hitachirail.com»

A receipt of the report is carried out via a third-party platform called "NAVEX", which receives and processes all reports reported in a secure and confidential manner. NAVEX confirms receipt of the report to the reporting party and forwards the report to the Company's relevant "compliance" function.

If the report concerns areas relating to this Model or in any case relevant conduct pursuant to Legislative Decree 231/01, the receiving function will send it to the Supervisory Body, which ensures the carrying out of the appropriate and necessary checks on the facts reported, guaranteeing that these are carried out in compliance with the provisions of the law and in particular the privacy and confidentiality aspects related to the reported person and the person reporting the information.

The system adopted by the Company is based on two fundamental conditions required by law: protection of confidentiality and protection from retaliation.

In particular, with regards to the protection of confidentiality, the identity of the reporting person cannot be revealed, without his express consent, to people other than those in charge to receive or follow up on the reports. This prohibition is also extended to any other information from which such identity can be deduced, directly or indirectly.

The protection of identity also concerns people involved and those mentioned in the report, until the conclusion of the proceedings initiated due to the report in compliance with the same guarantees provided in favor of the reporting person.

With regards to protection from retaliation, the Company prohibits any act of retaliation or discrimination, direct or indirect, against the whistleblower for reasons connected, directly or indirectly, to the report made (for example dismissal, mobbing, demotion, etc.).

In the event that, following the checks carried out, the validity of the facts reported is ascertained, the relevant outcomes are communicated to the competent company functions, so that the most appropriate sanctioning measures are taken, as described in the paragraph "Disciplinary system and measures in case of failure to comply with the provisions of the Model" of this document (paragraphs 4.5 and following General Part).

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For anything not expressly referred to in this paragraph, please refer to the Law, the Group Directive «Whistleblowing Policy» as well as the «Whistleblowing & Speak-up Policy» and the «Hotline Instruction Guide» available on the company website in the «hitachi» section .ethicspoint.com»

All information relating to reports is retained for a period not exceeding five years.

The company guarantees that all are aware of the reporting procedures and of the related rights and protections adopted.

### 4.3.3 Actions of the Supervisory Body

The Supervisory Body considers and examines information and reports received and envisages the analyses it considers necessary.

During this phase of analysis, all investigations considered necessary shall be carried out, querying the people to obtain the necessary information, acquiring documentation, liaising with Compliance and other corporate bodies and external consultants. All activities of the SB are minuted and conclude with a report, explaining:

- archiving when the SB believes that no further measures are necessary,
- a recommendation when an adjustment is needed to the Model, a procedure or organizational deed,
- a suggestion of disciplinary action when a breach is identified of procedures or the Model.

### 4.3.4 Collection, storage and access to the archives of the Supervisory Board

All information, reports and notifications envisaged in the Model are stored by the Supervisory Body in specific electronic archives, access to which is only permitted (under the terms reported in the SB Regulation) to the Members of the Supervisory Body and its Technical Secretariat.

## 4.4 PERSONNEL TRAINING AND DISTRIBUTION OF THE MODEL IN THE CORPORATE CONTEXT AND EXTERNALLY

### 4.4.1 Staff Training

Hitachi Rail STS promotes awareness of the Model, the in-house regulatory system and their relevant updates of all employees who are required to know the contents, observe it and help implement it.

In cooperation with the Supervisory Body, the Company manages personnel training on the contents of the Decree and the implementation of the Model through a specific plan.

In this context, the communications envisage:

- inclusion of the Model and Code of Ethics in the company intranet, in the specific dedicated section of the Company website, also in the English version,

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- availability of the Code of Ethics for all personnel on the workforce and distribution to new employees at the time of inclusion in the company with a signature certifying the receipt and commitment to be aware of and comply with the related provisions,
- permanent on-line course on the company intranet on the contents of the Decree, the Organizational Model and the Code of Ethics,
- specific training sessions for senior management,
- e-mail providing an update of the changes made to the Model or the Code of Ethics, consequent to significant legislative and/or organizational changes relative to the Decree, including with reference to the on-line course on the company intranet.

Participation in training sessions and the on-line course is mandatory and Hitachi Rail STS constantly monitors to ensure that the training course is used by all personnel. In addition, learning is checked through specific questionnaires. Providing correct answers to the questionnaire questions is essential to obtain the course completion certificate.

Traceability of participation in training on the Decree is implemented through the request for signing an attendance sheet and as regards e-learning activities, through a course attendance certificate.

Any update training sessions, in addition to specific investigations into the matter held for new employees under the scope of the process of inclusion in the company, will be carried out in the event of major changes to the Model, the Code of Ethics or onset legislation relative to the work of the Company, if the Supervisory Body does not consider the simple distribution of the change in the above manner to be sufficient.

#### **4.4.2 Information to external collaborators and partners**

Hitachi Rail STS promotes awareness and observance of the Model and Code of Ethics including amongst the commercial and financial partners, consultants, collaborators, customers, and suppliers of the Company.

The information is provided, for the subjects listed above, through the circulation of an official communication on the existence of the Model and Code of Ethics, with an invitation to consult the Company's website.

Hitachi Rail STS inserts specific clauses in contracts with commercial, financial and consultant counterparties, which envisage, in the event of failure to observe the standards established in the Model, the resolution of business obligations.

### **4.5 DISCIPLINARY SYSTEM AND MEASURES IN THE EVENT OF FAILURE TO OBSERVE THE MODEL PROVISIONS**

#### **4.5.1 General Principles**

Preparation of a suitable sanction system for the breach of the Model provisions is essential in order to assure the Model's effectiveness.

In this regard, in fact, Article 6, paragraph 2, letter e) of the Decree establishes that the organizational and management models must *"introduce a disciplinary system able to sanction failure to comply with the measures set out in the model"*, specifying that this disciplinary system must envisage specific sanctions *"in regard to anyone breaching the measures protecting the*

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*whistleblower and anyone deliberately or negligently making reports that are unfounded*” (Art. 6, paragraph 2-bis, letter d) and Case Law has on multiple occasions ruled that the existence of the disciplinary system is an essential part of the Model pursuant to Italian Legislative Decree no. 231/2001.

For the purpose of this Disciplinary System and in compliance with the provisions of applicable laws and that established by collective bargaining agreements, where applicable, any action or conduct implemented in breach of the Model shall be subject to sanction. As this latter also consists of the legislative corpus, which is an integral part thereof, it therefore follows that “breach of the Model” shall be construed as breach of one or more procedures and/or principles of the Code of Ethics.

The application of the disciplinary sanctions is regardless of the start and/or outcome of any criminal proceedings, insofar as the rules of conduct laid down by the Model are accepted by the Company in complete autonomy.

The identification and application of sanctions must consider the principles of proportionality and suitability of such to the alleged breach. To this end, the following circumstances are important:

- type of offense reported,
- concrete circumstances in which the offense was committed,
- method by which the conduct was implemented,
- severity of the breach, also taking into account the subjective attitude of the perpetrator,
- any committing of multiple breaches under the scope of the same conduct,
- any collaboration of more than one party in committing the breach,
- Any repetition by the perpetrator.

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## 4.5.2 Sanctions for employees

### White Collar workers and Middle Management

Employees' violation of the rules of conduct outlined in this Organizational Model are defined as disciplinary infractions.

The sanctions that can be charged come under the scope of those envisaged by the corporate disciplinary regulation, in compliance with the procedures envisaged by Article 7 of the Workers' Statute and any special legislation applicable and applicable collective regulations.

In connection with the foregoing, the Model refers to the disciplinary system set out in the collective bargaining agreement.

More specifically, in compliance with the provisions of the National Collective Bargaining Agreement of Metal-Mechanical Workers, it is established that:

- any worker who adopts conduct that is not compliant with the provisions of the Model, shall be subject to VERBAL WARNING, WRITTEN WARNING, FINE, SUSPENSION FROM WORK AND PAY, as such conduct shall constitute breach of the duties of the employee as identified by the National Collective Bargaining Agreement (Section IV - Title VII - Art. 9 - letter I) and prejudicial to the rules and moral of the company,
- any worker who, in working in areas at risk, breaches this Model in a manner that although more significant than those considered by the point above, are not so serious as to result in the sanction of dismissal without notice, shall be DISMISSED WITH NOTICE,
- any worker who, in working in areas at risk, behaves in a way that is clearly intended to commit an offense sanctioned by the Decree or in breach of the provisions of the Model, such as to determine the concrete application to the Company of measures envisaged by the Decree shall be DISMISSED WITHOUT NOTICE as such conduct is seen as an extremely serious breach such as to seriously morally and/or materially harm the company.

This document details, with specific reference to the crimes envisaged by the Decree, the disciplinary code adopted in the company and is made available to all Company employees through the standard means of distribution used by the company.

The disciplinary system is constantly monitored by the SB.

### Managers

In the event of breach by managers of the provisions of the Model and/or Code of Ethics, or of the adoption of conduct that is not compliant with the Model, the most suitable measures will be taken against the parties responsible, in compliance with the provisions of the National Collective Bargaining Agreement for Industrial Managers.

## 4.5.3 Measures taken against directors and auditors

In the event of breach of the Model by one or more Directors and/or Auditors of Hitachi Rail STS, the SB informs the Board of Directors and the Board of Auditors, who - on the basis of their respective competences - will proceed to take one of the following initiatives, taking into account the severity of the breach and in compliance with the powers envisaged by the law and/or the Articles of Association:

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- declarations in the minutes of meetings,
- formal notice,
- revocation of the appointment and/or delegation, request to convene or convening of the Shareholders' Meeting with the agenda featuring the adoption of suitable measures in regard to the perpetrators of the breach, including the exercise of lawsuits aimed at acknowledging the liability of the director in regard to the Company and the restoration of damages suffered.

Taking into account that the Directors of Hitachi Rail STS are appointed by the Company's Shareholders' Meeting, in the event of breach of the Model such as to compromise the trust with the company representative or if there are serious reasons connected with the protection of the interests and/or image of the Company (for example the application of interim measures or referral to the opinion of the Directors in connection with the perpetration of crimes that may result in the Company incurring administrative liability), the Shareholders' Meeting will be convened to resolve on the revocation of the mandate.

#### **4.5.4 Measures in regard to collaborators, consultants, partners, counterparties and other external subjects**

All conduct implemented under the scope of a contract by collaborators, auditors, consultants, partners, counterparties and other external subjects in conflict with the lines of conduct indicated by this Model and the Code of Ethics, may determine, thanks to the activation of certain clauses, the termination of the contract. The legal department, collaborating with the SB, assures the preparation, update and inclusion in the letters of appointment or business agreements or partnerships of these specific contractual clauses that, in the event of breach of the ethical standards established, will envisage the termination of the business obligations.

#### **4.5.5 Sanction application procedure**

The procedure for the application of sanctions consequent to breach of the Model and Code of Ethics differs for each category of addressees in terms of the phase:

- of the report of the breach to the party concerned,
- of the determination and subsequent application of the sanction.

The application procedure may, in any case, start following receipt by the company bodies competent as applicable and indicated below, of the notice with which the Supervisory Committee informs the relevant body of the breach of the Model.

More specifically, in all cases where notice is received or acquired during monitoring, and where elements have been proven as constituting danger of breach of the Model, the SB has the task of acting to carry out all checks and audits under the scope of its activities.

Once the verification and control is complete, on the basis of the elements in its possession, the SB evaluates the existence of conditions for the activation of the disciplinary procedure, duly informing the Head of Human Resources, also in order to assess any relevance of the conduct with respect to other applicable laws or regulations.

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#### 4.5.5.1 The disciplinary procedure with regard to directors and auditors

if the breach of the Model should be noted by a subject holding the position of Director, who is not tied to the Company by a subordinate contract of employment, the SB shall send to the Chief Executive Officer for subsequent sending to the Board of Directors and to the Board of Auditors of a report containing:

- a description of the conduct noted,
- an indication of the provisions of the Model that have been breached,
- the general details of the subject responsible for the breach,
- any documents proving the breach and/or other relevant elements,
- proposal with regard to an appropriate sanction for the specific case in hand.

Within ten days of receipt of the report by the SB, the Board of Directors shall call the member specified by the SB for a Board meeting. This shall be held no later than thirty days following receipt of said report.

The notice of calling must:

- be made in writing,
- contain indication of the alleged conduct and provisions of the Model purported to have been breached,
- notify the party concerned of the date of the meeting, with notice of the faculty to present any findings and/or objections, both in writing and verbally. The notice of calling must be signed by the Chairman and at least two members of the Board of Directors.

During the meeting of the Board of Directors, which the members of the SB are also invited to attend, the party concerned will be heard, any counterclaims made by this latter will be formulated, and any further checks deemed to be appropriate shall be completed.

On the basis of the elements acquired, the Board of Directors shall thus determine an applicable sanction, providing grounds for any disagreement with the proposal with respect to the proposal formulated by the SB.

The resolution made by the Board of Directors and/or the Shareholders' Meeting, as applicable, shall be notified by the Board of Directors to the party concerned and the SB for any appropriate checks, in writing.

The above proceedings also apply if breach of the Model is noted by a member of the Board of Auditors within the limits permitted by applicable provisions of law.

In all cases where a breach of the Model is noted by a Director tied to the Company by a subordinate contract of employment, proceedings will be started as envisaged below in regard to the Managers/Employees.

Should the results of these procedures entail the sanction of termination of employ, the Board of Directors shall call the Shareholders' Meeting without delay to resolve the revocation of the Director from his office.

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#### 4.5.5.2 The disciplinary procedure with regard to managers

The procedure for ascertaining the offense with regards to the Managers is performed in compliance with current legislative provisions and applicable collective bargaining agreements.

Specifically, the SB sends the Chief Executive Officer and the Head of Human Resources, to whom the management of managers is assigned, a report containing:

- a description of the conduct noted,
- an indication of the provisions of the Model that have been breached,
- the general details of the subject responsible for the breach,
- any documents proving the breach and/or any other relevant documents.

Within five days of the acquisition of the SB report, the Chief Executive Officer summons the Manager concerned by means of a notice of complaint, setting out:

- the indication of the conduct noted and the subject of the breach in accordance with the Model,
- notice of the date of the discussion and the right of the party concerned to there to submit any considerations, in writing or verbally, on the events.

Thereafter, the Chief Executive Officer, together with the Head of Human Resources, will define the position of the party concerned and the implementation of the relevant sanction proceedings.

If the party against whom the proceedings have been brought holds a position of Manager with the attribution of delegations by the Board of Directors, and if the investigation proves their involvement in accordance with Italian Legislative Decree no. 231/01, the following is envisaged:

- the Board of Directors may decide on whether or not to revoke the delegations attributed according to the nature of the appointment,
- the Chief Executive Officer can take action to define the position of the person concerned and implement the related sanction proceedings.

In general terms, the provision applying the sanction is notified in writing to the party concerned within six days of receipt of explanations by the manager. These terms will run from the date on which the written justifications are provided or, if later, the oral explanations. Under the scope of the procedure described above, it is envisaged that the Company's Board of Directors is informed in both these cases of the results of the internal audits and the sanction profile applied.

A copy of the sanction resolved will be sent to the SB for its information, and they will therefore verify its application. Without prejudice to the faculty to seise the legal authorities, within thirty days of receipt of the written notice of dismissal, the manager may petition the Conciliation and Arbitration Panel in accordance with the procedures envisaged by applicable contracts. In the event of appointment of the Panel, the disciplinary sanction is suspended until the ruling of said body.

#### 4.5.5.3 The disciplinary procedure with regard to employees

The procedure for the application of the sanction to Employees takes place in compliance with the provisions of Art. 7 of the Workers' Statute and the National Collective Bargaining Agreement.

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In particular, in the event of reports, the SB sends the Head of Human Resources a report setting out:

- the general details of the subject responsible for the breach,
- a description of the conduct noted,
- an indication of the provisions of the Model that have been breached,
- any documents and elements in support of the charges.

Through the Head of Human Resources, promptly with respect to the acquisition of the report, the Company sends the Employee a written notice of the charges pursuant to Art. 7 of the Workers' Statute, containing:

- a timely indication of the conduct noted,
- the provisions of the Model allegedly breached,
- notice of the faculty to provide written clarification and/or explanations within five days of receipt of the notice and to request the involvement of the representative of the trade union to which the employee adheres or grants power of attorney.

Following any rebuttal arguments submitted by the party concerned, the Head of Human Resources shall take steps in respect of the application of the sanction, determining the relevant entity. The sanctions must be applied within six days of receipt of the explanations. The related provision shall also be notified to the SB, which also verifies the effective application of the sanction applied.

Without prejudice to the possibility of seising the legal authorities, within twenty days of receipt of the order, the Employee may promote the establishment of a conciliation and arbitration panel, in this case with the sanction suspended until the relevant ruling.

Under the scope of the procedure described above, it is envisaged that the Company's Board of Directors is informed of the results of the internal audits and the sanction profile applied with regard to employees.

#### **4.5.5.4 The proceedings in regard to third party model addressees**

In order to allow for the assumption of the initiatives envisaged by the contractual clauses, the SB sends the Manager of the Department that manages the contract and, for his information, the Chief Executive Officer, a report setting out:

- details of the party responsible for the breach,
- a description of the conduct noted,
- an indication of the provisions of the Model that have been breached,
- any documents and elements in support of the charges.

If the contract has been resolved by the Company's Board of Directors, this report must also be sent to the attention of it and the Board of Auditors.

The Head of the Department that manages the contract, by agreement with the legal department and on the basis of any determinations passed in the meantime by the Chief Executive Officer and the BoD and Board of Auditors in the cases envisaged, sends the party concerned a written notice setting out the indication of the conduct noted, the provisions of the Model allegedly breached and an indication of the specific contract clauses to be applied.

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#### 4.6 Principles of Conduct for Crimes not addressed in the special parts

This paragraph provides general rules of conduct relating to the types of crimes envisaged by the Decree for which it was not deemed necessary to prepare a Special Part, although it is considered that the related risks already appear to be adequately covered by the rules of conduct specified in the Code of Ethics, by some of the rules provided for in the Special Parts of this Model and in company procedures.

In order to prevent the risks of committing crimes with the purpose of terrorism and against the person, the Company:

- adopts IT tools that prevent access to and/or receipt of material not relevant to the Company's business,
- establishes clear and unequivocal reminders of the proper use of the IT tools in the possession of its employees,
- pays special attention in evaluations of possible partnerships or investment activities,
- performs due diligence on all customers and/or suppliers:
  - in relation to determining the beneficial owners of the counterparty,
  - with respect to relations with Customers, in relation to the verification of the end recipient of the supply and the trustworthiness of the Customer on the basis of documents, data or information obtained from reliable and independent sources.

In addition, in order to prevent crimes against the person through the illegal recruitment of labor through migrant smuggling, slave trafficking, and forced labor, Hitachi Rail STS:

- requires and ensures that its suppliers/contractors comply with legal obligations regarding:
  - protection of child labor and women,
  - health, hygiene and safety conditions,
  - trade union rights or in any case rights of association and representation,
  - protection against exploitation of labor,
- provides for appropriate contractual sanctions against suppliers/contractors who violate the rules referred to in the previous point.

Lastly, in addition to the principles referred to above, in order to prevent the crime of employing foreign nationals without a valid residence permit, the Company:

- in the case of foreign workers, requires and checks that they have a valid residence permit,
- in the case of foreign suppliers/contractors, partners and/or consultants/professional service providers and/or foreign personnel employed by them, obtains a special declaration of lawfulness in this regard.

#### 4.7 VERIFICATION OF THE APPLICATION AND ADEQUACY OF THE MODEL

By agreement with the SB, the Board of Directors of Hitachi Rail STS oversees the update and adjustment of the Model in cases where such may be necessary and/or appropriate according to any changes made to the reference regulatory and organization context or internal protocols of the Company or any shortcomings noted in the internal regulatory system.

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## **5 SPECIAL PART “A” - CRIMES TO THE DETRIMENT OF THE PUBLIC ADMINISTRATION**

### **5.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is in any case prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are those indicated under Articles 24 and 25 of the Decree below (refer to the Model annex for a detailed description) and, therefore:

- fraud to the detriment of the State or other public entities (Art. 640, paragraph 2, point 1 of the Italian Criminal Code),
- fraud to obtain public funds (Art. 640 bis of the Italian Criminal Code),
- embezzlement of public funds (Art. 316-bis of the Italian Criminal Code),
- misappropriation of public funds (Art. 316-ter of the Italian Criminal Code),
- computer fraud (Art. 640 ter, paragraph 1 of the Italian Criminal Code),
- crimes against the Public administration acting in concert with public officers and public servants:
  - Concussion (Art. 317 of the Italian Criminal Code),
  - Corruption:
    - for the exercise of the duties (Articles 318-320 and 321),

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- for an act in conflict with official duties (Articles 319-320 and 321 of the Italian Criminal Code),
- instigation to corruption (Art. 322 of the Italian Criminal Code),
- corruption in legal acts (Art. 319-ter of the Italian Criminal Code),
- undue inducement to give or promise benefits (Art. 319-quater of the Italian Criminal Code),
- concussion, corruption, undue inducement to give or promise benefits and instigation to the corruption of members of the International Criminal Court or of the bodies of the European Community and officers of the European Community and foreign states (Art. 322 bis of the Italian Criminal Code),
- trafficking in unlawful influence (Art. 346-bis of the Italian Criminal Code),
- fraud in public supplies (Art. 356 of the Italian Criminal Code),
- fraud to the detriment of the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development (Art. 2 of Italian Law no. 898/1986),
- embezzlement (Art. 314 of the Italian Criminal Code),
- embezzlement through profiting from a third party error (Art. 316 of the Italian Criminal Code),
- abuse of office (Art. 323 of the Italian Criminal Code);
- bid rigging (Art. 353 of the Italian Criminal Code)
- disturbed freedom of the procedure for choosing the contractor (Art. 353 bis of the Italian Criminal Code).

## 5.2 AREAS EXPOSED TO RISK

The basis for liability for the crimes listed above is the establishment and conduct of direct or indirect relations with the Public Administration. In criminal matters, it is necessary for the notion of Public Official and Public Servant to be very broad, to the point of including not only foreign persons with similar functions to those of Italian public officials, but also persons who, as private individuals, shape and manifest the will of the Public Administration with an activity regulated by rules of public law, such as all persons who such as all persons who hold concessions for the implementation or management of public works or public services. Among all of them we can mention employees, for example.

Therefore, areas exposed to risk are defined as all those areas of the company that for the conduct of its business have or are expected to have relations with public administrations facilitating said relations.

### Crime risk areas:

All areas in which relations are entertained with the PA and, in particular, those in which operations take place with the following, are considered as being at risk:

A.1 Relations with public administration customers in the management and coordination of commercial activities,

A.2 Research and negotiation of orders/contracts of sale and maintenance with public customers and/or public service concession-holders,

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- A.3 Stipulation, execution and management of contracts/orders with public entities/customers and/or concession-holders of public services,
- A.4 Selection and management of providers in support of commercial activities and partners in ATI (temporary consortia) and/or consortia,
- A.5 Management of requirements, communications and requests for authorizations, licenses and certifications, including during audits and inspections by the competent public administrations/supervisory authorities,
- A.6 Management of relations and requirements envisaged under the scope of the activities for the application and management of public grants/loans,
- A.7 Management of legal and amicable disputes and relations with the legal authorities,
- A.8 Finance and treasury,
- A.9 Management of transfers and the reimbursement of costs, entertainment expenses, hospitality and gifts, sponsorships and donations,
- A.10 Personnel selection, hiring and management
- A.11 Procurement of goods, services and consultancy.

With reference to the above areas, below is a description of sensitive activities.

### **A.1 Relations with public administration customers in the management and coordination of commercial**

Commercial activities for the development of the business are carried out by the commercial business unit departments, by business unit managers and the Chief Executive Officer, according to the commercial strategies defined when preparing the strategic plan. The commercial departments have geographic area managers who monitor the commercial opportunities in the area of competence. These activities include relations with customers and on foreign markets, may be supported by service providers. During this phase, the offer strategies are also defined, along with potential partners, sub-suppliers, technical solution and contractual structure.

As regards relations with public administration customers in commercial business, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- *i) Management of institutional relations with public subjects competent in the area of business interest.*
- *ii) Management of commercial relations in regard to (potential) customers belonging to the public administration (Italian and foreign), and subjects appointed by them if the nature of the appointment is comparable with the public administration.*

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*iii) General promotional activities performed on customers of the public administration.*

- *iv) Support and coordination in defining the offer strategy for public administration customers or subjects appointed by them where the nature of the appointment is such as to make them comparable with the public administration.*

The same crimes may be committed in relations with a subject appointed by a customer or through an intermediary between Hitachi Rail STS and the PA.

In relations with customers and public subjects, there is also a risk of the perpetration of the crime of aggravated fraud to the detriment of the State each time using false technical or commercial documentation or other artifice if business conditions are determined that damage the public administration customers, mislead or result in unfair profit for the company.

## **A.2 Research and negotiation contracts of sale and maintenance with public customers and/or public service concession-holders**

Following the decision to pursue a commercial opportunity (“go-not to go” decision), bids are submitted, sometimes preceded by pre-qualification. As a preliminary measure, the decision is made as to whether or not to submit a bid (“bid-not bid” decision).

According to the corporate bidding procedure, a bidding group is assigned to these activities, comprising reference persons of the corporate departments concerned (e.g. project management, engineering, etc.) and coordinated by a reference person from the commercial bid department. This bidding group examines the tender documentation and prepares the bid. During this phase, requests may be made to the customer for clarification, the answers to which are generally disclosed to all bidders. After the submission of the bid, an improved bid may be requested (the “best and final offer”). Award is followed by negotiation with a view to signing the contract.

This bid procedure envisages review and bid approval phases. The bid and contract are signed according to the system of corporate powers of attorney.

During this phase, relations may be entertained with the customer or customer's representatives, or between the customer and the company's representatives, usually consultants assisting with the definition of the tender specifications and bid assessment. These relations may involve the submission of the bid or meetings to respond to requests for clarifications.

As regards relations with customers in research and contract negotiation, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- *i) Management of pre-qualification activities for the participation in tenders or bids.*
- *ii) Analysis of the subject of the tender or bid, including the specifications and requirements laid down and preparation of the tender documentation.*
- *iii) Request for clarifications on a tender notice or call for bids.*
- *iv) Participation in negotiations for the acquisition of orders or contracts and the preparation of the technical/economic documentation necessary to acquire the order.*

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In this area, there is a potential risk of perpetration of crime, in order to obtain an undue benefit for the company, such as, for example:

- definition of conditions and/or assessments during the pre-qualification and/or assessment of bids in the company's favor, to assist it during the selection phase, even if not meeting the necessary requirements,
- responses to requests for information about a tender notice, which gives the company an undue advantage,
- assessments of the offer received and/or definition of contract conditions in the company's favor, despite the lack of the necessary requirements.

### **A.3 Stipulation, execution and management of contracts with public entities/customers or concession-holders of public services**

Through the Project Managers, the Delivery Department is responsible for managing the contract/order, according to the expected quality levels, budget and planning. The Project Manager coordinates the project group, which includes the reference persons of the corporate departments involved in the execution of the project (e.g. engineering, construction and commissioning, etc.). The management of the contractual relationship is also the responsibility of the Project Manager, who may be assisted by a dedicated assistant and, potentially, for more complex aspects, by the legal department.

As regards relations with public customers, during the stipulation, execution and management of contracts/orders, the main activities potentially "at risk" identified for the perpetration of crimes, are as follows:

- *i) Definition of the technical-economic aspects connected with variants not envisaged by the contract stipulated directly by the company or through ATI or Consortium and negotiation of variants and/or management of order claims.*
- *ii) Management of works progress and contractual milestones both in terms of relations with the customer and/or subjects appointed by them and for the preparation of the supporting documentation.*
- *iii) Management of relations with the representatives of the customer and/or subjects appointed by them - in-house technicians, Test Commissions, Works Management - and/or public organizations e.g. Agenzia Nazionale Sicurezza Ferroviari (the National Rail Safety Agency) - in charge of carrying out the verifications envisaged by applicable provisions of law and/or contract.*
- *iv) Attendance of meetings with the customer and/or subjects appointed by them in order to address topics relevant to the order/contract.*
- *v) Management of relations with the customer and/or subjects appointed by them during project audits.*
- *vi) Management of activities connected with credit management in order to obtain approval of payment of the invoices receivable from the customer and/or its representatives.*

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- *vii) Management of testing in the various phases of order execution, e.g. factory acceptance test, verifications of the test commissions, partial activations, etc.*

#### **A.4 Selection and management of providers in support of commercial activities and partners in ATI and/or consortia**

On the foreign markets, the Company can use providers as commercial support through contracts that envisage the provision of specific commercial support and/or market research services and, where necessary, of technical and management support.

In tenders called by public and other entities, through the establishment of temporary consortia or consortia with other companies, the Company takes part in the preparation of bids for the award of the contract.

As regards this area, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- promise or giving of money or other gains, through a provider in support of commercial activities, in order to obtain undue favoritism in connection with the award of contracts (crime of corruption),
- promise or giving of money or other gains, through association partners, in order to obtain undue favoritism in connection with the award of contracts (crime of corruption),

Taking into account these risks, the selection and management of the relationship with providers and partners must be subject to strict checks and monitoring.

#### **A.5 Management of requirements, communications and requests for authorizations, licenses and certifications, including during audits and inspections by the competent public administrations/supervisory authorities**

The company has contacts and relations with the public administration (public officials or public servants) in connection with the request and management for authorizations, licenses, administrative concessions, fulfillments in terms of social security and welfare, hygiene, health and safety at work and tax, corporate and patent requirements.

In addition, Hitachi Rail STS also entertains relations with authorities and organizations appointed to oversee specific profiles connected with the exercise of business activities (Data Protection Authority, Authority for the Supervision of Public Works, Services and Supplies Contracts, Chambers of Commerce) or specific administrative requirements (Companies House), etc.

As regards this area, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- *i) Fulfillment of the requirements and management of relations with authorities such as the Data Protection Authority, Competition Authority, certifying bodies SoA, Ministry of Infrastructures and other public entities in respect of the obtaining and renewal of the qualification/position as General Contractor.*

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- *ii) Request for and management of authorizations, permits, concessions, including during audits and inspections on, for example, site activation, building permits, certificates of fitness for habitation, applications for Reports of Start of Activities (DIA), requirements linked to the protection of health and safety at work and the environment in relations with the local health authorities, the fire brigade, the employment inspectorate, etc.*
- *iii) Management of dealings with the Financial Administration (Revenue Agency, companies in charge of collecting debt on behalf of public entities, the Ministry of Finance, Financial and Customs Administration) and the Financial Police also during inspection audits and the related requests for information.*
- *iv) Management of requirements and relations with officers of the competent entities on corporate matters (e.g. the courts, Chambers of Commerce, Registration Office, etc.).*
- *vi) Management of relations with public administrations such as INPS, INAIL, the Provincial Employment Directorate, Offices for Employment, Regional authorities for employment policies, etc., for the observance of the obligations set forth in the reference legislation (including requirements relating to special-rate hiring) also during audits and inspections,*
- *vi) Management of activities connected with rights, trademarks and industrial patents, including through the support of external consultants and requirements in respect of SIAE for registered software.*

#### **A.6 Management of relations and requirements envisaged under the scope of the activities for the application and management of public grants/loans**

The company can access public grants/loans in various ways for research and development. These loans/contributions can be supplied by Italian public administrations or the European Union. The company may also benefit from contributions for training or investments, as a rules made by national public administrations.

Relations with the financing public administration or with subjects appointed by it (e.g. the concession-holder bank) are managed by the finance department for all administrative aspects and by the Portfolio, Business Development & Innovation Department at each BU for the technical aspects. The Portfolio, Business Development & Innovation Department at each BU establishes the technical-administrative proposal, with the support of the other corporate departments. Some research projects may also be pursued in a partnership with other businesses and/or research institutes. The Portfolio, Business Development & Innovation Department of each BU or the Development Department in connection with the topics involved manages relations with partners.

The reports of costs are prepared by the Portfolio, Business Development & Innovation Department at each BU with the support of the relevant departments and revised by the administration. The activities carried out and costs incurred are normally subjected to audit by the lender or a party appointed by it (e.g. concession-holder bank, auditor of the accounts). Relations during audit with the lender or subject appointed by it are handled by the Portfolio, Business Development & Innovation Department at each BU or, in the event of a concession-holder bank, by the Finance Department with the support of the Portfolio, Business Development & Innovation Department at each BU.

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## **A.7 Management of legal and amicable disputes and relations with the legal authorities**

This area includes the activities relating to disputes managed by the company, including on an international level, in an administrative, criminal or civil court and including formal arbitration.

These activities in fact entail contacts, including through third parties (for example external lawyers appointed by the Company) with the legal or administrative bodies, competent to establish and rule on the dispute, as well as, potentially, with their auxiliaries, with legal police bodies responsible for carrying out the investigations delegated by the legal authority. This area also includes relations entertained by any title and during any phase of the criminal proceedings held before the national or international legal authorities.

This activity is overseen by the legal department, which, for legal proceedings, avails itself of the support of external lawyers, appointed with a specific power of attorney. Employment law disputes are monitored by the Human Resources Department.

## **A.8 Finance and treasury**

The CFO is responsible for managing cash flows, including those relative to current accounts (opening/closing), collections and payments - these latter as authorized by the corporate departments that use the services or the departments in charge of receiving and verifying the materials/goods delivered - the management of liquid funds and loan transactions and petty cash and management.

The activity in question presents risk profiles insofar as possible, for the creation of concealed economic funds to be allocated to corrupt public officials in order to obtain undue advantages in the Company's favor.

Special attention must be therefore paid first and foremost to defining the financial policies, in such a way as to ensure that they highlight the legitimacy of the choices for the allocation of corporate resources, also in view of a subsequent verification of their effective use.

In this area, the relationship with the subsidiaries for the concession and management of any intra-group guarantees, as well as the management of group treasury, take on particular importance.

## **A.9 Management of transfers and the reimbursement of costs, entertainment expenses, hospitality and gifts, sponsorships and donations**

The management of the transfers and reimbursements of costs refers to the expenses incurred by employees (managers and others) in connection with transfers. According to the corporate systems and procedures, these expenses are authorized both before the request for a transfer and afterwards, at the time of liquidation, according to its reporting.

The management of entertainment, hospitality and gift expenses are expenses aimed at maintaining and developing relations with third parties, such as those relating to breakfasts or work meetings, as well as a welcome in order to promote the image or services provided by the Company during corporate events. Gifts are objects, of low value, functional to the dissemination and promotion of the image or supporting external relations of the Company.

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The management of sponsorships, advertising initiatives and disbursements to entities and associations regards contracts, connected with a given event, project or activity and stipulated by the Company for the optimization and dissemination of its name, image and trademark or to promote the corporate business, as well as for donations or other donations or the supply of goods and services to subjects not for profit.

The activities in question entail risks that may constitute a vehicle to conceal the undue disbursement in favor of public agents, operating in the segments of interest to the Company, of amounts of money or benefits of any type in view of the obtaining of undue favors, with the consequent possible integration of crimes of corruption. Similarly, the crime of instigation to corruption can be committed.

#### **A.10 Personnel selection and hiring and management**

The human resources department assures the definition of the organizational structure and the needs of resources consistently with the corporate strategy and the needs of the various corporate departments, it also ensures, again in compliance with the corporate strategy, the optimization of the use of human resources, the plan of merits, support in the development of competences and industrial relations with the trade union organizations at the various levels (business, territorial and national).

The area in question entails risk because the selection, hire and management of personnel (e.g. policies of merit) could represent the vehicle through which to obtain under advantages in the event that they should involve a person near a public agent or, in legal proceedings, a magistrate, a clerk or a witness.

#### **A.11 Procurement of goods, services and consultancy**

The area of procurement is instrumental to the perpetration of the various crimes. In respect of the crimes involving this special part, we would not, merely by way of example, the following hypotheses:

- the selection and use of suppliers or consultants that are “near to” or “approved by” public subjects, despite the lack of the necessary requirements of competence and professionalism, in order to obtain undue favors/foster the interests of the Company (e.g. stipulation of contracts with the public administration, obtaining authorizations, etc.),
- the definition of “inflated” or exorbitant fees, i.e. which are higher than market prices or the value of the service or consultancy effectively provided, with the aim of creating liquid funds to be used for corruption. This conduct is even more insidious in the case of consultancy, given the intangible nature of the provision contracted and, therefore, the difficulty in identifying the effective economic value of the service provided. Similarly, for the above reasons, there could also be a risk for infra-group purchases.

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### 5.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES

this Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

This Special Part envisages the express prohibition for said Addressees of behaving in any way:

- such as to constitute the crimes considered in this special part (Articles 23, 24 and 25 of the Decree), also in the form of acting in concert,
- which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially such,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics,
- to foster any situation of conflict of interest in relation to the Public Administration in connection with the above-mentioned offenses.

In the context of the above conduct, it is forbidden in particular to:

- make promises or undue monetary donations to public officers or public servants or persons near to such in order to obtain undue benefits,
- distribute or receive gifts and presents outside the provisions of the Code of Ethics and internal regulations (see the corporate procedure governing gifts, hospitality and entertainment expenses - see the attached list of procedures). In any case, any form of present to public officials, whether Italian or foreign (including countries where the giving of presents is common practice) or their relatives is prohibited if it might influence the independence in a decision or induce to grant any advantage whatsoever to the company. Permitted gifts are always of negligible value. Gifts offered or received - except for those of negligible value - must be suitably documented to as to allow for appropriate checks,
- afford other types of benefits (promises of employment, use of corporate assets, improper use of entertainment expenses, etc.) in the favor of public officials or public servants, which can have the same consequences as at the previous point,
- receive advantages of any type, over and above normal commercial practices or courtesy or in any case aimed at acquiring undue favorable treatment in the conduct of any corporate business,
- pay or offer, directly or indirectly, including in the form of aid or contributions, payments or tangible benefits for public officials or public servants in order to impact or compensate a deed of their office and secure benefits of any type for the company, follow up on undue requests for money or other benefits made by any person. In these cases, the employee shall promptly inform his superior and suspend all business relations with the applicant,

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- sign deeds or documents of external relevance to the company in the absence of powers formally attributed or going beyond the powers assigned,
- act in a misleading manner in regard to the Public Administration such as to cause it to commit errors of assessment during the analysis of requests for authorizations, licenses, certificates, diplomas, concessions and similar,
- omit information due, in order to direct the decisions of the public administration in its favor,
- give into recommendations or pressure from public officers or public servants,
- exert undue pressure or solicitations on public officials in the pursuit of their official duties,
- provide, in any way, untruthful or incomplete information to the national or foreign public administration,
- allocate sums received from national or EU public bodies by way of grants, contributions or loans for purposes other than those for which they were intended,
- hire personnel who are not necessary or not worthy merely in order to obtain undue benefits,
- acknowledge reimbursements of transfer and entertainment costs that are not suitably justified in connection with the type of activities carried out or without suitable justifying documentation,
- issue requests for purchase that are not matched by a specific, explained need of the company and that are not authorized on the basis of the delegations conferred,
- award supply or subcontracting contracts to persons or companies that are “near to” or “approved by” public officials purely in order to obtain undue benefit,
- award supply or subcontracting contracts without the necessary requirements of quality, safety and value for money of the purchase,
- unlawfully “direct”, through corruption, the tender procedures for the award of supplies in order to have a specific subject named as awardee, including through artifice employed to exclude other participants,
- approve invoices payable in respect of entirely or partly non-existent services,
- provide services to business partners and/or consultants without appropriate contractual documentation, justification and authorization,
- acknowledge payments in the favor of external collaborators that are not suitably justified in connection with the type of appointment to be performed, current local practices and market prices,
- provide various forms of aid or contributions that, in the form of sponsorships, instead aim to promote or foster the company’s interests,

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- act in any way aimed at discouraging the participation of other bidders, in the case of public tenders, or acquire information useful to the unlawful obtaining of a competitive advantage by the company to the detriment of competitors,
- produce, in participation in public tenders, false or altered documents, in all or in part,
- act in a misleading way that may mislead customers in their technical-economic assessment of the documentation submitted,
- omit due information in order to direct the decisions of customers in its favor,
- grant any discounts, write-offs of credit and/or repayment plans in order to obtain undue advantages in relations with public administration customers,
- award consultancy appointments/mandates on persons or companies not meeting the requirements of honor, professionalism and reliability, use cash as a means of payment and collection outside the cases permitted by corporate procedures or regulations or in any case improperly,
- open current accounts or savings books anonymously or under fictitious names and use any opened in foreign countries,
- order payments or collect monies to/from countries on the main international black lists, without any documentation proving the real, specific needs,
- make payments or acknowledge fees in the favor of third parties, without suitable contractual justification or in any case without suitable documents, justifications and authorizations,
- award works, services and supplies and arrange for the related payments without respecting the requirements of form and traceability required by current legislation governing public contracts and cash flow traceability, where applicable,

With regards to **relations with the public administration, in the management and coordination of commercial activities (A.1)** and **the search for and negotiation of orders/sales contracts (A.2)**, the Company complies with the control principles described below (see the corporate “Bidding” procedure - see list of procedures attached). These control principles also apply to relations with subjects appointed by the customer, such as consultants assisting with the definition of tender specifications and the bid assessment:

- with respect to the roles, duties and responsibilities defined by the company organization charge, the authorization system and the system of delegations in relations with customers or subjects appointed by them,
- respect for principles of correctness, transparency and integrity in the relationship with customers or subjects appointed by them,
- compliance with laws, current regulations, ethical standards and existing procedures,
- traceability of decisions made and acts performed with regards to relations with the customer or subjects appointed by them, retaining suitable documented evidence,

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- transparency and correctness in supplying information and data to the customer or subjects appointed by it, in order to guarantee the relevant completeness and truthfulness,
- multiple corporate departments are involved in the bid phase, through the representatives in the bidding group,
- the bid documentation (technical and commercial) to be sent to the customer is subject to review and approval according to the corporate bidding procedure,
- the bids submitted must be signed by a person with a suitable power of attorney. This power of attorney must be conferred in line with the organizational and managerial responsibilities assigned to the appointed party,
- these subjects must exercise the powers conferred upon them, respecting the breadth thereof and observing the operating procedures as per corporate procedures. In particular, the internal authorization levels envisaged by the procedures in force must be respected at all times if, during the negotiation of the bid submitted, the customer should request changes (economic or technical) such as to entail risks that have not been assessed and approved by the competent corporate subjects,
- if the commercial department should use providers to assist with commercial promotion, as promoters, consultants and similar, the control principles must be applied relative to the area at risk of the selection and management of providers in support of commercial activities (area A.4),
- if participation in the bid is envisaged in the form of a temporary consortium, the principles of control must be applied in connection with the area at risk of the selection and management of partners (area A.4),
- if the supply contracted envisages the involvement of subcontractors or co-suppliers, principles of control must be applied relative to the area at risk of the procurement of goods and services (area A.11).

As regards **relations with the public administration in the stipulation, execution and management of contracts/orders** (A.3), the Company complies with the following control principles (see the corporate Project Managing procedure - see attached list of procedures). These control principles also apply to relations with subjects appointed by the customer, such as consultants assisting with contract management.

- identification of responsibilities between the project group and reporting systems towards the project manager and controller, this latter working for a department (Administration, Finance and Control) independent of the Delivery Department,
- The Project Manager reports periodically on the status of orders to the Head of Delivery/Area PM in management meetings for significant orders, or in the order report,
- with respect to principles of transparency, correctness and integrity in the conduct adopted in execution of contractual relations and in all data and information prepared for the customer (e.g. works progress reports, variant requests, etc.). Any critical issues or difficulties of any type in the execution of such relations, including any breach, are highlighted in writing and

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managed by the competent departments in compliance with contractual agreements, as well as in accordance with the law and other applicable rules,

- traceability and documentation of relations entertained with the customer or subjects appointed by it,

determination of the payment procedures (no payments can be made in cash or in kind) and express prohibition to make payments to foster provisions due by the public administration (see the corporate procedure on gifts, hospitality and entertainment expenses - see attached list of procedures),

- acts generated during contract/order execution and with relevance externally must be signed by parties with suitable powers of attorney according to the corporate system,
- with respect to the company skills and system of delegations in place, including with reference to the spending limits relative to the departments and methods used to manage the financial resources,
- in the event of use of permanent establishments abroad for the execution of the contracts with customers, the business must in any case be managed in compliance with procedures and practices applicable to the management of the contract and permanent establishment,
- under the scope of order management, project management and controlling tools and methods must be used, such as the works program and budget, which assure: (i) suitable planning of all activities involved in the execution of contracts and related resources, (ii) a clear identification of the responsibilities, duties and resources assigned during the execution of activities, (iii) a clear identification of the responsibilities and duties assigned during the verification and control of the activities performed,
- the variants during works, if impacting the subject of the contract and/or entailing an economic change, must: (i) be supported by suitable technical-economic documentation, (ii) be approved within the companies by persons with suitable internal authorization powers and powers of signature, and (iii) be approved by the customer,
- testing must be suitably planned in the works schedule, organized with the participation of the competent corporate departments and the related results must be tracked,
- if the Delivery Department should use providers to assist with order execution, as promoters, consultants and similar, the control principles must be applied relative to the area at risk of the selection and management of providers in support of commercial activities (area A.4),
- if contract execution is envisaged in the form of a temporary consortium, the principles of control must be applied in connection with the area at risk of the selection and management of partners (area A.4),
- if the supply contracted envisages the involvement of subcontractors or co-suppliers, principles of control must be applied relative to the area at risk of the procurement of goods and services (area A.11).

With reference to the **selection and management of providers in support of commercial activities** (A.4), the Company's business is compliant with the following control principles (see the

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corporate procedure on services in support of commercial activities - see the attached list of procedures):

- all relations with promoters/consultants/suppliers of services in support of the commercial business must be hinged on principles of transparency and integrity and must envisage provisions and fees in line with market practice and ascertaining that there are no aspects that may foster the perpetration of crime in Italy or abroad,
- the contracts in question are regulated by a specific procedure that envisages:
  - a clear formalization of the reasons for awarding an appointment and the choice of provider,
  - rules for the selection with the conduct of detailed due diligence, which must be analytically documented,
  - rules for the formation of the contract,
  - methods for managing the contract based on the obtaining of periodic written reports on the activities carried out,
- the Sales & BD Department is responsible for conducting the due diligence process with the support of the legal department and for documenting the results of this process on an evidential paper, indicating the assessments performed, in particular with regard to any risk factors and indicators of criticality, and the decisions taken,
- the legal department is responsible for verifying compliance with the procedure and conformity of the contract with the requirements of the corporate procedure,
- the contract with the provider includes clauses setting out a commitment not to behave in any unethical or unlawful manner in providing the service and to comply with the Code of Ethics and the Organizational, Management and Control Model,
- the Sales & BD Department is responsible for obtaining regular written reports on the activities performed. This responsibility lies with the Delivery department when the provider's support continues in the order management phase,
- an independent corporate department verifies the completeness and consistency of the due diligence documentation before submitting the contract for signing by senior management, this department then keeps the documentation and the signed contract,
- the administration department verifies the consistency of the documentation offered in support of the provision; this department retains this documentation.

With reference to the **selection and management of partners in temporary and/or permanent consortia** (A.4), the Company's business shall comply with the following control principles (see the corporate bidding procedures - see attached list of procedures):

- standardization of agreements with partners and/or other third parties, which have been defined in writing with the highlighting of all conditions of the agreement (in particular, those of joint participation in any tenders) and clauses aimed at guaranteeing compliance

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with Italian Legislative Decree no. 231/2001 between contracting parties and verified and approved according to current procedures and in compliance with the powers conferred on Hitachi Rail STS subjects,

- verification of the integrity, honesty and reliability of the Partner with which to make the association, through a specific background analysis that considers ethics and standing, technical skills, equity and financial solidity,
- verification and assessment of the identity of the counterparties and subjects on whose behalf they may act,
- evidence/traceability of the assessments performed to select partners.

With reference to the management of requirements, communications and **requests for authorizations, licenses and certificates including during audits and inspections** by the public administrations (A.5), the Company's activities must be compliant with the following control principles:

- respect for duties, roles and responsibilities defined by the corporate organizational chart and authorization system in managing the process for the obtaining of authorizations and the management of environmental and hygiene, health and safety at work, involving where possible multiple subjects in relations with public administration, including during audits and inspections or at least informing those responsible,
- absence of conduct aimed at exerting any pressure or in any case unduly influencing the determinations of the administrative bodies in managing relations with the public administration in view of the request for authorizations, permits and concessions,
- compliance with the limits to the concession, authorization or permit obtained. Any critical issues or difficulties of any type are highlighted in writing and managed by the competent departments in compliance with the law and other rules in force on the matter and corporate procedures,
- relations with public officers during inspection audits are managed by the department manager involved or by the subjects identified, as envisaged by the corporate regulations,
- during inspection, the appointed departments operate in compliance with the tasks, roles and responsibilities defined by the corporate organization transparently, correctly and with a spirit of collaboration, facilitating the verification and, completely and correctly, providing the information, data and documentation required,
- the reports of the inspection audits are signed by the head of the department involved, or, if no reports are drawn up, the main inspection audits are documented in internal summary reports containing the following information: public administration involved, reason for the inspection audit, internal subjects involved and any findings,
- processing of documentation relative to the obtaining of authorizations, concessions and permits by the Public Administration, so as to guarantee the related completeness, correctness and integrity,

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- the heads of the competent departments verify the completeness, correctness and integrity of the documentation prepared by staff assigned to such before sending to the public administration concerned,
- in order to guarantee the traceability of the deeds executed and public administration subjects contacted, also during audits or inspections, all (internal or external) documents prepared must be carefully archived by the department that entertained such contacts,
- express prohibition to make payments with a view to fostering provisions in any case due by the public administration.

With reference to the **management of relations with the financial administration, with public subjects in charge of corporate requirements and with the supervisory authorities/bodies (A.5)**, the Company's business shall comply with the following control principles:

- respect for the duties, roles and responsibilities defined by the corporate organizational chart and the authorization system in the management of relations with the financial administration with public subjects in charge of corporate requirements and with the supervisory authorities/bodies,
- clear identification of the corporate subjects authorized to represent the company in relations with the financial administration,
- segregation of duties and tasks between those preparing the documentation to sent to the PA and those controlling before proceeding with dispatch,
- monitoring of the evolution of the reference regulations in order to guarantee the adjustment to comply with new tax legislation and the timing to be respected for the various requirements,
- controls of completeness and accuracy regarding the determination of tax and formal approval of the supporting documentation,
- compliance with legal requirements in order to avoid delays and imprecisions in the submission of tax documentation,
- relations with public officers during inspection audits are managed by the department manager involved or by the subjects identified, as envisaged by the corporate regulations,
- during inspection, the appointed departments operate in compliance with the tasks, roles and responsibilities defined by the corporate organization transparently, correctly and with a spirit of collaboration, facilitating the verification and, completely and correctly, providing the information, data and documentation required,
- the reports of the inspection audits are signed by the head of the department involved, or, if no reports are drawn up, the main inspection audits are documented in internal summary reports containing the following information: public administration involved, reason for the inspection audit, internal subjects involved and any findings,
- processing of the documentation relative to tax requirements so as to guarantee the completeness, correctness and integrity,

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- evidence of relations with the PA, in particular during an inspection audits,
- express prohibition to make payments with a view to fostering provisions in any case due by the public administration.

With reference to the **management of relations with the PA for requirements connected with the administration of employed personnel (A.5)**, the Company's business complies with the following control principles:

- respect for the duties, roles and responsibilities defined by the corporate organizational chart and the authorization system in the management of relations with the PA, connected with social security and welfare requirements,
- clear identification of the corporate subjects authorized to represent the company in relations with social security and welfare entities,
- segregation of duties and tasks between those preparing the documentation to sent to the PA and those controlling before proceeding with dispatch,
- monitoring of the evolution of reference legislation and timing to be respect for the various requirements,
- relations with public officers during inspection audits are managed by the department manager involved or by the subjects identified, as envisaged by the corporate regulations,
- during inspection, the appointed departments operate in compliance with the tasks, roles and responsibilities defined by the corporate organization transparently, correctly and with a spirit of collaboration, facilitating the verification and, completely and correctly, providing the information, data and documentation required,
- the reports of the inspection audits are signed by the head of the department involved, or, if no reports are drawn up, the main inspection audits are documented in internal summary reports containing the following information: public administration involved, reason for the inspection audit, internal subjects involved and any findings,
- processing of the documentation relative to social security and welfare requirements so as to guarantee the completeness, correctness and integrity,
- evidence of relations with the PA, in particular during an inspection audits,
- express prohibition to make payments with a view to fostering provisions in any case due by the public administration.

With reference to the management of **relations and requirements envisaged under the scope of activities involving the application for and management of public finance/contributions**- see the corporate procedure for the management of financed projects - see the attached list of procedures - (A.6), the Company's business complies with the following control principles:

- respect for the duties, roles and responsibilities defined by the corporate organizational chart, which envisages the involvement of multiple departments and the authorization

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system in the management of relations with said public subjects or subjects appointed by them (such as the concession-holder bank and auditing firm),

- clear identification in the corporate organization of the subjects authorized to represent the business in relations with the public subjects or those who perform the duties of public subjects, in the management of public grants/finance,
- segregation of duties and tasks between those preparing the documentation to sent to the financing entity and those controlling before proceeding with dispatch,
- traceability of the costs incurred for the project financed in the company's industrial accounts and evidence of the control on the scope, costs and timing of the project in the project management process,
- in the event of collaborations with partners under the scope of research and development projects, the parties concerned explicitly agree on the industrial/intellectual property rights in collaboration agreements,
- relations with public officers during inspection audits are managed by the department manager involved or by the subjects identified, as envisaged by the corporate regulations,
- during inspection, the appointed departments operate in compliance with the tasks, roles and responsibilities defined by the corporate Organizational Chart transparently, correctly and with a spirit of collaboration, facilitating the verification and, completely and correctly, providing the information, data and documentation required,
- the reports relative to inspection audits are signed by the head of the department concerned, or, for lack of a report, the inspection audits are tracked internally, indicating the public administration that has intervened, the reason for the inspection audit, internal subjects involved and any findings,

processing of the documentation relative to public grants/finance so as to guarantee the completeness, correctness and integrity,

- the reports of costs subjected to obtain public grants or loans are supported by suitable documentation stored by the corporate department appointed,
- evidence of relations with the PA, in particular during an inspection audits,
- express prohibition to make payments with a view to fostering provisions in any case due by the public administration,
- if project execution is envisaged in the form of a temporary consortium, the principles of control must be applied in connection with the area at risk of the selection and management of partners (area A.4).

With reference to the **management of disputes and relations with the legal authority A.7)**, the Company's activities are compliant with the following control principles (with regards to the management of lawyers, see also the corporate consultancy procedure - see attached list of procedures):

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- compliance with the principles of integrity, completeness, transparency and correctness in the face of requests for information of the legal authority and the preparation of documentation to be sent to said authority,
- respect for duties, roles and responsibilities defined by the corporate organizational chart, by the authorization system in dispute management,
- the definition of the defense strategy in the proceedings is carried out by the legal department, shared with the external lawyers and the Chief Executive Officer,
- only external lawyers and persons duly authorized can interface with the subjects involved in legal proceedings or who are called to make declarations before the legal authorities,
- monitoring of the dispute through the keeping and update of summary communications, dispute records and dispute risk assessment records,
- management of the periodic information flows envisaged by current procedures,
- selection of lawyers and consultants on the basis of current procedures, in compliance with the criteria of professionalism and competence of the professional and the conferral on them of appointments by means of contract/letter of appointment prepared on the basis of the business formats,
- delivery to the lawyer and consultant of the Company's code of Ethics and acquisition of the formal commitment to comply with the provisions contained therein and inclusion in the consultancy contracts of a clause setting out compliance with the Code of Ethics in order to sanction any conduct in conflict with the corporate ethical standards,
- reporting and monitoring of fees and expenses of the appointed lawyers: the activities carried out by the consultants and lawyers must be duly documented and the department that uses their work must, before liquidating the relevant fees, certify the effective service,
- monitoring of the appointments assigned, the fees and the expenses of the lawyers appointed,
- documented evidence of the control on the service received and the expenses debited before the liquidation of the fees, after acquiring an analytical list of the activities carried out, which makes it possible to assess the conformity of the fees with the value of the service provided.

As regards the **management of cash flows** (collections and payments), under the scope of finance and treasury (A.8), the Company's business complies with the following control principles:

- respect for the roles, duties and responsibilities defined by the company organizational chart, the authorization system and the system of delegations and powers of attorney in treasury management and the opening of and transactions on current accounts,
- the party responsible for the provision is called to approve, through the issue of approval on the system of invoices for related payment. Unless a payment block is inserted in the

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system, invoices are payable as they fall due. Any decisions to defer payment beyond the due date shall be validated by the administration,

- a party responsible for the administration verifies the list of payments to be made, prepared according to the invoices falling due before being sent to the Treasury for payment orders,
- payments are only ordered on current accounts indicated by the supplier at the time of stipulation of the contract or thereafter by means of written communication, duly verified,
- the assignee of a special power of attorney with individual signature for the management of a current account, connected with the needs for a permanent establishment abroad, must manage the current account in compliance with corporate procedures and in any case within the limits and according to the instructions of the administration department and finance and treasury department,
- at least once a month, the finance and treasury department controls the transactions on the current accounts of the permanent establishments abroad, payments of the most significant invoices (exceeding 15,000 euros) of the permanent establishment are specifically authorized by the administration department and are arranged directly by the finance and treasury department in cases of current accounts held in home banking,

Cash payments are only permitted for small amounts (approximately 250 euros). The assignee of cash is required to use it in compliance with corporate practices and procedures and the periodic reporting of the relevant transactions. The administration verifies this report and, at least once a year, checks the cash balance physically available,

- each collection must be matched to a specific item and must be duly justified,
- reconciliation of the bank accounts and correspondence current accounts with the group companies and periodic, documented verifications of such,
- highlights the activities and controls performed.

With reference to the **management of transfers and reimbursements of expenses** to employees (A.9), the Company's business complies with the following control principles (see the corporate transfer procedures - see the attached list of procedures):

- respect for duties, roles and responsibilities defined by the corporate organizational chart, by the authorization system and the procedures in force in transfer and expense reimbursement management,
- it highlights the preventive approval of the request for employee transfer/dismissal in the computer system,
- definition of roles, responsibilities, controls and limits to the concession of advances to employees and the possibility of incurring costs for hospitality and representation,
- definition of the methods for the use and reservation of means of transport by the HR Department, as for the types of hotels,

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- definition of the types of expenses permitted and the provision of spending limits for each type,
- the transfer, any advance requested and the expense note subsequently compiled are managed by means of the company computer system, which is structured according to specific approvals of the managers in line with the authorization system and current procedures,
- formalized controls, by the subjects appointed to this end, in regard to the consistency of the evidence of the expenses incurred or statements of account of the credit cards with respect to that indicated in the expense note,
- highlights the activities and controls performed.

With reference to the management of **entertainment, hospitality and gift expenses** (a.9), the Company's business complies with the following control principles (see the corporate gift, hospitality and entertainment expenses procedure - see attached list of procedures):

- formal definition of specific criteria and rules for entertainment, hospitality and gift expenses, which must be reasonable and in any case such as not to be able to be interpreted as aimed at obtaining favorable treatment by the beneficiary, or intended for beneficiaries with positions relating to corporate activities and that satisfy the generally-recognized requirements of reputation and integrity or take into account the profile of the beneficiary, with regards to standard practice in institutional or professional relations and in respect of local cultures,
- definition of the concept of low value for gifts,
- entertainment, hospitality and gift expenses are approved according to the forms envisaged by corporate procedure, which envisages, amongst others, the indication of the beneficiary,
- express prohibition to make payments with a view to fostering provisions in any case due by the public administration.

With reference to the management of **sponsorships, advertising initiatives and donations** (a.9), the Company's business complies with the following control principles (see the sponsorships, advertising initiatives and donations procedure - see attached list of procedures):

- respect for the duties, tasks and responsibilities defined by the corporate organizational chart and the authorization system in the management of sponsorships and advertising initiatives and contributions to associations and entities,
- verification of the type and nature of advertising initiatives, sponsorships and events in connection with the visibility and return on image and the related cost,
- sponsorships, advertising initiatives and donations are approved according to the forms envisaged by company procedure,

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- inclusion in the sponsorship/advertising contracts of the clause to comply with the Model and Code of Ethics,
- verification of the provision of counterparty work (for example by means of the acquisition of documented evidence),
- limited to contributions to associations and entities, it must be verified, after paying the price, that the initiative has effectively been carried out by the counterparty (e.g. through the acquisition of documented evidence),
- verification of the reputational, regulatory and integrity requirements and competence that the beneficiary of the initiative must meet, performed through due diligence, by means of which the following is ascertained:
  - the capacity of the beneficiary to pursue the initiative,
  - the non-existence of conditions of incompatibility or conflict of interests, amongst others, with regards to family or personal or professional relations of the beneficiary, who must have an excellent reputation in terms of skills and integrity,
  - the absence, in regard to the beneficiary, of any judgments passed for crimes in general nor the assignment of sanctions by the competent national or international authorities,
  - that the beneficiary is not resident nor have its headquarters in a country with a preferential tax regime, unless it has its residence/headquarters in that country and the initiative is carried out there.

With reference to the **selection, hiring and management of personnel** (A.10), the Company's business complies with the following control principles (see also the corporate selection & recruitment procedures and the integrated management of human resources - see attached list of procedures):

- respect for the duties, roles and responsibilities defined by the corporate organizational chart, the authorization system and current staff selection and management procedures, which envisages, amongst others, the involvement of multiple departments in the various selection and management phases,
- predetermination of the needs of resources by the Company in the corporate budget, any new hires not envisaged on the budget must be duly authorized,
- during personnel selection, the following activities are carried out:
  - formal definition, according to the corporate system of competences, of the profiles of potential candidates for the various positions to be filled,
  - the HR Department prepares a list of candidates to be technically assessed by the requesting department,
  - collection and archiving in specific databases of the documentation relating to the applications received,

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- analysis of the applications and verification of their suitability by examining the CV of the applicant and the organization of psychological-aptitude tests and interviews by the HR Department and technical-professional interviews by the department making the request. The HR Department is usually present at the technical interview held by the department making the request,
  - formalization of the results of the applicant assessment and selection process,
  - formulation of the economic bid by the HR Department in line with the position held and the responsibilities/duties assigned to the candidate, as per corporate and market parameters,
  - the contract of employment is signed by a person with a suitable power of attorney, storage of the documentation relative to the selection process,
  - the HR department collects the information necessary to prepare the employee's personal file, including, amongst others, the certificate from the criminal records database and certificate of any pending charges and, in the case of non-EU workers, the validity of their residency permits,
  - the HR Department makes the legal communications to the various authorities (INAIL, INPS, employment inspectorate),
- permits, holidays and overtime are approved by the relevant department managers,
  - policies on the merits are implemented through the corporate performance assessment and skills development process, which envisage the assessment by managers and feedback to the employee, coordinated by the HR Department,
  - proposed salary rises and career advancement are put forward by the managers under the scope of the budget established by the HR Department and approved by the HR Department,
  - clear definition of the objectives assigned to managers, in line with the strategic plan and in compliance with criteria of correctness and balance,
  - letters of career advancement and/or acknowledgment of the salary increase and/or variable remuneration are signed according to the system of corporate powers of attorney,
  - the various activities envisaged in the performance assessment and skills management process (proposals, assessments, feedback, etc.) are traced in the specific corporate tool.
  - relations with the corporate and/or national trade union representatives are handled by the HR Department and hinged on principles of transparency, correctness and a spirit of collaboration. Any decisions made are formalized in agreements.

With reference to the **management of consultancy contracts and professional services** to employees (A.11), the Company's business complies with the following control principles (see the corporate consultancy procedure - see the attached list of procedures):

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- with respect to principles of transparency and integrity, envisaging services and fees in line with market practices, ascertaining that there are no aspects that may foster the perpetration of crime in Italy and abroad,
- according to the corporate procedure on consultancy, during the selection and choice of the supply offer, multiple subjects are involved with different roles, the Procurement Department must always be involved,
- purchasing needs envisaged on the budget and in any case approved, the purchase request must be supported by suitable documentation,
- also on the level of the computer system, specific authorization levels are defined for the approval of the purchase request to be submitted to the Procurement Department,
- during the offer selection and choice phase, offers must be requested from multiple consultants/professionals present on the list of qualified suppliers, any derogation must be explained in writing, in the event that requests are sent to suppliers not yet qualified, to submit offers, the supplier must be qualified before the purchase order/contract can be formalized,
- a technical-economic assessment is performed of the offers received with the support of the requesting department and the other departments involved, the assessment and choice of the consultant/professional must be explained in writing,
- due diligence is performed aimed at assessing the professionalism, competence and experience of the professional, as well as identifying any incompatibilities and conflicts of interests,
- the integrity requirements of the professional are ascertained and the existence of any criminal sentences or sanctions against him, verified,
- contracts and purchase orders with consultants and professionals, including where continuous, for periods of more than a year, are signed by the Chief Executive Officer or Managing Directors. These contracts worth more than Euro 150,000 must be approved following the Delegation of Authority and guidelines established under the scope of the Railways System Business Unit, the Procurement Department is responsible for keeping the contracts/purchase orders signed with consultants and professionals,
- orders/contracts contain standard clauses in order to comply with legislation governing employment contracts and Italian Legislative Decree no. 231/2001 (or, if foreign suppliers, compliance with the related local and international legislation),
- orders/contracts with consultants and professionals must have limited duration,
- the requesting department, in the roles identified by the corporate organization, including at the level of the computer system, approves the acceptance of the service, after verifying that what has been requested matches with what has been received, the requesting department is responsible for keeping evidence of the service received from the consultant/professional,

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- documented management of the supplier database and changes thereto, supported by suitable documentation,
- registration of invoices exclusively in the presence of a purchase order - duly approved on the basis of the spending limits conferred - and objective evidence of the goods/service received.

With **reference to relations with suppliers of goods and services** (A.11), the Company's business complies with the following control principles (see the corporate Procurement procedures - see attached list of procedures):

- with respect to principles of transparency and integrity, envisaging services and fees in line with market practices, ascertaining that there are no aspects that may foster the perpetration of crime in Italy and abroad,
- according to the corporate procedures, during the selection and choice of the supply offer, multiple subjects are involved with different roles, the Procurement Department must always be involved,
- purchasing needs envisaged on the budget and in any case approved, the purchase request must be supported by suitable documentation,
- also on the level of the computer system, specific authorization levels are defined for the approval of the purchase request to be submitted to the Procurement Department,
- during the supply offer selection and choice phase, offers must be requested from multiple suppliers present on the list of qualified suppliers, any derogation must be explained in writing, in the event that requests are sent to suppliers not yet qualified, to submit offers, the supplier must be qualified in order to formalize the purchase order/contract, supplier qualification takes place as per predefined criteria,
- a technical-economic assessment is performed of the offers received with the support of the requesting department and the other departments involved, the assessment and choice of the supplier must be explained in writing,
- including on the computer system, specific authorization levels are envisaged for the issue and approval of purchase orders in line with the company powers of signature and organizational roles,
- orders/contracts contain standard clauses in order to comply with legislation governing employment contracts and Italian Legislative Decree no. 231/2001 (or, if foreign suppliers, compliance with the related local and international legislation),
- the variant of a purchase order must apply the same approval process of the original order or, if as a result of the variant, the amount of the order should require higher levels of approval, this latter must be applied,
- the requesting department, in the roles identified by the corporate organization, including at the level of the computer system, approves the acceptance of the service, after verifying that what has been requested matches with what has been received,

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- the materials are subject to a verification and testing process in the manner envisaged by the corporate procedures before being accepted,
- documented management of the supplier database and changes thereto, supported by suitable documentation,
- registration of invoices exclusively in the presence of a purchase order - duly approved on the basis of the spending limits conferred - and objective evidence of the goods/service received.

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## **6 SPECIAL PART “A1” - OFFENSES WITH THE PURPOSE OF TERRORISM OR SUBVERSION OF THE DEMOCRATIC ORDER**

### **6.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are as follows under Article 25 of-quater (refer to the Model annex for a detailed description):

- Subversive associations (Art. 270 of the Italian Criminal Code)
- Associations with the aim of committing national or international terrorism or subversion of the democratic order (Art. 270-bis of the Italian Criminal Code)
- Assistance to members (Art. 270-ter of the Italian Criminal Code)
- Enrollment with the purpose of committing national or international terrorism (Art. 270-quater of the Italian Criminal Code)

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- Organization of transfers with the purpose of committing terrorism (Art. 270 - quater<sup>1</sup> of the Italian Criminal Code)
- Training in activities with the purpose of committing national or international terrorism (Art. 270-quinquies of the Italian Criminal Code)
- Conduct with the purpose of committing terrorism (Art. 270-sexies of the Italian Criminal Code)
- Attacks for the purpose of terrorism or subversion (Art. 280 of the Italian Criminal Code)
- Act of terrorism with lethal or explosive devices (Art. 280-bis of the Italian Criminal Code)
- Kidnapping for the purposes of terrorism or subversion (Art. 289 bis of the Italian Criminal Code)
- Instigation to commit a crime against the personality of the State (Art. 302 of the Italian Criminal Code)
- Political conspiracy by means of political conspiracy and agreement through association (Articles 304 and 305 of the Italian Criminal Code)
- Armed band, training and participation, assisting those taking part in the conspiracy or armed band (Articles 306 and 307 of the Italian Criminal Code)
- Crimes committed with the purpose of terrorism in breach of Art. 2 of the New York Convention of December 09, 1999.

## 6.2 AREAS EXPOSED TO RISK

For crimes of terrorism and subversion of the democratic order, the areas considered to be most specifically at risk are financial or commercial transactions involving the Company, stipulated with:

- natural persons and/or legal entities resident in countries at risk identified on the “lists of countries” and/or with natural persons or legal entities indicated on the “registered lists” connected with international terrorism, which can be found on the Bank of Italy’s website,
- direct or indirect subsidiaries controlled by the above subjects.

Considering that the crime risk in question can also be carried out through conduct involving corruption, the following risk activity areas are highlighted:<sup>a</sup>

- A1.1 research and negotiation of sales and maintenance contracts/orders,
- A1.2 Stipulation, execution and management of contracts/orders,
- A1.3 Selection and management of providers in support of commercial activities and partners in ATIs (temporary consortia) and/or consortia,
- A1.4 Finance and treasury,
- A1.5 Procurement of goods, services and consultancy.

## 6.3 ADDRESSEES OF THE SPECIAL PART - PRINCIPLES OF CONTROL IN THE AREAS OF RISK ACTIVITIES

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

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This Special Part envisages the express prohibition for said Addressees of behaving in any way:

- such as to constitute the crimes considered in this special part (Art. 25 quater of the of the Decree), also in the form of acting in concert,
- which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially such,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics,

In the context of the above conduct, it is forbidden in particular to:

- directly or indirectly to fund subjects intending to commit crimes of terrorism or subversion of the democratic order,
- to receive finance from individuals, companies or organizations suspected of terrorism or subversion of the public order,
- to implement any commercial or financial transaction with individuals, companies or organizations known or suspected of terrorism or subversion of the public order,
- to implement any commercial or financial transaction with individuals included on the black lists published on the Bank of Italy website ([www.bancaditalia.it](http://www.bancaditalia.it)) or the Financial Intelligence Unit established there (<http://uif.bancaditalia.it>)
- to contact or, more generally, entertain working contact with natural persons and legal entities resident or with their headquarters in a country included on the non-cooperative countries (NCCTs),
- to make payments or recognize compensations in favor of third parties without appropriate contractual documentation, justification and authorization,

As regards these areas of the corporate business at risk of crime, reference is made to the control principles described in special part A of the Model (Crimes to the detriment of the Public Administration) for the corresponding areas at risk.

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## 7 SPECIAL PART “B” - CORPORATE OFFENSES

### 7.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 25-ter and Art. 25-sexies of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description):

- false corporate communications (Art. 2621 of the Italian Civil Code),
- minor events (Art. 2621-bis of the Italian Civil Code),
- falsity in the reports or notices of independent auditing firm (Art. 27 of Italian Legislative Decree no. 39 of 2010, formerly Art. 2624 of the Italian Civil Code),
- preventing control (Art. 2625 of the Italian Civil Code),

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- undue return of conferrals (Art. 2626 of the Italian Civil Code),
- unlawful allocation of profits and reserves (Art. 2627 of the Italian Civil Code),
- unlawful operations on shares or units of companies or the parent company (Art. 2628 of the Italian Civil Code),
- operations damaging creditors (Art. 2629 of the Italian Civil Code),
- failure to disclose conflicts of interests (Art. 2629-bis of the Italian Civil Code),
- fictitious formation of capital (Art. 2632 of the Italian Civil Code),
- undue allocation of corporate assets by liquidators (Art. 2633 of the Italian Civil Code),
- unlawful influence of the shareholders' meeting (Art. 2636 of the Italian Civil Code),
- stock manipulation (Art. 2637 of the Italian Civil Code) hindrance of the exercise of duties of the Public Supervisory Authorities (Art. 2638 of the Italian Civil Code),
- corruption between private individuals (Art. 2635 of the Italian Civil Code),
- instigation to corruption between private individuals (Art. 2635 - bis of the Italian Civil Code),
- abuse or illegal communication of insider information, recommendation or extortion of others to commit insider trading (Articles 184 and 187 quater of Italian Legislative Decree 58/98 Consolidated Law on Finance);
- fraudulent transfer of values (Art. 512 bis of the Italian Criminal Code).

## 7.2 AREAS EXPOSED TO RISK

The areas of activity considered at risk, in connection with corporate crimes, with the exception of corruption between private individuals (Art. 2635 of the Italian Civil Code) and instigation to corruption between private individuals (Art. 2635-bis of the Italian Civil Code), for which see Special Part B1, are as follows:

**B.1 Management of requirements, communications and requests connected with the corporate business, also during audits, inspections and assessments by the competent public entities or independent administrative and supervisory authorities**

**B.2 Management of corporate requirements (relations with shareholders, auditors and independent auditors)**

In the context of these activities, the abstract existence can be hypothesized of the risk of the perpetration of the crime of Hindrance of the exercise of duties of the public supervisory authorities (Art. 2638 of the Italian Civil Code).

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In addition, the crime exists where the company representative, in any form, including failure to make required communications, hinders the operations of the Supervisory authorities, through, for example, concealing the relevant documentation during inspection or a request for information, the submission of altered or specifically pre-prepared documentation to prevent or mislead the body's controls.

The Company may instead be called to answer for the crime of *Falsity in relations or communications of the parties responsible for the statutory audit (Art. 27 of Italian Legislative Decree no. 39 of 2010)* where, following, for example, the preparation of false documentation, by agreement with those appointed to perform the statutory audit, or misleading them, it should lead them to certify falsity about the economic, equity and/or financial position.

### **B.3 Research and negotiation of orders/contracts of sale and maintenance with public customers and/or public service concession-holders (including through tenders)**

### **B.4 Stipulation, execution and management of contracts/orders with public entities/customers and/or concession-holders of public services and/or with Test Commissions and Ministerial Supervisory Bodies**

### **B.5 Management of the general accounts and preparation of the draft consolidated and statutory financial statements and any equity positions, including when performing extraordinary transactions**

- i) Preparation of the financial statements, the report on operations, the consolidated financial statements and other corporate communications
- ii) Planning of extraordinary transactions

In addition to that observed in Special Part A sub. A.5) *Management of requirements, communications and requests for authorizations, licenses, certifications and during audits and inspections and ascertainment by public administrations/competent supervisory authorities* on the prevention of crimes against the Public Administration, preparation of the financial statements (including the consolidated financial statements), reports and other corporate communications envisaged by the law and addressed shareholders or the public and the publication of periodic information to the financial markets, is relevant to this Special Part in multiple ways.

This activity entails risks, first and foremost in connection with the perpetration of crimes of False corporate communications (Art. 2621 of the Italian Civil Code).

The activity indicated can become important also in regard to the situations of Stock manipulation (Art. 2637 of the Italian Civil Code), as false corporate communication can represent a vehicle for the distribution of information able to significantly alter the price of financial instruments (listed or unlisted). Finally, Hindrance to the duties of Public Supervisory Authorities (Art. 2638 of the Italian Civil Code) also applies, where, for example, market information is conveyed through the Supervisory Body following a specific request for clarifications.

More specifically, as regards the hypothesis of False corporate communications, the crime could,

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as already mentioned, take place following the creation of reserves, obtained through the under-valuation of items of the assets or over-valuation of liabilities, to foster the self-financing of the corporate business, or cover any losses occurring during the corporate business. By way of example, the procedures are cited use to form concealed reservations, closed triangulation (seen in the case where a company transfers values to another, which, in turn, transfers them to a third) and corporate constructions (a company establishes or purchases the full investment of another and this latter carries out the same transaction with a third party until reaching a company that is usually based in a tax haven). The economic-financial instruments that can be used to transfer money from one company to another (within or external to the Group) are still practically infinite: over-invoicing or false invoicing (for example for fictitious consultancy or the provisions of fictitious goods or services), active financing, the instrumental use of derivatives, stipulation of future contracts on securities, indexes, stipulation of options on shares or currencies, etc.

Instead, as regards the crime of stock manipulation, the Company could first and foremost, in communicating to the market - through the distribution of financial statements or other corporate communications - information that is incorrect or partial in respect of its own economic, equity and/or financial position or that of subsidiaries, commit a crime connected with the consequent or at least potential alteration of the price of listed or unlisted financial statements (manipulation of information). Consider, for example, in the inclusion in the financial statements of a level of debt (deriving, for example, from the issue of bonds) below that which actually exists, leading market operators to acquire financial instruments issued by the Company.

As also mentioned, the availability of information contained in the financial statements before distributing them to the public, could lead a company representative to implement undue transactions on financial instruments in the interests or to the benefit of the Company (for example to stabilize the security in respect of changes that may be significant).

*iii) Corporate transactions that may impact the integrity of the share capital*

In the context of crimes aimed at protecting the Company’s capital, crimes are considered of Transactions to the detriment of creditors (Art. 2629 of the Italian Civil Code) and Failure to disclose conflicts of interests (Art. 2629 bis of the Italian Civil Code).

The first hypothesis can, for example, take place in the event of a leverage buy out, i.e. mergers between companies, one of which has contracted debt to acquire control over another, in the event that the transaction in which the Company is involved has damaged the creditors of the company concerned by the leverage buy out, following breach of the rules set to protect creditors.

The crime of Failure to disclose a conflict of interests can instead abstractly take place, by way of example, in the context of infra-group relations where - in the event of an interlocking directorate situation - the member of the board of directors of the subsidiary should fail to disclose, when passing a resolution, the interest that the parent company has in said transaction, thereby damaging the subsidiary to the potential benefit of the parent company.

### **7.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

the addressees of this Special Part “B” are the Directors, Auditors, Chief Executive Officer, Managers and employees operating in the risk areas, as well as external collaborators and

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partners, as already defined in the General Part (hereinafter the “Addressees”).

The Addressees are specifically obliged:

- to behave with integrity, fairly and transparently when preparing the financial statements, reports and other corporate communications envisaged by the law, so as to provide shareholders and the public with truthful, correct information on the economic, equity and financial position of Hitachi Rail STS and the group to which it belongs, in compliance with all provisions of the law, regulations and applicable accounting standards. Therefore, it is prohibited to indicate or send for processing or include in said communications, false, artifact or incomplete data or in any case data that is not true, about the Company’s economic, equity and/or financial position. It is also prohibited to act and/or operate in such a way as to create cash off the accounts (for example by invoicing non-existent transactions or over-invoicing) or in any way aimed at creating “black funds” or “parallel accounts”, also for values below the threshold of criminal relevance set by Articles 2621 and 2622 of the Italian Civil Code. Particular attention must be paid to estimating the accounting items: those intervening in the estimation procedure must comply with the principle of reasonableness and clearly state the assessment parameters applied, providing all complementary information necessary to guarantee the truthfulness of the document. The financial statements must be completed in terms of corporate information and must contain all data required by the law. Similar correctness is required of the directors, auditors and any liquidators in preparing all other communications set or in any case envisaged by the law and directed towards the shareholders or the public, so that they contain clear, precise, truthful and complete information. With reference to the consolidated financial statements, in particular, the Company assures observance of criteria used to prepare standardized financial statements and complies, when consolidating, with principles of correctness, reasonableness in determining criteria, refusing to proceed with the consolidation should it note any imperfect compliance by the subsidiaries with said criteria,
- to behave ethically and with integrity, fairness and transparency when preparing the statements required to request an investment or admission to listing on regulated markets, or documents to be published during public purchase or trade offers, so as to allow addressees of prospectuses to form an informed, objective opinion on the economic, equity or financial position of the Company or the financial instruments issued by it and the related rights. To this end, the information prospectuses and/or documents being commented must be completed in terms of the information and must contain all elements, where envisaged, required by the law,
- to behave in such a way as to guarantee the regular function of Hitachi Rail STS and the correct interaction of its corporate bodies, assuring and facilitating all forms of control over company management, in the manner envisaged by the law, and the free and regular formation of the will of the shareholders' meeting. To this end, it is prohibited to: prevent or hinder in any way, including by concealing documents or using other suitable artifice, the pursuit of institutional controls and revisions by the Board of Auditors and/or independent auditing firms, b) unlawfully determine or impact the passing of shareholders' meeting resolutions, to this end acting in a simulated or fraudulent manner in order to

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falsely alter the normal and correct procedure of the formation of the will of the shareholders' meeting,

- to guarantee the timely compliance with all provisions of the law that protect the integrity and effectiveness of the share capital, so as not to harm the guarantees of creditors and, more generally, third parties. To this end, it is prohibited to: a) return, even through simulation, conferrals to shareholders or release them from the obligation to do so, clearly without prejudice to the hypotheses of lawful reduction of the share capital, b) allocate profits or down payments on profits not effectively achieved or allocated by law to reserves, or allocate reserves, even not constituted from profits, which the law states cannot be distributed, c) purchase or subscribe shares in the company or parent company outside the cases permitted by the law, thereby harming the integrity of the share capital or reserves that cannot be distributed by the law, d) reduce the share capital or merge with other companies or perform spin-offs in breach of the provisions of the law, thereby damaging the creditors, and e) form or fictitiously increase the share capital through the attributions of shares for an amount below their nominal value, reciprocal subscription of shares or stocks, significant over-valuation of conferrals of assets in kind or receivables or the equity in the event of transformation,
- to comply, in carrying out transactions of any kind on financial instruments or in distributing information about them, with principles of correctness, transparency, completeness of information, protection of the market and respect for the dynamics of the free determination of the price of securities. To this end, it is strictly prohibited to distribute or help distribute, in any way, false information, news or data or implement fraudulent transactions or in any case transactions that are misleading, in such a way as to even only partially potentially cause an alteration in the price of financial instruments. Hitachi Rail STS undertakes to: a) always act diligently, correctly and transparently, in the interests of the public of investors and the market, b) organize itself in such a way as to exclude the onset of situations of conflict of interests and, on these occasions, to in any case ensure the balanced protection of the conflicting interests, c) take steps to ensure that there is no undue circulation/dissemination of significant information within the Company and Group,
- to hinge the management and coordination carried out by Hitachi Rail STS in regard to direct or indirect subsidiaries on compliance with the law and, more generally, principles of managerial autonomy, correctness and transparency. This activity shall be carried out in such a way as to be traceable and, therefore, on the basis of formalized instruments, such as directive, group provisions, etc. issued by subjects to whom specific power has been attributed in this regard.

The work carried out by Hitachi Rail STS in the areas potentially at risk is regulated by internal procedures that comply with the criteria laid down by the Decree. In addition, the Company operates in compliance with the regulatory provisions envisaged by the Financial Instruments and Exchange Law (J-SOX).

Below is a description of the criteria implementation methods specified above in connection with the various activities at risk.

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## Financial Statements

In order to guarantee the correctness of the financial statements and, more generally, all communications made by the Company, the related activities must be carried out on the basis of the following principles:

- compliance with the principles of compiling accounting documents in accordance with Art. 2423, paragraph 2 of the Italian Civil Code, in accordance with which “the financial statements must be prepared clearly and must provide a truthful and correct representation of the company’s equity position and period economic result”,
- when estimating the accounting items, it is important to comply with the principle of reasonableness and clearly state the assessment parameters applied, providing all complementary information necessary to guarantee the truthfulness of the document (see Articles 2423, paragraph 3 and 2423-bis of the Italian Civil Code),
- to ensure the completeness of the financial statements in terms of corporate information, indicating, in particular, all the elements required by the law, such as, by way of example, those envisaged by Art. 2424, for the balance sheet, 2425, for the income statement and 2427 for the notes,
- with respect to the procedures that lay down the roles, tasks, responsibilities and controls with reference to the reliability of the economic, financial and equity information,
- similar correctness is paid in preparing all other communications set or in any case envisaged by the law and directed towards the shareholders or the public, so that they contain clear, precise, truthful and complete information,
- systematic communication to the SB of any appointment conferred on the independent auditing firm, over and above that relative to the auditing of the financial statements.

More specifically, the Hitachi Rail STS protocols envisage:

- respect for duties, roles and responsibilities defined by the corporate organizational chart and by the authorization system in the preparation, processing and control of the financial statements information,
- definition of the timing for sending the information between the various different corporate departments,
- definition of the information flows between the structure in charge of preparing the financial statements and corporate departments responsible for supplying the information that will flow into the financial statements,
- the list of the data and information that each Entity/corporate department needs to supply, to which entities/departments it is to be sent, the criteria for its processing and the delivery time,
- sending of data and information to the responsible department (CFO - Administration) for the preparation of the financial statements in written or electronic form so as to keep the

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various steps tracked and the subjects sending the data and information or entering the data into the system, identified

- the listing of criteria and procedures for preparing and transmitting the data of the consolidated financial statements by the Group companies consolidated, specifying the responsibilities relative to the various process phases and the procedure for reconciling the infra-group balances,
- the timely transmission to all members of the Board of Directors and Board of Auditors of the draft financial statements and the report of the independent auditors as well as a suitable recording of said transmission,
- periodic meetings or in the preparation of the Financial Report and Financial Statements between the Independent Auditing Firm and the Board of Auditors and, where considered appropriate, the SB,
- the communication to the SB of the assessments that lead to the choice of the independent auditing firm,
- the systematic, timely communication to the SB of any other appointment, conferred or to be conferred, in compliance with current applicable legislation, on the independent auditing firm over and above that of the audit of the financial statements,
- the justification, provided in duly documented circumstances, objectively able to be noted and reconstructed *a posteriori*, of any change to the assessment criteria adopted in order to prepare the above accounting documents and the related application methods. These situations, in any case, must be promptly reported to the Supervisory Body,
- the attribution to the BoD of the preventive approval of corporate transactions that may entail significant economic, equity and financial impacts (for example, capital transactions, mergers, spin-offs, transformations, purchases of treasury shares, return of conferrals, purchases or sales of business units, etc.),
- the formal definition of the roles, duties, responsibilities and controls relative to the mergers and acquisitions in order to guarantee their transactions, compliance with current rules and regulations and consistency with the corporate procedure business strategies, see the corporate procedure on M&As (see attached list of procedures),
- the timely verification of the effectiveness and fairness of the provisions in connection with which an invoice is issued to the Company, with the involvement of the departments that benefited from service in order to acquire certification of its effective provision of said service and its compliance with the contract object. Special attention must be paid to infra-group transactions entailing the purchase or sale of goods and services and, more generally, the payment of fees in connection with activities carried out in within the Group: in particular, intra-group transactions and/or those implemented with associated parties must always take place according to criteria of substantial correctness and must be regulated in advance on the basis of written contracts, which must be withheld and held on the records of each of the contracting companies. These conditions must be settled at arm's length, on the basis of assessments of reciprocal economic convenience, moreover in regard to the shared objective of creating value for the whole Group. This is in any case

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without prejudice to the obligation to comply with the provisions of Articles 2391 of the Italian Civil Code in terms of the directors' obligations to disclose to the Board any situations of conflict of interests and the consequent passing of the related resolutions with a duly justified resolution and with Articles 2428 of the Italian Civil Code on the obligation to present the most important infra-group transactions in the report on operations,

- the traceability of transactions entailing the transfer and/or deferral of credit positions through the figures of subrogation, the assignment of credits, the assumption of debt, the use of the figure of the delegation, transactions and/or waivers of credit positions and the related justifications,
- the traceability of the process relative to the communications to the Supervisory Authorities to be performed in compliance with the provisions of law and regulations, in view of the objectives of transparency and correct information. Any meetings with the Supervisory Authorities (including during inspections) must involve the corporate representatives expressly delegated to this end, each meeting must be duly documented and take place in the presence of at least two representatives of the Company. In the event of an inspection ordered by the Supervisory Authorities, the Company assures the coordination of all the corporate departments involved, so as to guarantee the most extensive and timely collaboration with such Authorities, providing the data and documents required promptly and fully,
- suitable cautions aimed at guaranteeing the protection and storage of the documentation containing confidential information so as to prevent any undue access,
- the obligation to invest on the basis of the strategies defined formally in advance by the competent bodies and/or corporate departments.

With specific regard to the preparation of information prospectuses, the Company shall comply with the following principles:

- the verification of the correctness of the data and information each time there is the possibility,
- if the data and/or information used in the prospectus comes from sources outside the Company, these sources must be specified,
- the identification of a person responsible for each preparation - or involvement in the preparation - of an information prospectus,
- timely disclosure to the SB by the transaction manager, of each initiative involving the preparation or involvement in the preparation of information prospectuses and their publication.

### **Related party transactions**

With reference to related party transactions, including the management of infra-group transactions (risk area B.7), the Company's activities comply with the following principles:

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- infra-group transactions must be implemented correctly and transparently in compliance with the principle of autonomy of Group companies and principles of correct management, accounting transparency and the separation of assets, so as to guarantee the protection of the stakeholders of all group companies,
- formal definition of the roles, duties, responsibilities and controls relative to the management of related party transactions in order to guarantee their transparency and compliance with current legislation,
- respect for the roles, duties and responsibilities defined by the corporate organizational chart and the authorization system,
- the management/purchase of investments must take place on the basis of a specific authorization procedure, as envisaged by said corporate procedure on M&A transactions (see attached list of procedures, in connection with which the roles, duties and responsibilities are defined and specific controls envisaged in relation to the operating process, the pursuit of which must be suitably highlighted,
- the concession and management of the guarantees in the favor of subsidiaries must take place on the basis of a specific authorization procedure, in connection with which roles, duties and responsibilities are defined and specific controls relative to the operating process, the pursuit of which must be suitably highlighted.

### **Exercise of control powers over corporate management**

The activities involving the exercise of control powers over corporate management (risk area B.2) must be carried out in compliance with the corporate rules inspired by the following principles:

- transparency and correctness in supplying information and data to the control bodies, including the Board of Auditors or subjects appointed by it, in order to guarantee the relevant completeness and truthfulness,
- the timely transmission to the Board of Auditors of all documents relative to the items on the agenda of Shareholders' Meetings and meetings of the Boards of Directors or about which the Board is called to express an opinion,
- making available to the Board and the Independent Auditing Firm of the documents on the Company's management for the audits of the two bodies,
- provision for regular meetings between the Board of Auditors and the Independent Auditing Firm and, if considered appropriate, the SB, to verify compliance with the corporate rules and procedures on corporate regulations,
- respect for the roles and responsibilities for access by shareholders to the contents of the corporate books in accordance with Art. 2421 of the Italian Civil Code,
- respect for the rules envisaged by current procedures governing access to corporate books, which envisage the formulation of a written request by shareholders, prior verification of the legitimacy of the party making the request, shareholder access to the

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corporate books in such a way as to avoid any compromising of their integrity and genuine nature and the documentation attesting to the work carried out.

### **Protectio of the share capital**

All transactions on the Company's share capital, the allocation of profits and reserves, purchases and sales of investments and business units, mergers, spin-offs and demergers, as well as all transactions, including within the group scope, which may potentially harm the integrity of the share capital (risk area B.5) must be inspired by the following principles:

- respect for the duties, roles and responsibilities defined by the law, the corporate organization chart and the authorization system in carrying out transactions that can in any way impact the integrity of the share capital,
- the disclosure by the corporate management team and the discussion of said transactions in meetings held between the Board of Auditors, the Independent Auditing Firm and the SB,
- the explicit approval by the Board of Directors of Hitachi Rail STS of transactions that may impact the integrity of the share capital,
- the obligation to provide suitable, timely information by the corporate representatives on any situations of conflict of interests, including with reference to appointments held in subsidiaries,
- the identification of the corporate representatives holding positions or carrying out activities potentially able to create situations of conflict of interests, also with reference to the appointments held in subsidiaries and including through the provision for an obligation to sign declarations attesting to the absence of any such situations.

### **Supervised activities**

Activities supervised by public authorities (risk area B.1) must be carried out on the basis of the following principles:

- respect for the duties, roles and responsibilities defined by the corporate organizational chart and the authorization system in the management of relations with the Authorities/Supervisory Bodies,
- respect for duties, roles and responsibilities in preparing the documentation to be sent to the Authorities/Supervisory Bodies,
- operation of duties in respect of the duties, roles and responsibilities defined by the corporate organizational chart transparently, correctly and with a spirit of collaboration, facilitating the work of the body during inspections and, completely and correctly, providing the information and data as may be requested in compliance with the duties legally attributed to the body,
- application in compliance with the duties, roles and responsibilities defined by the corporate organizational chart and assuring the completeness, truthfulness and

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transparency of data transmitted by the departments involved in the transmission of documentation, data or information to the Authority/Supervisory Body,

- suitable representation of the activities and controls carried out and the regular reports made to the authorities as envisaged by laws and regulations.

All communications and information sent to the supervisory authorities must be kept available to the SB.

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## 8 SPECIAL PART “B 1” - CORRUPTION AMONG PRIVATE INDIVIDUALS

### 8.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- Anti-Corruption Policy,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refer are two specific hypotheses of corporate crime introduced by Art. 25-ter, paragraph 1, letter s-bis of the Decree: corruption between private individuals pursuant to Art. 2635 of the Italian Civil Code and instigation to corruption among private individuals pursuant to Art. 2635-bis of the Italian Civil Code (see the relevant annex to the Model for a description of the crime).

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## 8.2 AREAS EXPOSED TO RISK

The crime of corruption among private individuals has as its assumption the establishment and conduct of direct or indirect relations, private counterparties, in Italy or abroad.

Therefore, all the corporate areas that, in order to go about their duties, entertain relations with private counterparties or have instrumental functions or facilitate the unlawful conduct in question, are defined as being at risk.

- B1.1 Relations with private customers in the management and coordination of commercial activities,
- B1.2 Research and negotiation of orders/contracts of sale and maintenance with private customers or subjects appointed by them,
- B1.3 Stipulation, execution and management of contracts/orders with private customers,
- B1.4 Selection and management of providers in support of commercial activities and partners in ATI (temporary consortia) and/or consortia,
- B1.5 Relations with third parties for certification activities,
- B1.6 Management of relations with the financial market,
- B1.7 Finance and treasury,
- B1.8 Management of transfers and the reimbursement of costs, entertainment expenses, hospitality and gifts, sponsorships and donations,
- B1.9 Management of research and development and intellectual property,
- B1.10 Personnel selection, hiring and management
- B1.11 Procurement of goods, services and consultancy.

Any integrations of said risk areas could be proposed during the meetings of the Company's Board of Directors, including on the indication of the SB, without prejudice to the autonomous power/duty to report by the SB.

With reference to said areas, below is a description of the related sensitive activities, as has emerged in the risk assessment analysis and commented - in summary form and merely by way of example - the procedures through which the predicate offenses could potentially be committed.

### **B1.1 Relations with private customers in the management and coordination of commercial activities**

Commercial activities for the development of the business are carried out by the commercial business unit departments, by business unit managers and the Chief Executive Officer, according to the commercial strategies defined when preparing the strategic plan. The commercial departments have geographic area managers who monitor the commercial opportunities in the

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area of competence. These activities include relations with customers and on foreign markets, may be supported by service providers. During this phase, the offer strategies are also defined, along with potential partners, sub-suppliers, technical solution and contractual structure.

As regards relations with private customers in commercial business, the main activities potentially “at risk” identified for the perpetration of the crime of corruption among private individuals are as follows:

- *Management of commercial relations in regard to private customers or subjects appointed by the (public or private) customer*
- *General promotional activities performed on customers of the company*
- *Support and coordination in defining offer strategies for private customers or subjects appointed by the (public or private) customer*

As regards this area, there is a potential risk of the perpetration of the crime of corruption between private parties insofar as, during meetings under the scope of commercial relations, including those relating to the definition of the offer, monies or other benefits may be offered or promised to a customer functionary in order to obtain undue benefit for the Company.

## **B1.2 Research and negotiation of orders/contracts of sale and maintenance with private customers or subjects appointed by them**

Following the decision to pursue a commercial opportunity (“go-not to go” decision), bids are submitted, sometimes preceded by pre-qualification. As a preliminary measure, the decision is made as to whether or not to submit a bid (“bid-not bid” decision).

significant According to the corporate bidding procedure (see attached list of procedures), a bidding group is assigned to these activities, comprising reference corporate departments concerned (e.g. project management, engineering, etc.) and coordinated by a reference person from the commercial bid department. This bidding group examines the tender documentation and prepares the bid. During this phase, requests may be made to the customer for clarification, the answers to which are generally disclosed to all bidders. After the submission of the bid, an improved bid may be requested (the “best and final offer”). Award is followed by negotiation with a view to signing the contract.

This bid procedure envisages review and bid approval phases. The bid and contract are signed according to the system of corporate powers of attorney.

During this phase, relations may be entertained with the customer or customer's representatives, usually consultants assisting with the definition of the tender specifications and bid assessment. These relations may involve the submission of the bid or meetings to respond to requests for clarifications.

As regards relations with private customers or subjects appointed by them in the search for and negotiation of orders/contracts, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- *i) Management of pre-qualification activities for the participation in tenders or bids.*

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- *ii) Analysis of the subject of the tender or bid, including the specifications and requirements laid down and preparation of the tender documentation.*
- *iii) Request for clarifications on a tender notice or call for bids.*
- *iv) Participation in negotiations for the acquisition of orders or contracts and the preparation of the technical/economic documentation necessary to acquire the order.*

With regards to relations with public or private customers, there is the potential risk of the perpetration of the crime of corruption between private parties insofar as monies or other benefits could be promised or offered to a customer functionary in order to obtain undue benefit for the company, such as, for example:

- definition of conditions and/or assessments during the pre-qualification and/or assessment of bids in the company's favor, to assist it during the selection phase, even if not meeting the necessary requirements,
- responses to requests for information about a tender notice, which gives the company an undue advantage,
- assessments of the offer received and/or definition of contract conditions in the company's favor, despite the lack of the necessary requirements.

The same crimes could be committed in regard to a subject appointed by the customer, for example a consultant assisting it in defining and assessing a bid.

### **B1.3 Stipulation, execution and management of contracts/orders with private customers**

Through the Project Managers, the Delivery Department is responsible for managing the contract/order, according to the expected quality levels, budget and planning. The Project Manager coordinates the project group, which includes the reference persons of the corporate departments involved in the execution of the project (e.g. engineering, construction and commissioning, etc.). The management of the contractual relationship is also the responsibility of the Project Manager, who may be assisted by a dedicated assistant and, potentially, for more complex aspects, by the legal department.

As regards relations with private customers, during the stipulation, execution and management of contracts/orders, the main activities potentially "at risk" identified for the perpetration of crimes, are as follows:

- *i) Definition of the technical-economic aspects connected with variants not envisaged by the contract stipulated directly by the company or through ATI or Consortium and negotiation of variants and/or management of order claims.*
- *ii) Management of works progress and contractual milestones both in terms of relations with the customer and/or subjects appointed by them and for the preparation of the supporting documentation.*
- *iii) Management of relations with the representatives of the customer and/or subjects appointed by them, in charge of carrying out the verifications envisaged by applicable provisions of law and/or contract.*

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- *iv) Attendance of meetings with the customer and/or subjects appointed by them in order to address topics relevant to the order/contract.*
- *v) Management of relations with the customer and/or subjects appointed by them during project audits.*
- *vi) Management of activities connected with credit management in order to obtain approval of payment of the invoices receivable from the customer and/or its representatives.*
- *vii) Management of testing in the various phases of order execution, e.g. factory acceptance test, verifications of the test commissions, partial activations, etc.*

In this area, there is the potential risk of the perpetration of the crime of corruption between private parties insofar as monies or other benefits could be promised or offered to a customer functionary in order to obtain undue benefit for the company, such as, for example:

- the recognition of new activities or new prices or variants during work, where there is no basis for such,
- failure to note anomalies in works performed or contractual breach, so as to unduly obtain recognition of works progress or the payment of invoices put on hold,
- positive assessments without there being any basis for such or failure to report findings, thereby unduly obtaining the successful outcome of tests or audits performed by the customer in the various phases of order execution.

The same crimes could be committed in regard to a subject appointed by the customers, such as a consultant assisting it in managing the contract.

If false documentation should be supplied by the company to a private customer, which uses it to fraudulently mislead its public administration customer, action in concert in the crime of aggravated fraud to the detriment of the State, may take place.

#### **B1.4 Selection and management of providers in support of commercial activities and partners in ATI and/or consortia**

On the foreign markets, the Company can use providers as commercial support through contracts that envisage the provision of specific commercial support and/or market research services and, where necessary, of technical and management support.

In tenders called by public and other entities, through the establishment of temporary consortia or consortia with other companies, the Company takes part in the preparation of bids for the award of the contract.

As regards this area, the main activities potentially “at risk” identified for the perpetration of crimes, are as follows:

- promise or giving of money or other gains, through a provider in support of commercial activities, in order to obtain undue favoritism in connection with the award of contracts (crime of corruption between private individuals),

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- promise or giving of money or other gains, through association partners, in order to obtain undue favoritism in connection with the award of contracts (crime of corruption between private individuals),

In addition, the area shows potential risk profiles connected with the perpetration of the crime of association with the intent of committing crime, given that the establishment of Temporary Business Associations or Consortia could be instrumental to the perpetration of crimes, the basis of which consists of the existence of the association, destined to continue over time between the participants, obtaining undue benefit for the company through said association.

### **B1.5 Relations with third parties for certification activities**

The point in question presents risk profiles insofar as possible for the activity carried out by the Company that includes constant contact with third parties for certification activities including management of any audits connected with preparing, updating the documentation called for by the law and checking effective application of the relevant company requirements.

### **B1.6 Management of relations with the financial market**

The point in question presents risk profiles insofar as possible for the relation between the Company and the financial market who potentially and abstractly could commit the crime of market manipulation or make false or misleading statements.

### **B1.7 Finance and treasury**

The CFO is responsible for managing cash flows, including those relative to current accounts (opening/closing), collections and payments - these latter as authorized by the corporate departments that use the services or the departments in charge of receiving and verifying the materials/goods delivered - the management of liquid funds and loan transactions and petty cash and management.

The activity in question presents risk profiles insofar as possible, for the creation of concealed economic funds to be allocated to corrupt private counterparties in order to obtain undue advantages in the Company's favor.

Special attention must be therefore paid first and foremost to defining the financial policies, in such a way as to ensure that they highlight the legitimacy of the choices for the allocation of corporate resources, also in view of a subsequent verification of their effective use.

In this area, the relationship with the subsidiaries for the concession and management of any infra-group guarantees, as well as the management of group treasury, take on particular importance.

With regard to the management of relations with banks and insurance companies, in order to obtain loans and guarantees of any type functional to the business, we note that the company's business requires the availability of facilities for guarantees, as a rule bank bonds, in some cases also insurance bonds, to be given when submitting bids (bid bonds), for the correct completion of the order (performance bonds) and after-sales guarantees (warranty bonds), for the collection of contractual advances (Advance bonds) or the release of guarantee withholdings (retention bonds).

Despite the context regulated by restrictive bank or insurance procedures, in this area there is a potential risk of the perpetration of the crime of corruption between private parties that could take

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concrete form through the giving or promise of money or other benefits to a functionary of a bank, insurance company or broker of the latter, in order to facilitate the issue of guarantees, even without meeting the necessary requirements or conditions (economic and/or contractual) off the market to the benefit of the Company.

### **B1.8 Management of transfers and the reimbursement of costs, entertainment expenses, hospitality and gifts, sponsorships and donations**

The management of the transfers and reimbursements of costs refers to the expenses incurred by employees (managers and others) in connection with transfers. According to the corporate systems and procedures, these expenses are authorized both before the request for a transfer and afterwards, at the time of liquidation, according to its reporting.

The management of entertainment, hospitality and gift expenses are expenses aimed at maintaining and developing relations with third parties, such as those relating to breakfasts or work meetings, as well as a welcome in order to promote the image or services provided by the Company during corporate events. Gifts are objects, of low value, functional to the dissemination and promotion of the image or supporting external relations of the Company.

The management of sponsorships, advertising initiatives and disbursements to entities and associations regards contracts, connected with a given event, project or activity and stipulated by the Company for the optimization and dissemination of its name, image and trademark or to promote the corporate business, as well as for donations or other donations or the supply of goods and services to subjects not for profit.

The activities in question entail risks that may constitute a vehicle to conceal the undue disbursement in favor of private counterparties with which the Company entertains relations, of amounts of money or benefits of any type in view of the obtaining of undue favors, with the consequent possible integration of the crime of corruption between private individuals.

### **B1.9 Management of research and development and intellectual property**

The company carries out significant research and development for the introduction of new technological solutions or to improve existing ones. To this end, the company entertains relations with universities and research centers. The corporate Intellectual Property Department, with the support of the Legal Department, assists the development departments in the patent process.

In this area, there is a potential risk of perpetration of the crime of corruption between private parties, which could take place, merely by way of example, in the following ways:

- promise or giving of monies or other benefits to a functionary of the company and/or professional associations supporting the company in the activities necessary to obtaining patents, for example in order to obtain registration of a patent earlier than a competitor,
- promise or giving of money or other gains to a functionary of a competitor company or research center, for example in order to obtain a trade secret.

The management of research and development and intellectual property is an area at risk also for crimes relating to breach of copyright, in this respect, refer to the related Special Part. These same activities could entail relations with entities that may come under the scope of those classifiable as PA, for which reference is made to special part A).

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## **B1.10 Personnel selection and hiring and management**

The human resources department assures the definition of the organizational structure and the needs of resources consistently with the corporate strategy and the needs of the various corporate departments, it also ensures, again in compliance with the corporate strategy, the optimization of the use of human resources, the plan of merits, support in the development of competences and industrial relations with the trade union organizations at the various levels (business, territorial and national).

The area in question entails risk because the selection, hire and management of personnel (e.g. policies of merit) could represent the vehicle through which to obtain under advantages in the event that they should involve a person near a private counterparty.

Consider, merely by way of example, the following hypotheses:

- promise of hiring or hiring of a person or an undue improvement or promise of undue improvement of the conditions of an employee (e.g. in policies of merits) linked by family relationship, affinity or in any case related to a representative of the private customer or subject appointed by it or any private counterparty, as a means by which to cause him to act or fail to act in a manner that is in conflict with official duties or duties of loyalty, thereby harming the relevant company,
- a specific case of corruption between private individuals can abstractly occur in the case of the promise or giving of money or other gains to a representative of the trade union, in order to obtain support and promotion of corporate policies to the benefit of the Company.

Again with regard to the management of personnel, critical aspects may emerge with regards to the planning of corporate objectives and the assignment of the related targets with respect to the prospect of benefits or bonuses (for example in terms of stock options), parameterized to the achievement of particularly ambitious results, there may be a risk that the corporate representative, in order to achieve the result required, shall perpetrate crimes facilitating pursuit of the objective.

## **B1.11 Procurement of goods, services and consultancy**

The area of procurement may be instrumental to the perpetration of the various crimes. In respect of the crime involved by this special part, we report the promise or giving of money or other gains to an employee of the supplier in order to obtain undue advantage, thereby leading said subject to act or fail to act in breach of the obligations of their position or obligations to loyalty, harming the relevant company.

## **8.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

In the context of the above conduct, it is forbidden in particular to:

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- make promises or undue donations of money to private parties in order to obtain undue benefits,
- distribute gifts and presents outside the provisions of the Code of Ethics and internal regulations (see the corporate procedure governing gifts, hospitality and entertainment expenses - see the attached list of procedures). In any case, any form of gift to private counterparties (including countries where the giving of presents is common practice) or their relatives is prohibited if it might influence the independence in a decision or induce to grant any advantage whatsoever to the Company. Permitted gifts are always of negligible value. Gifts offered or received - except for those of negligible value - must be suitably documented to as to allow for appropriate checks,
- afford other types of benefits (promises of employment, use of corporate assets, improper use of entertainment expenses, etc.) in the favor of private counterparties, which can determine an undue advantage for the Company,
- pay or offer, directly or indirectly, including in the form of aid or contributions, payments or tangible benefits for private counterparties to impact or compensate a deed of their office and secure benefits of any type for the company,
- sign deeds or documents of external relevance to the company in the absence of powers formally attributed or going beyond the powers assigned,
- exert undue pressure or solicitations on private counterparties in the pursuit of their official duties,
- hire personnel who are not necessary or not worthy merely in order to obtain undue benefits,
- acknowledge reimbursements of transfer and entertainment costs that are not suitably justified in connection with the type of activities carried out or without suitable justifying documentation,
- issue requests for purchase that are not matched by a specific, explained need of the company and that are not authorized on the basis of the delegations conferred,
- award supply or subcontracting contracts to persons or companies that are “near to” or “approved” purely in order to obtain undue benefit,
- award supply or subcontracting contracts without the necessary requirements of quality, safety ad value for money of the purchase,
- unlawfully “direct”, through corruption, the tender procedures for the award of supplies in order to have a specific subject named as awardee, including through artifice employed to exclude other participants,
- approve invoices payable in respect of entirely or partly non-existent services,
- provide services to business partners and/or consultants without appropriate contractual documentation, justification and authorization,

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- acknowledge payments in the favor of external collaborators that are not suitably justified in connection with the type of appointment to be performed, current local practices and market prices,
- provide various forms of aid or contributions that, in the form of sponsorships, instead aim to promote or foster the company's interests,
- grant any discounts, write-offs of credit and/or repayment plans in order to obtain undue advantages in relations with private customers.
- award consultancy appointments/mandates on persons or companies not meeting the requirements of honor, professionalism and reliability,
- use cash as a means of payment and collection outside the cases permitted by corporate procedures or regulations or in any case improperly,
- open current accounts or savings books anonymously or under fictitious names and use any opened in foreign countries,
- order payments or collect monies to/from countries on the main international black lists, without any documentation proving the real, specific needs.

With regards to **relations with private customers, in the management and coordination of commercial activities (B1.1)** and **the search for and negotiation of orders/sales contracts (B1.2)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk areas A.1 and A.2 (see the corporate "Bidding" procedure - see attached list of procedures). These control principles also apply to relations with subjects appointed by the customer, such as consultants assisting with the definition of tender specifications and the bid assessment:

As regards **relations with private customers in the stipulation, execution and management of contracts/orders (B1.3)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.3 (see the corporate Project Managing procedure - see attached list of procedures). These control principles also apply to relations with subjects appointed by the customer, such as consultants assisting with contract management.

With reference to the **selection and management of providers in support of the commercial activity (B1.4)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.4 (see the corporate procedure on services in support of the commercial business - see attached list of procedures).

With reference to the **selection and management of partners in ATI and/or consortia (B1.4)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.4 (see the corporate procedure on "Bidding" - see attached list of procedures):

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With reference to the **management of relations with third parties for certification activities (B1.5)**, the Company's business complies with the following control principles:

- respect for the roles, duties and responsibilities defined by the corporate organizational chart and the authorization system in the management of relations with certification entities/companies,
- during audits and verifications by the certification entities/companies, the departments appointed to entertain relations with such subjects and any other department required to provide support, operate transparently, correctly and in a spirit of collaboration, facilitating verifications and completely and correctly supply the information, data and documentation required,
- employees entertaining relations with representatives of certification entities/companies report promptly to the project team and the respective managers on the critical issues that may arise during assessments/audits,
- the selection of certification entities/companies and the definition of the related appointment is carried out according to the procedures and principles of control of the goods and services procurement processes to which reference is made.

With reference to **cash flow management** (collections and payments) under the scope of finance and treasury activities **(B1.7)**, the Company complies with the principles of control described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.8.

With reference to the **management of relations with banks, insurance companies or brokers, in order to obtain facilities and guarantees of any type** functional to the conduct of business, under the scope of finance and treasury **(B1.7)**, the Company's business complies with the following control principles:

- respect for the roles, duties and responsibilities defined by the company organizational chart, the authorization system and the system of delegations and powers of attorney with reference to relations with banks, insurance companies or brokers and their functionaries,
- correctness and transparency in relations with banks, insurance companies or brokers in respect of principles of correct management, transparency, information fairness and in such a way as to guarantee the protection of interlocutors,
- integrity, impartiality and independence, not improperly impacting the decisions of the counterparty and not requesting special treatment. It is in any case prohibited to promise, disburse or receive favors, amounts and benefits of any type,
- completeness, accuracy and truthfulness of all information and data sent to banks, insurance companies or brokers,
- provision for specific contractual cautions aimed at regulating the processing of and access to inside information by banks, insurance companies or brokers in order to guarantee equal information to all interlocutors,

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- departments needing surety or a guarantee, essentially the Sales & BD Department and the Delivery Department, prepare periodic medium-term provisions of the needs for guarantees on the basis of which the Finance and Treasury Department negotiates the loans and controls their use,
- loans for surety and guarantees are negotiated by the Finance and Treasury Manager, liaising with the CFO,
- the department needing surety or a guarantee, essentially the Sales & BD Department and the Delivery Department, submits a written request to the Finance and Treasury Department, which is responsible for negotiating it with the bank or broker in compliance with the requirements needed and at the lesser cost. The Legal Department supports the review of the conditions of the surety or guarantee
- the requesting department is also responsible for reporting the expiry of the surety or guarantee in order to have it returned,
- the commission charged by the bank or, through the broker, by the insurance companies, are controlled with the results of the calculations performed by the Finance and Treasury Department.

With reference to the **management of transfers and expense reimbursements to employees (B1.8)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.9 (see the corporate procedures on transfers - see attached list of procedures).

With reference to the **management of entertainment expenses, hospitality and gifts (B1.8)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area a.9 (see the corporate procedure on gifts, hospitality and entertainment expenses - see attached list of procedures).

With reference to the **management of sponsorships, advertising initiatives and donations (B1.8)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area a.9 (see the corporate procedure on sponsorships, advertising initiatives and contributions to associations and entities - see attached list of procedures).

With reference to the **management of research and development and intellectual property activities (B1.9)**, the Company complies with the control principles described in Special Part “I” (Crimes against industry and trade) for the corresponding risk area.

With reference to the **selection, hiring and management of personnel (B1.10)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.10 (see also the corporate procedures on “selection & recruitment” and integrated HR management - see attached list of procedures).

With reference to the **management of consultancy contracts and professional service agreements (B1.11)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration and the Justice Administration) for the

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equivalent risk area A.11 (see the corporate procedure on consultancy - see attached list of procedures).

With reference to **relations with suppliers of goods and services (B1.11)**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for the equivalent risk area A.11 (see the corporate procedures on the Procurement process - see attached list of procedures).

#### **8.4 IDENTIFICATION OF INTERNAL MANAGERS IN THE INDIVIDUAL RISK TRANSACTIONS AND EVIDENTIAL PAPERS**

In order to provide due evidence of the operations carried out in the risk areas of the paragraph above. To this end, the Chief Executive Officer and Managers of the Departments managing operations in the risk areas become *internal managers* of each individual risk operation carried out by them directly or implemented under the scope of the department they head. These managers:

- become the reference persons of the risk operation,
- are responsible in particular for relations with third party private counterparties for the activities carried out with them.

The activities carried out in regard to private customers or subjects appointed by them are considered at highest risk. Therefore, such relations must be disclosed to the SB by said managers through the completion of an Evidential Paper (hereinafter the "Paper"), to be updated periodically, which shows:

- the duties of the private customer or subjects appointed by the customer with competence over the initiatives/activities in question,
- the declaration given by the Internal Manager - for himself and his collaborators appointed to carry out activities entailing relations with private customers and subjects appointed by them - to the effect that he is fully aware of the requirements to be fulfilled and the obligations to be observed in the pursuit of operations and that no breach has been committed of the Model,
- the indication of the name, surname, qualification and appointment held by the reference person of the private customer or subject appointed by it with whom relations are entertained, meetings held and/or activities pursued - considered as "risk operations" - in the period concerned.

The managers of the risk areas identified have the task of having the declarations filled in by their subordinates and sending them to the Supervisory Body, responsible for archiving and controlling the contents.

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## **9 SPECIAL PART “C”-OFFENSES OF MANSLAUGHTER AND GRIEVOUS OR VERY GRIEVOUS BODILY HARM COMMITTED IN BREACH OF HEALTH AND SAFETY AT WORK LEGISLATION**

### **9.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 25- *septies* of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description):

- manslaughter (Art. 589 of the Italian Criminal Code)
- bodily injury caused through negligence (Art. 590, paragraph 3 of the Italian Criminal Code)

This Model is an integral part and at the same time a summary tool of the health and safety at work management system in place at Hitachi Rail STS S.p.A. and is compliant with Art. 30 of

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Italian Legislative Decree no. 81/08. The Company is ISO 45001 certified for all its plants, with a view to guaranteeing the achievement of worker protection objectives.

The Company is in fact constantly committed to the protection of worker health and safety, privileging preventive actions and seeking to assure continuous improvement.

To this end, the Company undertakes:

- to comply with legislation and applicable agreements regarding safety at work,
- to involve the whole of the company organization in active safety management,
- to ensure the continuous improvement of the health and safety at work management system and prevention,
- to provide the necessary human and material resources,
- to ensure that workers are sensitized and trained to go about their duties safely and to accept full responsibility for health and safety at work,
- to involve and consult workers, including through their Safety Managers,
- to periodically review the policy and management system implemented,
- to define and spread awareness, within the company, of the health and safety at work objectives and related implementation programs,
- to constantly monitor safety at work, through the verification of the achievement of objectives and system functions.

This commitment by the Company comes under the scope of the more general commitment to comply with standards at work.

## 9.2 RISK FACTORS EXISTING IN HITACHI RAIL

According to the provisions of the Confindustria Guidelines, the adoption and effective implementation of the Model calls for a preliminary risk assessment with a view to identifying, through the inventory and mapping of business activities and areas, the risks of perpetration of the crimes envisaged by the decree and the assessment of the internal control system and its capacity to mitigate the risks identified.

With reference to the crimes in breach of health and safety at work standards, these same guidelines highlight the impossibility of excluding, *a priori*, any area of activity as such crimes could involve all company members.

In addition, as regards the identification and analysis of potential risks and the possible methods by which crimes may be committed, on the basis of the mentioned guidelines and by virtue of the already discussed integrated nature of the health and safety at work management system in place at the company, the analysis coincides with the working risk assessment performed by the company on the basis of the accident prevention legislation in force, including in accordance with Articles 28 *et seq.* of Italian Legislative Decree no. 81/08.

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In order to prepare this Special Part, Hitachi Rail STS has therefore taken into account the Risk Assessment Document adopted in accordance with Articles 17, letter a) and 28 of Italian Legislative Decree no. 81/08.

For an assessment of its completeness, the method used to identify Dangers and quantify Risks has been taken into account, an essential element in order to guarantee a suitable assessment of “all” risks present (as required by Decree no. 81/08) and the consequent implementation of provisions able to improve worker health and safety, this is an essential basis for the prevention of crimes pursuant to Articles 589 and 590 of the Italian Criminal Code.

Special attention has been paid to groups of workers present in the company that, regardless of the duties performed, may be considered as potentially exposed to specific risks, including in connection with gender differences.

On a case-by-case basis, when Hitachi Rail STS operates in places where it does not have legal liability, safety measures will be adopted through the documents envisaged by the law, as may be necessary to cope with the risks present in connection with the actual situation.

### 9.3 GENERAL PRINCIPLES OF CONDUCT

As the subject required to comply with the general obligation to protect health and safety at work, the Company has over time complied with the provisions on the matter, up to the recent introduction of Italian Legislative Decree no. 81/08.

Hitachi Rail STS acknowledges compliance with current general and industry-specific laws and regulations as an essential principle.

It is specified that the general principles of conduct reported in this chapter:

- should not be considered as complete, but rather representative of the general principle of “correctness and lawfulness at work and in business”,
- refer to the business areas in which a possibility has been identified of the onset of the crimes to date recalled by the decree and can be considered reference principles for the extension of the decree to include new families of crimes.

Accident prevention and the protection of health and safety at work represent the company’s essential need to protect its human resources and third parties.

All those who, as a result of the position and role held, are responsible for specific requirements or involved in processes relative to the protection of health and safety at work shall comply with all current prevention legislation, in particular the implementation of the requirements laid down by Italian Legislative Decree no. 81/08 and comply with the applicable corporate regulations and procedures.

Our company undertakes to guarantee a work environment that is compliant with current health and safety standards, promoting responsible behavior and preserving, through monitoring, managing and preventing the risks connected with the professional activities, the health and safety of all employees and collaborators.

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To this end, the Company takes the most appropriate steps to avoid risks connected with the conduct of its business and, where this is not possible, to suitably assess existing risks with the aim of combating them directly at source and guaranteeing their elimination or, where not possible, handling them.

All employees and collaborators as well as all those who, although external to the Company, operate directly or indirectly for Hitachi Rail STS, are required to comply scrupulously with all rules and obligations deriving from reference health, safety and environment regulations and to comply with all measures required by internal regulations and procedures.

Under the scope of their duties, employees/collaborators take part in the risk prevention and health and safety protection process in regard to themselves, colleagues and third parties.

As part of its activities, the company undertakes to adapt the work to the person, including as regards the design of the work station and the choice of working equipment and methods and production, in particular in order to attenuate monotonous and repetitive work and reduce the effects of such work on health.

As regards health and safety at work, the company also undertakes to operate:

- a) taking into account the degree of evolution of technique,
- b) replacing what is dangerous with what is not, or with what is less dangerous,
- c) suitably planning prevention and aiming to ensure a consistent overview that takes into account and includes technique, work organization, working conditions, social relations and the impact of workplace factors,
- d) prioritizing collective protective measures over personal protective measures,
- e) giving suitable instructions to Personnel.

These principles are used in order to identify and adopt measures necessary to protect worker health and safety.

As regards the Safety System management process, all Addressees of this document must:

- envisage suitable procedures for the archiving of all documentation produced during the process activities and all relevant information about the activity, so as to reconstruct, clearly and transparently, all actions that have led to the conclusion of a process for the implementation and maintenance of the Company's Safety System,
- prepare all documentation, including annexes, in compliance with the requirements laid down by health and safety at work standards (e.g. keep copies of all meeting minutes, relative to training, documents appointing legally-required subjects, etc.).

All those concerned must comply with these principles, in particular when decisions or choices need to be made and, thereafter, when they need to be implemented.

Hitachi Rail STS also undertakes to prevent and repress any conduct and practices that may have the effect of mortifying the employee in his capacities and professional expectations, or resulting in his exclusion in the workplace, discrediting or the harming of his image.

In particular, the following is prohibited:

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- to expose workers to risks to their health and safety,
- to use workers who are even only temporarily unfit for works for which they are not suited and that, consequently, expose them to higher risk, in order to achieve economic advantages for the Company,
- to ask a worker without training or with insufficient training on health and safety at work to carry out operations exposing him to risk,
- not to supply workers with personal or group protection equipment found to be necessary following the risk assessment,
- not to grant the necessary time to subjects acting in the field of prevention and safety (Prevention and Protection Service Manager, Appointed Physician, Prevention and Protection Service operators, Workers' Safety Representative) to fully go about their duties.

### 9.3.1 The organizational system

The Company has first prepared an organizational structure with powers, duties and responsibilities for health and safety at work (the Health and Safety Management System pursuant to Article 30 of Italian Legislative Decree no. 81/08), defined formally in line with the company's organizational and functional structure, involving and sensitizing senior management and all employees.

The preventive system in question aims to define the organizational and operative duties and the responsibilities of the company management, officers appointed and workers with specific regard to the safety activities under their purview. Details of the Safety at Work Management System are given in paragraph 9.5.

In the context of this organization, the figure of the **Employer** shall be pivotal, defined in accordance with Art. 2, paragraph 1, letter b of Italian Legislative Decree no. 81/08 as the “*principal of the contract of employment with the worker or in any case the subject who, according to the type and structure of the organization within which the worker works, is responsible for said organization or the production unit insofar as having decision-making and spending powers*”. This subject is the first and main addressee of the obligations to assure, observe and monitor the accident prevention measures and steps and accepts the responsibilities linked to compliance with health and safety at work standards by employees.

In accordance with the provisions of Art. 17 of Italian Legislative Decree no. 81/08, the Employer (DL) identified by the Board of Directors of Hitachi Rail STS S.p.A. has:

- assessed all risks, with the consequent preparation of the Risk Assessment Document drawn up in compliance with current legislation,
- designated the Prevention and Protection Service Manager (RSPP) and the Service Operators (ASPP) and
- appointed the appointed physician (MC).

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In addition, and in compliance with the formal and substantive conditions today laid down by Art. 16 of Italian Legislative Decree no. 81 of 2008, the Employer has - with a view to ensuring the effective and efficient implementation of prevention policies - the Employer shall:

- define a system of functions that covers the entire range of technical skills and powers required to determine, assess, manage and control risks, and a disciplinary system designed to take action against any violations to the measures set forth in the model,
- assign tasks and responsibilities to the appointed managers for safety, choosing the people in such a way as to have a capillary dissemination throughout the territory and suitable operative oversight. Appointed managers meet extensive requirements of professionalism and have extensive experience in connection with the duties assigned and can, by virtue of the delegation, exercise all powers of organization, management and control required by the specific nature of the duties assigned, as well as autonomous spending power.
- In conjunction with the Risk Prevention and Protection Officer (RSPP), complying with its obligations in accordance with Leg. Decree no. 81/08 and, specifically with Articles 17 and 18, .

Within the Organization and in line with the provisions of Italian Legislative Decree no. 81/08, **Managers** delegated to implement safety policies are assigned the duties indicated in paragraph 9.5, in particular, they must issue the directives necessary to the effective management of all prevention and protection problems.

Implementation of the instructions given is the task of the **Appointed Persons**, as per the system described in paragraph 9.5.

The **Prevention and Protection Service Manager** (RSPP) in accordance with Articles 17, 32 *et seq.* of Italian Legislative Decree no. 81/08 has been appointed by means of letter signed by the Employer. The manager in question is trained in the manner prescribed by current applicable legislation (i.e. through the attendance of specific risk prevention and protection courses, including as regards ergonomics and psychological-social aspects, as well as periodic refresher courses required by the law).

The RSPP operates on the staff of the Employer and manages the Prevention and Protection Service (SPP), whose main tasks are to support the Employer in the Risk Assessment in the Planning of actions aimed at improving safety conditions, in supporting the local sites present (local units and sites) and in coordinating the various sites and in supervisory duties.

More specifically, the RSPP and the risk prevention and protection structure (SPP) shall in compliance with Art. 33 of Italian Legislative Decree no. 81/08:

- identify the risk factors, assessing the risks and identifying the measures (to be taken) for the safety and health of the workplace, in accordance with the current regulations on the basis of their specific knowledge of the organization of the undertaking,
- develop, within its competence, the preventive and protective measures referred to in Article 28, paragraph 2, and the control systems for such measures,
- develop the safety procedures for the various undertaking activities,

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- propose workers' training and information programs,
- participate in consultations on the subject of safeguarding health and safety at work, as well as attending the periodic meeting referred to in article 35,
- supply workers with the information referred to in article 36.
- support the local units and sites in preparing all the documents necessary to an effective management of prevention and safety,
- support the Employer and SB in supervisory action through periodic audits,
- call and attend periodic health and safety meetings and the regular meeting pursuant to Art. 35 of Italian Legislative Decree no. 81/08,
- constantly monitor and spread awareness of the evolution of the regulatory framework on health and safety at work.

The members of the prevention and protection service are required to maintain secret the work processes they acquire knowledge of in the exercise of their functions as specified in this legislative decree.

The **Prevention and Protection Service Operators** (ASPP) have been designed by letter signed by the Employer. They have been trained in the manner prescribed by current legislation on the matter pursuant to Articles 31 and 32 of Italian Legislative Decree no. 81/08 (i.e. by means of the attendance of specific courses on risk prevention and protection as well as the legal periodic updates).

They are classified in the direct central structure by the RSP and operate in the peripheral structures with supporting, coordination and reporting duties, as per the structure described in paragraph C 6.

In accordance with Art. 38 of Italian Legislative Decree no. 81/08, the **Appointed Physicians**, specialists in occupational medicine, were appointed by specific letter signed by the Company's Employer. Each appointed physician shall, at the relevant site and in particular:

- take part in risk assessments and the drafting of the related document (DVR),
- carry out preventive assessments aimed at noting the absence of contraindications for the work to which workers are assigned, in order to assess their fitness for the specific task,
- carry out periodic medical checks to check workers' health and to express an opinion of their fitness to undertake the specific duties,
- manage the medical records and all legal documentation,
- collaborate towards the preparation of measures to protect the health and psychological and physical well-being of workers,
- together with the Prevention and Protection Service Manager, periodically inspect the workplace,
- attend periodic health and safety meetings and the regular meeting pursuant to Art. 35 for the Legislative Decree no. 81/08.

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The effective management of the health and safety at work system calls for the support and commitment of employees, also in order to use their knowledge and experience.

In connection with the company's operating structure, structured over multiple offices and countless sites, in order to standardize the risk assessment and consequent health protocols, the employer appoints one of the appointed physicians as coordinating physician.

In accordance with Art. 2 of Italian Legislative Decree no. 81/08, the **Workers' Safety Representative** has been designated from amongst the Corporate Trade Union Representatives. As RLS, he has specific prerogatives and rights to participation/consultation under the scope of the most relevant decision-making processes regarding health and safety in the workplace and performs controls on the initiatives taken by the Company in this area. To this end, the Workers' Safety Representative:

- has the right to special training on health and safety concerning the specific risks existing in the environments in which they are representative, such as to ensure they have adequate competencies on the principal techniques for controlling and preventing risks,
- is consulted promptly, in advance, about risk assessment and the identification, planning, execution and monitoring of prevention in the company,
- is consulted on the designation of the Manager and Operators of the Prevention and Protection Service, fire prevention, first aid and worker evacuation,
- attends the meetings held to discuss problems relating to risk prevention and protection.

At each office and on the sites, the workers have also been identified to whom the following tasks are entrusted:

- **emergency operator**
- **first aid operator**

The Operators have been appointed by a specific letter of appointment - after consulting with the RLS. They have completed specific courses on the type and level of risks present in the contexts in which they operate and are subjected to medical check-ups for fitness.

### 9.3.2 Training, communication and teaching

The teaching and training of personnel with specific regards to health and safety at work are an essential element for the effectiveness and suitability of the related preventive system.

The absolution of duties that can somehow impact health and safety at work calls for suitable staff training requires suitable personnel training, to be verified and driven through the delivery of teaching and training aimed at making sure that all personnel, at all levels, are aware of the importance of the conformity of their actions with the organizational model and the possible consequences due to conduct that differs from the rules dictated by model.

To this end, the Company makes sure that each worker/corporate operator receives sufficient, adequate training with respect to their workplace and duties. Training is envisaged at the moment of hiring, transfer or change of duties or when introducing new work equipment or new technology, any new hazardous substances and products, in relation to concrete needs noted over time.

In implementation of the annual training plan, the Company defines the types of courses delivered and the frequency of delivery, taking into account the need to identify specific differentiated training

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paths according to the type of subjects involved and assuring full documentation of the training activities carried out.

The Company also assures the circulation of information within the company to foster the involvement of all those involved and allow awareness and suitable commitment on all levels through:

- preventive consultation on the identification and assessment of risks and definition of preventive measures,
- regular meetings.

The circulation of information within the company is an essential element in order to guarantee suitable levels of awareness and commitment regarding the policy adopted in terms of health and safety at work and is based on the cooperation of all subjects involved, within and/or outside the company. The communication process is essential to have the personnel involved and participating in the health and safety at work management system and to achieve the objectives set to implement the corporate policy on the matter.

#### **9.4 THE PRINCIPLES INSPIRING PROCEDURAL PROTOCOLS ON HEALTH AND SAFETY AT WORK**

The risk control system for health and safety at work in Hitachi Rail STS S.p.A. is integrated with the management of the corporate processes and activities. In particular, the Company has implemented specific procedural protocols on health and safety at work, prepared according to current accident prevention legislation.

In order to prepare these protocols, the Company has focused on the need to ensure compliance with the principles set out below:

- identification and traceability, by means of service orders and delegations issued by the competent subjects, of responsibilities relating to health and safety at work, with particular reference to the Employer, RSPP, first aid workers, emergency workers and RLS. These responsibilities are promptly disclosed to third parties concerned in the cases envisaged (e.g. health authorities, employment inspectorate, etc.),
- express appointment of the Appointed Physicians, who must formally accept the appointment, structuring and adjustment of information flows to the Appointed Physician in connection with the processes and risks connected with the company business,
- identification of dangers and assessment of risks to worker health and safety by the Employer (including through the Prevention and Protection Service (SPP), taking due account of the corporate structure, the nature of the business, the location of the premises and work areas, organization of personnel, specific substances, machinery, equipment and plants used in the activities and related protection cycles. Risk assessment is documented through the processing, in accordance with current accident prevention legislation, of a Risk Assessment Document,
- adoption of a suitable system for fire prevention and worker evacuation, which envisages:

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- the conduct and documentation of periodic evacuation drills on the base,
- the preparation and update of the fire DVR in the workplace, performed by the Employer (including through the SPP),
- carrying out of periodic chemical, physical and biological environmental analyses, to:
  - fulfill regulatory provisions on worker protection against the risks deriving from exposure to chemical, physical and biological agents while at work,
  - ascertain the environmental situation and professional exposure to chemical pollutants connected with existing works,
  - examine the situation of the plants in terms of the prevention measures adopted,
- preparation of a company Health Plan to ensure the implementation of the measures necessary to guarantee worker health protection,
- definition, implementation and monitoring of a training, information and engagement program on health and safety at work, which involves the timely informing of Workers through the definition of roles and responsibilities, the definition of the types of courses delivered and the frequency of delivery, the definition of specific training courses, differentiated according to the type of subjects involved, the definition of the procedures of the relevant documentation, definition of an annual training plan,
- implementation of an information flow system that enables the circulation of information within the company to foster the engagement and awareness of the Addressees and ensure the timely evidence of any shortcomings or breaches of the Model,
- the RLS must be able to verify, including through gaining access to the relevant company information and documentation, compliance with the application of safety measures and protection measures,
- periodic monitoring of the effectiveness of the prevention and protection measures in place, in order to find suitable points for improvement,
- with regards to first aid and accident management, clear identification of the tasks and duties of all employees if incidents and/or injuries should take place or structural and organizational shortcomings should be found, which may impact safety,
- provision for a system to log the injuries and/or incidents,
- formalization and publication of the prohibition on smoking in all workplaces, with specific controls and supervisory measures,
- formalization and publication of the prohibition for Workers who have not in this respect received adequate instructions or authorizations to access zones exposing them to serious, specific risks,
- formalization and publication of the prohibition to ask Workers to resume work in situation where a serious, immediate danger remains,

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- in internal and external transfers, both using own and corporate vehicles, all precautions must be taken in respect of health and safety at work (e.g. verification of the regular maintenance of motor vehicles, respect for road signs, verification of regular insurance cover, use of personal or group protection equipment, etc.),
- guarantee of the ordinary and extraordinary maintenance of the corporate safety devices. The environments, plants machinery and generic and specific equipment must be subject to scheduled ordinary maintenance with specific regard to safety devices, in compliance with the manufacturers' indications and documented evidence must be provided to this effect,
- in supplier selection (in particular contractors and works suppliers), the costs for safety at work must be requested and assessed. This expense item must be indicated specifically in the contracts and must not be discounted,
- tenders, must be assigned, verified and managed and thereafter monitored on the basis of and in compliance with specific formalized internal rules. In the assignment of a tender, the internal procedures must envisage that, where considered appropriate by the SPP according to the risks deriving from the tender, before order execution, a check is run to ensure that all documentation is compliant with current rules and regulations and that all requirements envisaged by current rules and regulations and the company safety procedures, have been met,
- the health and safety at work management system is compliant with the requirements envisaged by the highest quality standards recognized nationally and internationally with specific reference to the requirements set out in British Standard ISO45001 with respect to which the Hitachi Rail STS Safety Management System, is verified and certified by a Certification Organization,
- a control system must be defined and implemented that is able to guarantee the constant registration, including through the potential preparation of specific reports of the audits carried out by the Company on health and safety at work and the implementation of corrective action must be assured,
- a verification must be envisaged of the achievement of objectives and a verification of the system functions, through two monitoring levels to be implemented respectively when planning, in regard to the procedures and responsibility for achieving objectives and *ex post* in order to verify the compliance of the system with that planned, the concrete implementation and maintenance procedures.

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The control system must guarantee, in accordance with the provisions of the Confindustria Guidelines, compliance with the principles summarized in the structure below:



The Company reserves the right to integrate and update the principles described in this paragraph and the procedural protocols, if considered appropriate, in order to guarantee the protection of health and safety at work.

The risk control system for health and safety at work in Hitachi Rail STS S.p.A. is integrated with the management of the corporate processes and activities. In particular, the Company has implemented specific procedural protocols on health and safety at work, prepared according to current accident prevention legislation.

In order to prepare these protocols, the Company has focused on the need to ensure compliance with the principles set out below:

- identification and traceability, by means of service orders and delegations issued by the competent subjects, of responsibilities relating to health and safety at work, with particular reference to the Employer, RSPP, first aid workers, emergency workers and RLS. These responsibilities are promptly disclosed to third parties concerned in the cases envisaged (e.g. health authorities, employment inspectorate, etc.);
- express appointment of the Appointed Physicians, who must formally accept the appointment; structuring and adjustment of information flows to the Appointed Physician in connection with the processes and risks connected with the company business;
- identification of dangers and assessment of risks to worker health and safety by the Employer (including through the Prevention and Protection Service (SPP), taking due account of the corporate structure, the nature of the business, the location of the premises and work areas, organization of personnel, specific substances, machinery, equipment and plants used in the activities and related protection cycles. Risk assessment is documented through the processing, in accordance with current accident prevention legislation, of a Risk Assessment Document;
- adoption of a suitable system for fire prevention and worker evacuation, which envisages:
  - the conduct and documentation of periodic evacuation drills on the base;

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- the preparation and update of the fire DVR in the workplace, performed by the Employer (including through the SPP);
- carrying out of periodic chemical, physical and biological environmental analyses, in order to:
  - fulfill regulatory provisions on worker protection against the risks deriving from exposure to chemical, physical and biological agents while at work;
  - ascertain the environmental situation and professional exposure to chemical pollutants connected with existing works;
  - examine the situation of the plants in terms of the prevention measures adopted;
- preparation of a company Health Plan to ensure the implementation of the measures necessary to guarantee worker health protection;
- definition, implementation and monitoring of a training, information and engagement program on health and safety at work, which involves the timely informing of Workers through the definition of roles and responsibilities; the definition of the types of courses delivered and the frequency of delivery; the definition of specific training courses, differentiated according to the type of subjects involved; the definition of the procedures of the relevant documentation; definition of an annual training plan;
- implementation of an information flow system that enables the circulation of information within the company to foster the engagement and awareness of the Addressees and ensure the timely evidence of any shortcomings or breaches of the Model;
- the RLS must be able to verify, including through gaining access to the relevant company information and documentation, compliance with the application of safety measures and protection measures;
- periodic monitoring of the effectiveness of the prevention and protection measures in place, in order to find suitable points for improvement;
- with regards to first aid and accident management, clear identification of the tasks and duties of all employees if incidents and/or injuries should take place or structural and organizational shortcomings should be found, which may impact safety;
- provision for a system to log the injuries and/or incidents;
- formalization and publication of the prohibition on smoking in all workplaces, with specific controls and supervisory measures;
- formalization and publication of the prohibition for Workers who have not in this respect received adequate instructions or authorizations to access zones exposing them to serious, specific risks;
- formalization and publication of the prohibition to ask Workers to resume work in situation where a serious, immediate danger remains;

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- in internal and external transfers, both using own and corporate vehicles, all precautions must be taken in respect of health and safety at work (e.g. verification of the regular maintenance of motor vehicles, respect for road signs, verification of regular insurance cover, use of personal or group protection equipment, etc.);
- guarantee of the ordinary and extraordinary maintenance of the corporate safety devices. The environments, plants machinery and generic and specific equipment must be subject to scheduled ordinary maintenance with specific regard to safety devices, in compliance with the manufacturers' indications and documented evidence must be provided to this effect;
- in supplier selection (in particular contractors and works suppliers), the costs for safety at work must be requested and assessed. This expense item must be indicated specifically in the contracts and must not be discounted;
- tenders, must be assigned, verified and managed and thereafter monitored on the basis of and in compliance with specific formalized internal rules. In the assignment of a tender, the internal procedures must envisage that, where considered appropriate by the SPP according to the risks deriving from the tender, before order execution, a check is run to ensure that all documentation is compliant with current rules and regulations and that all requirements envisaged by current rules and regulations and the company safety procedures, have been met;
- the health and safety at work management system is compliant with the requirements envisaged by the highest quality standards recognized nationally and internationally with specific reference to the requirements set out in British Standard ISO45001 with respect to which the Hitachi Rail STS Safety Management System, is verified and certified by a Certification Organization;
- a control system must be defined and implemented that is able to guarantee the constant registration, including through the potential preparation of specific reports of the audits carried out by the Company on health and safety at work and the implementation of corrective action must be assured;
- a verification must be envisaged of the achievement of objectives and a verification of the system functions, through two monitoring levels to be implemented respectively when planning, in regard to the procedures and responsibility for achieving objectives and *ex post* in order to verify the compliance of the system with that planned, the concrete implementation and maintenance procedures

The control system must guarantee, in accordance with the provisions of the Confindustria Guidelines, compliance with the principles summarized in the structure below

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### 9.4.1 Procedural Protocols

Hitachi Rail STS has a set of procedural protocols overseeing the corporate activities able to guarantee adequate prevention.

The most important documents on health and safety at work prepared in Hitachi Rail STS S.p.A. are as follows:

- **Risk Assessment Documents**

#### Risk Assessment Document (DVR)

The DL has prepared the risk assessment document according to the indications given in Art. 17, 28 and 29 of Consolidated Text 81/08. The risk assessment has been carried out taking into account the choice of work equipment, chemical substances and products used and the layout of the workplaces and regards all risks to worker health and safety. This document contains specified criteria for the preparation and indication of prevention and protection measures adopted and to be adopted and the identification of the procedures for the implementation of the measures to be adopted as well as the roles of the organization that must be envisaged. The document is updated to include the risk of infection from Coronavirus.

#### Consolidated Document for the Assessment of Risks of Interference (DUVRI) for tendered works

In this document, prepared in accordance with Article 26 of Leg. Decree no. 81/08, the focus is on works contracted out and to be carried out in the places of which Hitachi Rail STS has legal availability. In this event, in fact the client must verify the technical-professional suitability of the contractors or self-employed workers in connection with the works to be contracted or works contracts and provide them with detailed information about the specific risks existing in the area in which they will be operating and the prevention and emergency measures adopted in connection with its business. The employer shall also cooperate towards the implementation of prevention and protection measures of risks at work and coordinate the interventions for protection against and prevention of the risks to which the workers are exposed, including in order to eliminate the risks due to the interference of the works of the various enterprises involved in the execution of the work as a whole.

#### Safety plans for temporary or mobile sites

In the event of temporary or mobile sites as regulated by Articles 88 *et seq.* of Consolidated Law no. 81/08, it is envisaged that the safety-related aspects are regulated through the documentation and safety plans specifically envisaged by Title IV of the Decree, prepared over time by the

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competent figures envisaged by the law, and that project managers and safety coordinators will be appointed.

- **Emergency Management Plan**

The Plan sets out provisions on the involvement of personnel and vehicles in incidents (e.g. fire, terrorism, explosion, gas leak, etc.) and natural events (e.g. floods, earthquakes, etc.). It sets out the procedures that must be applied and, therefore, formalizes the conduct to be adopted (from the signaling of the emergency to its resolution), depending on the different types of events occurring.

- **Minutes of the Periodic risk prevention and protection meeting.**
- **Examination of reports** regarding alleged breach of the Model, including reports not answered promptly by the competent subjects, in respect of any shortcomings and inadequacy of the places, work equipment and protection devices or regarding a situation of danger relating to health and safety at work,
- **Monitoring of the function of the overall accident prevention system** adopted by the Company with reference to the sector of health and safety at work, insofar as it is the organization able to assure the objectivity, impartiality and independence from the work sector subject to verification,
- **Report to the Board of Directors** or competent company departments, on the updates to the Model, the accident prevention system adopted by the Company or current procedures, which should become necessary or appropriate in view of the shortcomings noted and following significant changes to the Company's organizational structure.

## 9.5 HITACHI RAIL STS SAFETY MANAGEMENT SYSTEM FOR THE APPLICATION OF ART. 30 OF ITALIAN LEGISLATIVE DECREE NO. 81/2008

### Sistema di Gestione della Sicurezza



Figure 1: Safety Management System Organization

The SPP organization is shown in figure 2.

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The Prevention and Protection Service is headed by a Prevention and Protection Service Manager (RSPP) with tasks relating to the organization and management of the Service, and various Prevention and Protection Service operators (ASPP) with the tasks envisaged by Art. 33 of Italian Legislative Decree no. 81/08.

At a local level, in particular on the sites, some ASPP are assigned temporarily, who depend directly on the central SPP, both to support Prevention and Safety operations and to carry out any form of reporting that allows the Employer, through the central SPP, to supervise the entire system.

In thus doing, timely operation can be guaranteed - an input by the central SPP to the local ASPP suffices - and the adoption of corrective measures.

The central SPP service therefore has the task of conveying the information necessary to the correct implementation of the employer's directives (Planning), to prepare and transmit to the Employer the information on the implementation status of safety policies (reporting and to support local contexts with the indication of applicable rules and any specialized competences (Support), a homogeneous application of the rules and policies must also be assured (Coordination).

The SPP also acts as Internal Auditor.

### Servizio di Prevenzione e Protezione

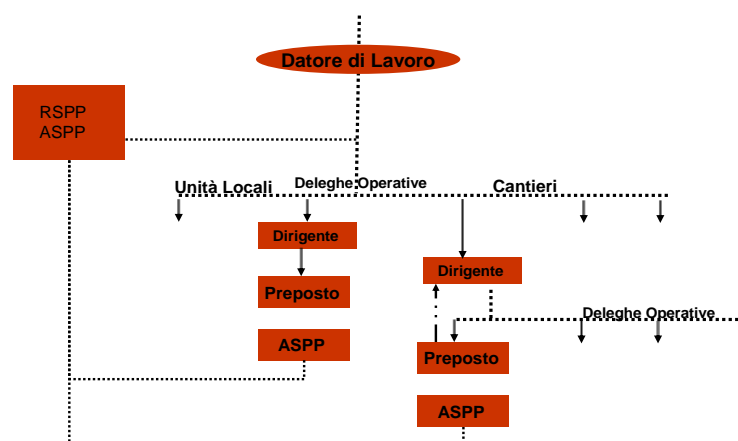


Figure 2: Accident Prevention and Protection Service Organization

#### 9.5.1 Definition of tasks

The tasks assigned must correspond to the effective powers.

Below are the tasks assigned to the various subjects involved in the corporate safety management system.

- **Employer** The Employer exercises decision-making and spending powers and has been identified on the basis of the powers vested in him. He is assisted in the exercise of his safety functions by the HSE function, RSPP, managers and supervisors within the scope of the powers and responsibilities assigned to them in the Company.

#### Managers

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Managers implement the employer's directives by organizing and supervising the work activity. They work with the employer in the fulfillment of obligations under Article 18 of Italian Legislative Decree 81/2008.

Managers who have received from the employer an express delegation of authority under Article 16 of Italian Legislative Decree 81/08 also have the safety obligations and responsibilities specified in the delegation given to them. In general, Managers must:

- Exercise hierarchical and disciplinary powers in regard to all employees. Adopt all organizational, procedural and economic measures, including exceptional expenses, in complete autonomy.
- Identify and promote the necessary investments in terms of safety at work and environmental protection. Define, prepare and issue, with the help of suitable corporate structures and notably the Prevention and Protection Service, all the procedures necessary to ensure the best possible protection of the physical integrity of the people and environmental protection.
- Define and implement training and information procedures and courses for workers on internal accident prevention, safety at work and environmental protection rules.
- Identify the managers and officers responsible for areas/department who must be formally assigned the duties relating to health and safety at work and environmental protection for the respective areas and departments of competence.
- Ensure the assessment of risks to worker health and safety, proposing that the Employer update the Risk Assessment Document (“DVR”).
- Carry out checks and controls on the efficiency, suitability and safety of technical equipment.
- Monitor the constant and timely compliance with the prevention and protection provisions. Define projects and programs to improve safety conditions.
- In the event of the award of works to contractors or self-employed workers, after assessing their technical-professional suitability, they shall liaise with the Prevention and Protection Service to assess application of safety regulations in connection with specific works,
- Identify the appointed person or persons in charge of carrying out supervisory activities.

### **Appointed officers**

Appointed Officers, in compliance with Italian Legislative Decree no. 81/2008, accept the obligations pursuant to Art. 19 with respect to all the structures and persons beneath them.

In order to perform the duties assigned them, they can arrange for all interventions immediately necessary according to the corporate procedures. Under the scope of the corporate safety system, they shall, in the pertinent areas:

- verify the completeness of the documentation relative to site management (as envisaged by Title IV of Italian Legislative Decree no. 81/2008),

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- verify the conditions for access and safety so as to guarantee use by the disabled,
- collaborate with the Prevention and Protection Service to update the Risk Assessment Document,
- have the procedures applied for personnel of third party companies and/or operative personnel who are not direct employees, to access the plant.

In connection with the instructions of hierarchical superior managers, the appointed officers shall:

- apply and ensure the application of the provisions of law and those defined by the company for worker safety,
- indicate the persons most suitable to being part of the emergency teams,
- propose the operating procedures necessary and control the application of existing ones,
- signal the need for education, information and training to include new staff and update existing personnel,
- verify the safety requirements of the equipment, machines and furnishings,
- collaborate towards defining the type of safety devices necessary to personnel activities and assure the relevant supplies,
- take formal steps against employees and external enterprises that do not respect safety standards and procedures as envisaged by the sanction system,
- control the operating procedures concerned by the contract, adopted by external enterprises, with specific regards to the movement of loads,
- inform enterprises of the specific risks linked to the environments and materials,
- coordinate the activities of enterprises operating in the area of their competence,
- make sure that the provisions are respected of Article 26 of Italian Legislative Decree no. 81/2008 on the obligations connected with the tender, works or supply contracts,
- apply or ensure the application of emergency procedures,
- supervise to ensure that personnel operate in compliance with the safety procedures and rules laid down by the company and make correct use of PPE,
- make sure that all plants, machinery and equipment and the workplaces and places of passage are constantly compliant with current legislation and the needs to protect health and safety, notifying the hierarchical manager of any anomalies,
- check and ensure the checking of compliance with the safety requirements of machines, equipment and plants that are used by their personnel,
- collaborate and prepare, in collaboration with SPP, the specific operating procedures regarding the works carried out in the pertinent areas and the methods used to move and deposit materials, taking care to keep the transit and emergency routes clear,
- coordinate the activities aimed at assuring the correct installation and ordinary and extraordinary maintenance of machinery, technical equipment and plants, so as to guarantee the efficiency, with specific regards to the safety devices and controls envisaged by current legislation,
- verify that the documentation relating to plants, machines and equipment is kept correctly,
- verify and check compliance with the obligations envisaged in accordance with title IV of Italian Legislative Decree no. 81/2008 on temporary and mobile sites,
- stop the activity and otherwise report the discovery of shortcomings in the work tools and equipment and any dangerous conditions detected during the supervisory activity.

## Coordinating Appointed Physician

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In connection with the company's operating structure, structured over multiple offices and countless sites, in order to standardize the risk assessment and consequent health protocols, the employer appoints one of the appointed physicians as coordinating physician.

## Physical Security Department

The Physical Security Department is responsible, as defined in the delegation pursuant to Art. 16 of Italian Legislative Decree no. 81/08, conferred by the Employer on the Manager, to define, implement and manage security governance at a group level. More specifically, the appointed Manager is entrusted with duties relating to the "Study, development and implementation of the strategies, policies and operating plans aimed at preventing, addressing and overcoming events mainly of an intentional/culpable nature, which can damage the tangible, intangible, organizational and human resources available to the company or that it needs to guarantee suitable short, medium and long-term competitive capacity". This area defines the measures and actions aimed at protecting the corporate assets from threats and attacks in the area of tangible assets (physical security) such as, for example, corporate sites, production plants, products and human resources. It is specified that as regards the threats and attacks in the area of intangible assets, such as, for example, corporate information, data, infrastructures and applications, know-how, patents and licenses, the protection duties are entrusted to the Cyber Security, Assurance and Control Department belonging to the Information Technology Entity.

With regards to the protection of human resources, the Physical Security Department defines the measures, actions and responsibilities for the protection of employees and third parties, during working activities both at the corporate sites and when transferred to risk zones (i.e. "Travel Security"). This security policy envisages the identification and assessment of risks brought about by threats deriving from deliberate or culpable events or actions not strictly related to the work (e.g. acts of terrorism, robbery, kidnapping, etc.) and the definition of security measures according to risk assessment. The personnel safety area also includes awareness-raising and training for the spread of the culture of safety within the organization, relative to regulatory, methodological and behavioral aspects to be observed in order to protect the company assets.

## Special duties

### Manager responsible for structures containing asbestos

As regards the requirements envisaged by Article 12 of Italian Law no. 257/92 and Ministerial Decree of 9/6/1994, the Manager of the structures containing asbestos must ensure compliance with the rules and procedures and, in particular:

- examine the register of structures containing asbestos, which is delivered to him,
- make sure that documentation is supplied relative to the structures containing asbestos to the competent administrative authorities,
- inspect the places with the presence of asbestos at least once a year and, in any case, each time such should be necessary following significant external events, which may damage the materials, such as, for example, a hailstorm, a whirlwind, etc.,
- in the event of changes to the situation defined by the record of structures containing asbestos, draft a detailed report filling in a sheet like that contained as an annex to the Ministerial Decree of 9/6/1994, the report must be complete with photographic documentation and documents showing the location of the materials containing asbestos,

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- if interventions are needed that may disturb the materials containing asbestos or the removal of asbestos, specific procedures must be observed, which are laid down by the law, with the involvement of specialized enterprises and work plans approved by the Supervisory Bodies.

## **HR Manager**

The HR Manager maintains relations between the workers and the company on topics relating to prevention and safety, in particular:

- he assists the Employer in relations with the RLS, with trade union organizations and employees in general,
- he controls the formal correctness of the legal procedures relating to the keeping of the medical documentation, the sending to the appointed entities and the delivery to the individual workers of documentation in the event of termination of employment,
- he collaborates with the Prevention and Protection Service in archiving information about personnel training.

At each Local Unit, the Employer delegates a representative of the HR Department to carry out all procedures relative to the reporting of employee injuries of the reference Local Unit in regard to INAIL and E.R. Authorities.

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## **10 SPECIAL PART “C 1” - CRIMES OF EMPLOYMENT OF CITIZENS OF THIRD COUNTRIES WITH INVALID RESIDENCY AND ENSLAVEMENT OR MAINTAINING IN SLAVERY**

### **10.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 25-*duodecies* of Italian Legislative Decree no. 231/2001, as introduced by Italian Legislative Decree no. 109 of 7.16.2012 (refer to the relevant Model annex for a detailed description):

- Art. 22, paragraph 12-bis of Italian Legislative Decree no. 286/1998,
- Art. 12, paragraphs 3, 3-bis, 3-ter and 5 of Italian Legislative Decree no. 286/1998

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and the following Art. 25 - *quinquies* of Italian Legislative Decree no. 231/2001, as introduced by Italian Law no. 228/2003 and subsequently amended by Italian Legislative Decree no. 24 of March 04, 2014 (refer to the relevant Model annex for a detailed description):

- enslavement or maintaining 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),
- possession of pornographic material (Art. 600-quater),
- virtual pornography (Art. 600-quater1 of the Italian Criminal Code),
- tourism initiatives aimed at exploiting child prostitution (Art. 600-quinquies of the Italian Criminal Code),
- people trafficking (Art. 610 of the Italian Criminal Code),
- purchase and sale of slaves (Art. 602 of the Italian Criminal Code),
- unlawful intermediation and exploitation of labor (Art. 603-bis),
- solicitation of children (Art. 609-undecies).

## 10.2 AREAS EXPOSED TO RISK

The areas considered as at risk for the crime of the use of third-country citizens whose stay is irregular, are as follows:

- C1.1 selection, hiring and management of personnel,
- C1.2 procurement of goods, services and consultancy from suppliers employing illegal workers.

## 10.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

In the context of the above conduct, it is forbidden in particular to:

- to uphold, promote, collaborate or give rise to the upholding of conduct such as, considered individually or collectively, to form the crimes considered under Article 25-*duodecies* and Article 25-*quinquies*, limited to the crime of enslavement or maintaining in slavery of the Decree, also in the form of action in concert,
- behave in such a way that, although not constituting an offense among those considered above, could potentially become such,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics.

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The Model Addressees shall also comply with the following principles:

- always consider the protection of workers prevalent over any economic consideration,
- not make any use of child labor and not collaborate with any subjects doing so,
- guarantee working conditions that respect the dignity of the person,
- verify, at the time of hiring and throughout employment, that any workers from other countries have valid residency permits,
- obtain from enterprises operating at corporate sites and offices, a declaration that their employees and personnel continuously present at the company, have a valid residency permit,
- provide for specific contractual clauses in the orders/contracts in order to ensure compliance with labor contracting legislation as well as with the Code of Ethics and the Model,
- the measures must be envisaged set out in the corporate procedures aimed at preventing the use of unlawful labor and protecting workers.

As regards the **selection, hiring and management of personnel**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) (see also the corporate procedures on “selection & recruitment” and integrated HR management - see attached list of procedures).

With reference to the **management of consultancy contracts and professional service agreements**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) (see the corporate procedure on consultancy - see attached list of procedures).

With reference to **relations with suppliers of goods and services**, the Company complies with the control principles described in Special Part A (Crimes to the detriment of the Public Administration) for risk area A.11 (see the corporate procedures on the Procurement process - see attached list of procedures).

In addition, the principles of conduct required **to protect health and safety at work**, as per Special Part C (Manslaughter and grievous or very grievous bodily harm committed in breach of accident prevention legislation and the protection of health and safety at work), chapter 9.5, also apply to this risk area.

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## **11 SPECIAL PART “D”- FENCING, MONEY LAUNDERING AND USING ILLEGALLY OBTAINED MONEY, ASSETS OR OTHER ILL-GOTTEN GAINS, AND SELF-LAUNDERING, FRAUD AND COUNTERFEITING MEANS OF PAYMENT**

### **11.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.
- It is also prohibited to act in any way in conflict with the provisions of the law.
- 

The crimes to which this Special Part refers are the following pursuant to Art. 25-octies of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description):

- handling stolen goods (Art. 648 of the Italian Criminal Code)
- laundering (Art. 648 bis of the Italian Criminal Code)
- use of money, goods or utilities of unlawful origin (Art. 648 ter of the Italian Criminal Code)
- self-laundering (Art. 648 ter 1 of the Italian Criminal Code)
- counterfeiting means of payment (Art. 493 ter and quater of the Italian Criminal Code).

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## 11.2 AREAS EXPOSED TO RISK

The risk areas identified consist of the following activities:

- D.1 Management of cash and financial flows
- D.2 Procurement of goods, services and consultancy
- D.3 Holding activity management
- D.4 Management of the general accounts and preparation of the draft consolidated and statutory financial statements and any equity positions, including when performing extraordinary transactions
- D.5 Management of the administrative-accounting activities of client companies under outsourcing agreements

With reference to said areas, below are comments - in summary form and merely by way of example - on the procedures through which the predicate offenses could be committed.

### D.1 Management of cash and financial flows

### D.2 Procurement of goods, services and consultancy

With reference to cash and financial flows, there could potentially be a risk, albeit only a remote one, of the committing of the crime of laundering and self-laundering of monies or other benefits using the transaction as cover, for:

- the handling or transfer of funds by or in the favor of third parties located in “tax havens” or “countries with preferential tax regimes” (or whose supporting banks for the transaction are located in such countries), without there being an underlying cause justifying the transfer (i.e. without there being any business relationship between the payment recipient and the party ordering the relevant payment), or in the presence of a cause that cannot concretely be ascertained (e.g. payment of intangible and/or consultancy services),
- transactions involving the frequent opening and closing of bank accounts with banks based in “tax havens” or “countries with preferential tax regimes”, without this appearing to be justified in light of objective needs or the business carried out.

With reference to the crime of handling stolen goods, the Company considers it appropriate to view the goods purchases management process as a possible risk area, defining protocols to oversee the potential perpetration of the crime, including:

- the register of suppliers and their assessment,
- verification, through the available information, of the commercial counterparties, so as to ascertain the relative respectability and reliability before starting business relations with them, etc.

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### **D.3 Holding activity management**

With reference to the sensitive area connected with the holding of assumption/acquisition of investments, there could potentially be a risk, albeit only a remote one, of the committing of the crime of laundering of monies or other benefits using the transaction as cover, to:

- replace or transfer goods or other benefits from crime committed without intent,
- carry out, in connection with said assets, other transactions aimed at hindering the identification of their unlawful origin,
- use in economic or financial activities of money, goods or other benefits of illegal origin.

And, in particular, the unlawful conduct may be implemented through:

- payment of the investments acquired through the use of cash or inappropriate payment means with respect to common practice,
- acquisition of investments in companies with their registered office in foreign countries known as “off-shore centers” or characterized by preferential tax regimes or those covered by bank secrecy or indicated by the Financial Action Task Force (FATF) as non-cooperative companies,
- establishment of fiduciary foreign companies and “dummy” companies or the acquisition of investments in such,
- establishment of particularly complex, articulated corporate structures, also in connection with the distribution of investments and placement abroad or one or more companies,
- acquisition of investments in exchange for considerations of value that is clearly different from market value.

### **D.4 Management of the general accounts and preparation of the draft consolidated and statutory financial statements and any equity positions, including when performing extraordinary transactions**

With reference to the sensitive area connected to the management of general accounts, the risk of the perpetration of said crime may, by way of principle, occur in the event of:

- frequent purchases of real estate in “tax havens” or “preferential tax regime countries”,
- purchases of luxury goods of high value, not consistent with the corporate business.

### **D.5 Management of the administrative-accounting activities of client companies under outsourcing agreements**

With regards to the outlining and identification of sensitive and relevant areas in accordance with the Decree, it is noted that some of the subjects indicated by Italian Legislative Decree no. 231 of 2007 (Articles 11 *et seq.*) on money laundering, although not qualified intermediaries and not requiring qualification, are in any case the addressees of specific duties in terms of money laundering. Such subjects include, amongst others:

- agencies involved in real estate mediation,
- the management of casinos,

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- trade, imports and exports of gold
- debt collection,
- the subjects registered on the list of accountants and expert accountants, on the register of auditors of accounts, on the list of registered accountants and on the list of employment consultants,
- notaries and lawyers, when, for or on behalf of their clients, they carry out any financial or real estate transaction and when they assist their clients in designing or pursuing transactions involving, amongst others:
  - i) the transfer by any title of real estate or economic business,
  - ii) the management of money, financial instruments or other assets,
  - iii) the establishment, management or administration of companies, entities, trusts, etc.,
- all other subjects providing services supplied by experts, consultants and other subjects professionally going about the accounting and tax business (Art. 12, paragraph 1, point b) Italian Legislative Decree no. 231/07).

Under the scope of its business, Hitachi Rail STS takes part, as a consortium company, in consortia established in order to coordinate the design, management and execution of works.

Under the scope of these consortia, the Company acts as General Coordinator, also keeping and managing the accounts of the consortia of which it is a member. The role of General Coordinator is remunerated in accordance with agreements stipulated between the consortium companies.

The above services can only be justified with the participation of Hitachi Rail STS in the consortium and the role of General Coordinator, as the service is functional to the organization and correct function of the consortium.

Therefore the Company - in accordance with Decree no. 60 of the Ministry of Economy and Finance of April 10, 2007, which, amongst others, corrects the earlier Ministerial Decree 141/2006 on anti money laundering obligations for professionals - could be a subject professionally carrying out accounting and, therefore, the addressee of provisions on anti money for the identification, storage of information for anti money laundering purposes and reporting of suspicious transactions to the Consolidated Archives. In the uncertainty of interpretation and for the sake of prudence, Hitachi Rail STS considers itself to be an addressee of said rules.

### **11.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

The Company operates in such a way as to foster the prevention of money laundering, self-laundering, handling stolen goods and the use of items of unlawful origin.

More specifically, the corporate procedures aimed at preventing money laundering and self-laundering are intended to:

- define roles and responsibilities in the management of the purchase verification process,

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- identify the reliability of suppliers in order to verify their reliability also in terms of the correctness and traceability of economic transactions with them, avoiding any onset or pursuit of transactions with subjects that do not have or maintain over time suitable requirements of traceability and correctness,
- check through the available information, of the commercial counterparties, so as to ascertain the relative respectability and reliability before starting business relations with them,
- monitor that suppliers retain their requirements of reliability, correctness, professionalism and integrity over time,
- select professionals and partners on the basis of criteria of transparency, economics and correctness, guaranteeing the traceability of the activities aimed at proving said criteria,
- carry out due diligence aimed at assessing the professionalism, competence and experience of the professional, as well as identifying any incompatibilities and conflicts of interests,
- ascertain the integrity requirements of the professional and verify the existence of any criminal sentences or sanctions against him,
- ascertain the location of the site or residence of the Professional, which must not be in a preferential tax regime country, unless contracts are to be stipulated with professionals resident in preferential tax regimes and this country is the same in which the professional services will be provided,
- guarantee the suitability of the assessment process for the acquisition of investments in an Italian or foreign legal entity and the identity of the counterparty (see the corporate procedure on M&As: - see attached list of procedures),
- determine the minimum requirements to be met by bidders and set the criteria for assessing bids in standard contracts,
- identify the body/unit responsible for executing the contract, indicating the duties, roles and responsibilities,
- verify the regularity of payments, with reference to the complete matching of recipients/orderers of payments and counterparties effectively involved in the transactions,
- perform formal and substantive controls over corporate cash flows, with reference to payments to third parties and infra-group payments/transactions, taking into particular account the registered office of the counterparty company, the credit institutes used and any corporate screens and trust structures used for extraordinary operations or transactions,
- regulate the recording and storage of data relative to the transactions, including those relating to infra-group transactions,
- guarantee the preparation and update of the database of suppliers,

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- establish contractual standards for the issue of purchase contracts/orders,
- guarantee the correct management of the tax policy, including with reference to any transactions with the countries pursuant to the Ministerial Decrees of November 21, 2001 and January 23, 2002 as subsequently amended and supplemented,
- guarantee the signaling of transactions that look suspicious in respect of the legitimacy of the origin of the amounts concerned by the transaction or reliability and transparency of the counterparty,
- fulfill anti money laundering requirements assigned to the Company in accordance with Italian Legislative Decree no. 231/2007 (Communication of breaches of the prohibition to transfer cash or securities to the bearer over and above 12,500 euros/Due diligence on customers and the recording of professional services in the Archives/Reporting of suspicious transactions to the FIU/Training of employees and collaborators), taking care, within the limits of the relevant attributions, to avoid any conduct that may, in any way, suggest conduct typical of the crime of money laundering (Art. 68-bis of the Italian Criminal Code) or the use of monies, goods or benefits of unlawful origin pursuant to Art. 648 - ter of the Italian Criminal Code,
- identify and implement specific internal control programs, also with regard to the matter under review, with specific regards to the management of payments and treasury, agreements/joint ventures with other enterprises, inter-company transactions, taking particular account of the economic fairness of any investments,
- ensure the constant training and information of corporate representatives on topics relating to the prevention of money laundering,
- highlight the activities and controls performed.

In addition, in going about their corporate duties and tasks, Addressees must comply with all rules regarding the limits to the use of cash and securities to bearers, envisaged by Italian Legislative Decree no. 231/2007, as amended both in connection with the management of cash flows coming under the purview of the Company and in connection with the management of cash flows on behalf of customer businesses through outsourcing.

To this end, merely by way of example, it is expressly prohibited:

- to transfer for any purpose between different subjects, except through banks or electronic money institutions or Poste Italiane S.p.A., cash or bank or post office bearer deposit books or bearer securities in euros or foreign currencies, when the value of the transaction, even if split, amounts equal to or greater than the limits under Italian Legislative Decree 231/2007, as amended,
- to issue bank and post office checks for amounts equal to or greater than the amounts referred to in Italian Legislative Decree 231/2007, as amended that do not indicate the name or company name of the beneficiary and the clause on non-transferability,
- to transfer bank and post office checks issued to the order of the drawer to subjects other than banks or Poste Italiane S.p.A.

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Addressees must notify the Supervisory Body of any suspicious transactions or breaches of the rules of conduct specified above, of which they have become aware during the professional activities carried out.

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## **12 SPECIAL PART “E”- COMPUTER CRIMES AND UNLAWFUL PROCESSING OF DATA AND CRIMES INVOLVING THE BREACH OF COPYRIGHT**

### **12.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 24-bis of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description):

a) crimes involving “cyber damage” (Art. 24 bis, paragraph 1):

- unlawful access to a computer or telematic system (Art. 615 ter of the Italian Criminal Code),
- interception, impediment or unlawful interruption of computer or telematic communications (Art. 617 quater of the Italian Criminal Code),

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- unauthorized possession, dissemination and installation of equipment aimed at intercepting, preventing or interrupting computer or telematic communications (Art. 617 quinquies of the Italian Criminal Code),
- damage of information, data and computer programs (Art. 635 bis of the Italian Criminal Code),
- damage of information, data and computer programs used by the State or by other public body or, in any case, of public utility (Art. 635 ter of the Italian Criminal Code),
- damage of computer or telematic systems (Art. 635 quater of the Italian Criminal Code),
- damage of computer or telematic systems of public utility (Art. 635 quinquies of the Italian Criminal Code),

b) crimes deriving from the possession or disclosure of codes or other methods aiming to cause cyber damage (Art. 24 bis, paragraph 2):

- unauthorized possession, dissemination and installation of information technology equipment, codes or other methods intended to access an IT or telematic system (Art. 615 quater of the Italian Criminal Code),
- unauthorized possession, dissemination and installation of information technology equipment, devices or program intended to damage or disrupt an IT or telematic system (Art. 615-quinquies of the Italian Criminal Code).

c) crimes relating to falsity in an electronic document and fraud of the subject providing certification services through the digital signature (Art. 24 bis, paragraph 3):

- computer fraud of the party providing electronic signature certification services (Art. 640 quinquies of the Italian Criminal Code),
- falsehood in a public computer document or one with evidential efficiency (Art. 491-bis of the Italian Criminal Code).

d) crime relating to the definition of the national cybernetic security perimeter.

Art. 25 novies envisages the liability of entities in connection with crimes relating to the Protection of copyright, and other crimes connected with its execution (Articles 171, paragraph 1, letter a-bis) and paragraph 3, Art. 171 bis, Art. 171 ter, Art. 171 septies and Art. 171 octies of Italian Law no. 633/1941).

## 12.2 AREAS EXPOSED TO RISK

The areas considered at risk in connection with computer crimes and the crimes of counterfeiting, alteration or use of distinctive marks on engineering works or industrial products, under the scope of the activities carried out by Hitachi Rail STS, are as follows:

- E.1 Development of the signaling applications,
- E.2 Assistance and maintenance of signaling applications,
- E.3 Installation of the technological signaling infrastructure at the client's premises,

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- E.4 Assistance and maintenance of technological infrastructure,
- E.5 Management of the data in the accounting systems,
- E.6 Management of activities required prior to the registration of trademarks and patents, such as: trademark/patent feasibility study, assessment of technical-economic convenience, search in past logs, registration. Development and management of copyright and licenses.

With regards to said areas, below, in summary form and merely by way of example, is a description of the occasions through which the above crimes may be committed.

### **E.1 Development of signaling applications**

With reference to the development of vital<sup>1</sup> and non vital<sup>2</sup> signaling applications, the following occasions for crime have been hypothesized:

- unlawful distribution by the programmer of access codes (e.g. backdoor) to the client computer system, obtained during the development of the application, in order to achieve an economic advantage for the company,
- unlawful installation of programs/procedures aimed at damaging the application, in order to increase the requests for assistance and technical intervention placed by the client.

### **E.2 Assistance and maintenance of signaling applications**

With reference to the assistance and maintenance of vital and non vital signaling applications, the following occasions for crime have been hypothesized:

- falsification of the trace of the system logs and data contained in the juridical recorder<sup>3</sup>, providing evidence in the criminal proceedings, in order to exclude liability or attenuate the evidence position of the entity during a trial,
- unlawful access/maintenance by the operator in the client application in order to carry out an unauthorized activity to the benefit of the Company,
- unlawful distribution of access codes (e.g. backdoor) to the client computer system, in order to achieve an economic advantage for the company,
- damage of the public or private application, altering or erasing data and programs or making the system partially or totally unusable in order to increase the requests for assistance and technical intervention of the client,
- damage of the public or private application, between expiry of the warranty period - set contractually at the time the application is installed - and stipulation of the maintenance contract, in order to reduce the time required to stipulate the maintenance contract,

<sup>1</sup>The vital system guarantees the safety of railway circulation, minimizing the risk of incident potentially involving passengers.

<sup>2</sup>The non-vital system supports the management of railway circulation.

<sup>3</sup>The juridical recorder is an activity log system (events and parameters relating to driving actions) of the carriers.

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- damage of the public or private application, in order to increase the requests for intervention before stipulation/renewal of the maintenance contract and increase the cost of the assistance service.

### **E.3 Installation of the technological signaling infrastructure at the client's premises**

With reference to the installation of the technological signaling infrastructure at the client's premises, the following occasions for crime have been hypothesized:

- unlawful installation of equipment aiming to damage the information system, in order to increase requests for assistance and technical intervention by clients or increase sales of new Company products.

### **E.4 Assistance and maintenance of technological infrastructure**

With reference to the assistance and maintenance of vital and non-vital technological infrastructure, the following occasions for crime have been hypothesized:

- unlawful access/maintenance by the operator in the client technological infrastructure in order to carry out an unauthorized activity to the benefit of the Company,
- unlawful installation of equipment aiming to damage the information system, in order to increase requests for assistance and technical intervention by clients or increase sales of new Company products,
- damage of the public or private infrastructure, altering or erasing data and programs or making the system partially or totally unusable in order to increase the requests for assistance and technical intervention of the client or increase sales of new Company products,
- damage to the public or private infrastructure, between expiry of the warranty period - set contractually at the time the infrastructure is installed - and stipulation of the maintenance contract, in order to reduce the time required to stipulate the maintenance contract,
- damage to the public or private infrastructure, in order to increase the requests for intervention before stipulation/renewal of the maintenance contract and increase the cost of the assistance service.

### **E.5 Management of the data in the accounting systems**

With reference to the management of data in the accounting systems, the following occasions for crime have been hypothesized:

- alteration and falsification of data that flows into the accounts in order to avoid any detection of errors and anomalies during assessments or audits performed by the competent authorities,

### **E.6 Management of copyright protected works**

It is observed that crimes of breach of copyright may take place significantly through the use of computer programs and systems: these crimes may therefore be committed in many areas of activity, given the ample possibility of access by employees and collaborators to computer and telematic data and instruments in the context of the ordinary business activities.

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With reference to the management of works protected by copyright (or license), the following occasions for the perpetration of crime have been hypothesized:

- the making available, with release into a system of telematic networks, of audio and video files, programs for processor, industrial designs protected by copyright, without the necessary authorizations, in order to facilitate the application of specific corporate departments,
- unlawful duplication of a computer program for distribution to employees or a group company, so that they can use it in their regular operations,
- unlawful use of images taken from external “image databases” supplied by a consultancy firm for specific purposes in the context of corporate publications or the organization of institutional events,
- unlawful use of intellectual works (e.g. software) acquired unlawfully from a third party.

### **12.3 ADDRESSEES OF THE SPECIAL PART – GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

The following general rules of conduct apply to the “Addressees” of this Model, who, for any reason, are:

- designated or appointed for the development and installation of vital and non-vital system signaling applications,
- designated or appointed for the assistance and maintenance of the vital and non-vital technological infrastructure and signaling applications,
- designated or appointed for the installation of the technological signaling infrastructure at the client’s premises,
- designated or appointed for the management of data in the accounting systems,
- designated or appointed for the management of intellectual property

With regards to the use and management of computer data, systems, instruments or documents or any other type covered by copyright, all Addressees shall:

- assure the integrity and non-alterability of data, information and computer programs that constitute the tool by which to go about work and the entire computer and telematic assets of the company,
- contribute towards the promotion of a suitable level of safeguarding of third party computer and telematic assets, both private and public, in compliance with the preventive and subsequent control methods implemented by the company,
- apply the procedures aimed at preventing and/or hindering the perpetration of crimes with regards to the works of any type covered by copyright.

Said Addressees are specifically prohibited from:

- implementing, collaborating or giving rise to conduct, which, individually or collectively, may give rise directly or indirectly to any of the offenses considered in this Special Part

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(Art. 24-bis and 25-novies of Italian Legislative Decree no. 231/01) also in the form of action in concert,

- act in any way that is in breach of current law, regulation and corporate procedures or in any case not in line with the principles expressed by this Model and Code of Ethics,
- alter or falsify computerized documents of any type,
- damage or even only alter the function of a third party computer or telematic system as well as the pertinent data, information and programs,
- access without right to data, information or programs contained in third party computer or telematic systems in order to procure undue benefit for the company,
- unduly use, exploit, distribute or reproduce, by any title, in any form, for profit or personal gain, intellectual works of any type covered by copyright.

In particular, for each sensitive area, the following control protocols apply, aimed at mitigating the risk of perpetration of the types of crime envisaged by Art. 24-bis and 25-novies of the Decree:

**With reference to the development of signaling applications:**

- the development of vital and non-vital applications is regulated by a specific method that assures the complete traceability and control of the software life cycle,
- the development of vital and non-vital applications is restricted to specific corporate departments identified in the job descriptions,
- the logical accesses to the systems assigned to the development of vital and non-vital applications are regulated by suitable segregation systems (username and password for the logical segregation of accesses to the computer systems).
- the integrity of the vital application is preserved by a process of multiple verifications and validations (V&V) in accordance with the standards envisaged by European CENELEC standards for rail circulation,
- the integrity of the non-vital application is preserved by the passing of the “factory and acceptance test”, after which a test report is produced.

**With reference to the assistance and maintenance of technological infrastructure and signaling applications:**

- the integrity of the juridical recorder is preserved by a process of multiple verifications and validations (V&V) in accordance with the standards envisaged by European CENELEC standards for rail circulation,
- the juridical recorder is situated on the railway vehicles and the client infrastructure with characteristics such as to make interaction impossible and therefore access to the system through remote connections,
- the physical accesses to the assistance areas are regulated by suitable segregation systems (badges with electronic chip for access to Customer Service offices and identification of predefined stations through controlled routing systems),

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- access to the client system is only permitted to authorized personnel of the competent corporate departments,
- access to the application/infrastructure for corrective purposes is only carried out following a request for intervention of the client to which a ticket is assigned. After consulting with the competent departments, the client is sent a communication indicating the technical problem noted, the type of intervention to be performed and the time estimated for solving it. This communication is followed by client authorization,
- logical accesses to non-vital applications/infrastructures are regulated by suitable segregation systems,
- remote access to the non-vital signaling application by means of mobile supports (e.g. portable PCs) is validated by the Hitachi Rail STS authentication system,
- all accesses are tracked in a system log report, which makes it possible to trace the user and connection time,
- there are tools and processes that, if necessary or on request, can analyze the activities carried out by authorized personnel by means of access to the client SI,
- restricted access to the vital system is guaranteed by the impossibility of system interaction via remote connections insofar as it is a closed system, protected by a metal structure (cabinets) equipped with a mechanical system,
- the integrity of the vital application is preserved by a process of multiple verifications and validations (V&V) in accordance with the standards envisaged by European CENELEC standards for rail circulation,
- the correct function of the system is guaranteed through connections aimed at assuring the constant diagnosis of the client application and infrastructure,
- in cases of connections aimed at assuring the constant diagnosis of the system for the preventive maintenance of the client application and infrastructure, access is only granted to authorized users without edit/write functions, and whose privileges are limited to the collection/vision of data useful for diagnosis,
- technical assistance services from a remote position are normally included in the supply contracts for the entire duration of the warranty, from when the application/infrastructure is installed at the client's premises,
- technical assistance from a remote position is managed, following expiry of the warranty, through a maintenance contract that typically includes payment of fixed monthly charges by the client, regardless of the number of interventions requested/performed, therefore, the increase in the number of interventions does not result in increased earnings,
- any damages caused to the client Information System or application during the performance of the assistance services may be claimed by the client, demanding Hitachi Rail STS pay compensation,

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- situations of structural obsolescence of the equipment, aimed at having a technical proposal issued for suitable replacement are managed, from a technical, contractual and commercial viewpoint, by different departments, in implementation of a suitable system of segregation of roles and responsibilities,
- the proposed sale of new products, following the ascertained obsolescence of the equipment, is performed with due notice and through the definition of a technical project with related estimate of costs,
- once a year, the department managers analyze the statistical and time series of maintenance interventions, with reference to contracts for which the warranty period is approaching expiry or being renewed, in order to note any anomalies. The results of the verification are set out in a summary report.

**With reference to the installation of the technological signaling infrastructure at the client's premises:**

- access to the client infrastructure is only permitted to authorized personnel of the competent corporate departments,
- technical assistance services are normally included in the supply contracts for the entire duration the warranty, from when the infrastructure is installed at the client's premises,
- the contract contains clauses that envisage payment of a penalty by Hitachi Rail STS in the event of damages caused to the client information system,
- correct system function is guaranteed through connections aimed at assuring the constant diagnosis of the client infrastructure.

**With reference to the management of data in the accounting systems:**

- the duties and tasks assigned to the system administrators are included in the company job descriptions,
- the accounting and administrative systems of the company are protected by a profiling mechanism that guarantees the inhibition of transactions in connection with the tasks and duties of each user,
- the company's accounting and administrative systems are equipped with log reports that track the activities performed, the user and the date of the transaction. The log reports are periodically reviewed by the IT department and by the Department Managers,
- the accounting and administrative systems are equipped with back-up procedures to restore the integrity of data and documents,
- system administrator accesses are logged in specific reports.

**With reference to the management of copyright protected works**

- the company is equipped with an IT governance system and procedures for the management of data and information integrity and security and to manage network infrastructures,
- employees shall use the IT tools and systems according to corporate policies and procedures (see the policy on the use of ICT means - see attached list of procedures),

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- periodic checks are performed on the system and application logs in order to promptly identify activities in conflict with corporate procedures, as well as controls on the network in order to verify the existence of any unauthorized accesses and devices,
- the company's technological instruments can prevent and/or impede the perpetration of cyber crimes or breaches of copyright by company representatives through, in particular, undue or unauthorized use of passwords, the possession or installation of software not envisaged by the corporate procedures, devices able to interrupt services or intercept, access to protected sites or sites that cannot be visited,
- the company has adopted procedures aimed at guaranteeing the suitability of the information made available to the public by means of the Internet and programs and other intellectual works covered by copyright,
- specific measures are taken to guarantee the correct use of the materials covered by intellectual property rights, including through procedures controlling the installation of software on the operating systems,
- specific controls are defined and implemented to protect the documents on the basis of their classification.

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## 13 SPECIAL PART “F”- ORGANIZED CRIME

### 13.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes subject of the this Special Part refers are the following (pursuant to Art. 24-ter of Italian Legislative Decree no. 231/2001):

- association with the intent to commit crime (Art. 416 of the Italian Criminal Code),
- Mafia-type association, including foreign (Art. 416-bis of the Italian Criminal Code),
- political-Mafia electoral exchange (Art. 416-ter of the Italian Criminal Code)
- seizure of persons for the purposes of kidnapping or extortion (Art. 630 of the Italian Criminal Code),

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- criminal association for the trafficking of illegal drugs and psychotropic substances (Art. 74 of Italian Presidential Decree no. 309 of October 09, 1990)
- crimes of illegal manufacture, introduction into the State, marketing, sale, possession and possession in a public place or place open to the public, or war or war-type weapons or part thereof, of explosives, unlawful weapons and more common shooting weapons, except for those envisaged by Art. 2, paragraph three of Italian Law no. 110 of April 18, 1975 (Art. 407, paragraph 2, letter a), point 5) of the Italian Code of Criminal Procedure).

It is recalled that in accordance with Art. 10 of Italian Law no. 146/2006, the crimes pursuant to Articles 416 of the Italian Criminal Code, 416-bis of the Italian Criminal Code and 74 of Italian Presidential Decree (309/1990) apply even if committed in a transnational manner.

The following crime of association also applies but only if committed in a transnational manner:

- association with the intent to commit crime aimed at the smuggling of processed foreign tobacco (Art. 291-quarter of Italian Presidential Decree 43/1973),

Crimes of association constitute autonomous crime figures with respect to the scope crimes and are considered as committed even if none of the crimes hypothesized have been committed.

See the relevant annex to the Model for a detailed description of the crimes.

## 13.2 RISK AREAS

Due to the specific nature of the crimes of association, perpetration of which is regardless of the type of crime scope, which may also be crimes not included amongst the Decree predicate offenses and taking into account the multiple relations the Company entertains with third parties, the risk area can be defined as disseminated throughout the company and not located in specific corporate areas at risk.

However, areas can be identified (both in terms of direct area and support area) in which the possibility of deviated conduct is more easily identified if it is considered that the essential element for liability is the interest or benefit of the Entity.

By way of example, these areas of activity are highlighted:

- F.1 procurement of goods, services and consultancy,
- F.2 selection and management of providers in support of the commercial activities and partners in ATIs (temporary consortia) and/or consortia,
- F.3 selection, hiring and management of personnel,
- F.4 management of customer relations during both the offer and order management phases,
- F.5 management of general accounting.

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### 13.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES

The addressees of this special part are the members of the Board of Directors and the Board of Auditors, the managers, employees, collaborators and third parties operating in the above-specified risk areas and all those entertaining commercial or financial relations with the Company.

A special mention must go to the aggravated hypothesis envisaged by the last paragraph of Art. 24-ter of the Decree (the hypothesis of the entity or its organizational unit permanently used to allow or facilitate the perpetration of organized crime), which envisages an autonomous criminal offense for which those holding senior positions within the company are particularly at risk.

The general principles of conduct are recalled envisaged by the Code of Ethics, with which all addressees are required to comply. More specifically, the following conduct is prohibited:

- such as to constitute the crimes considered above (Art. 24 ter of the Decree and, for the perpetration of crimes in a transnational manner, Art. 10 of Italian Law no. 146/2006) or such as to facilitate their perpetration,
- conduct which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially risky,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics.

All those operating on behalf of the Company are required to act in compliance with principles of integrity, prudence, correctness, transparency and honesty, observing the following provisions:

- anyone acting for or on behalf of Hitachi Rail STS who comes into contact with third parties with which the company intends to entertain commercial relations or with which it entertains institutional, social, political or any other relations, is obliged to:
  - inform such subjects of the commitments and obligations imposed by the Code of Ethics,
  - adopt internal initiatives as necessary in the event of refusal by third parties to comply with the Code of Ethics or observe the provisions of said Code.
- all relations with agents, intermediaries and business partners must be hinged on principles of transparency and integrity and must envisage provisions and fees in line with market practice and ascertaining that there are no aspects that may foster the perpetration of crime in Italy or abroad, by third parties,
- constant, continuous verification of the correctness, effectiveness, fairness and compliance with the social interests of the provisions requested, supplied by or in the favor of third parties, so as to guarantee the establishment and maintenance of only correct commercial, financial and consultancy relations that are properly in line with corporate interests and effective, transparent and fair,
- prudence, accuracy and objectivity in the selection, identification or in any case in the assumption and continuation of relations with third parties and the determination of the conditions relating to the relationship in order to prevent the risk of making contact with subjects belonging to national or transnational criminal associations of all types,
- with respect to the law, regulations issued by the competent authorities and internal procedures relative to the management of delegations of spending powers,

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- absolute correctness, transparency and accuracy in accounting entries and tax compliance and the audits required.

In the context of the above conduct, it is forbidden to:

- behave in any way that could be detrimental to the integrity, autonomy or image of the Company or other companies of the Group,
- establish relations with subjects, entities, companies or associations established in any form, in Italy or abroad, which are known or expected or suspected of being part of or in any case linked to or entertaining relations of any type with criminal associations or groups,
- establish relations with subjects who refuse or are reticent to provide relevant information for their correct, effective and complete knowledge or with respect to which there are suspicions as to potential operation in uncollaborative countries, or which request or offer services that, although abstractly beneficial to the Company, are somewhat suspicious or irregular, or which may act in conflict with laws and regulations on the circulation of tax or accounting capital and goods,
- unduly promise or pay amounts or goods in kind to any subject to promote or foster the interests of the Company or Group or directly or indirectly impact competition or the market,
- pay fees to suppliers, consultants or other collaborators without due justification and without any formalized agreements,
- use anonymous instruments to carry out money transfer operations,
- establish relations or perform transactions with subjects if there is a grounded suspicion that such may expose the Company to the risk of one or more crimes being committed.
- transfer money or supply fictitious intercompany services that are not necessary or not in line with market prices and/or not defined in specific service contracts, in order to determine incorrect/untruthful taxable income or create funds that can be used for corruption.

With regards to said areas of corporate business where the risk of a crime is more easily identifiable, reference is made to the principles of conduct and control envisaged in other special parts of the Model, as follows:

- in Special Part A relative to crimes to the detriment of the Public Administration and the justice administration:
  - procurement of goods, services and consultancy,
  - selection and management of providers in support of the commercial activities and partners in ATIs (temporary consortia) and/or consortia,
  - selection, hiring and management of personnel,

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- management of customer relations during both the offer and order management.
- in Special Part B relative to corporate cries and market abuse:
  - management of general accounting.

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## 14 SPECIAL PART “G”- CRIMES IN BREACH OF ENVIRONMENTAL STANDARDS AND CRIMES AGAINST THE CULTURAL HERITAGE AND LOOTING OF LANDSCAPES

### 14.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 25-undecies of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description)::

- **crimes envisaged by the Italian Criminal Code:**
  - environmental pollution (Art. 452-bis of the Italian Criminal Code),
  - environmental disaster (Art. 452-quater Italian Criminal Code),

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- culpable offense against the environment (Art. 452-quinquies Italian Criminal Code),
- aggravating circumstances (Art. 452-octies of the Italian Criminal Code),
- trafficking and abandonment of highly radioactive materials (Art. 452-sexies of the Italian Criminal Code),
- killing, destruction, capture, withdrawal and possession of protected wild plant or animal species (Art. 727-bis of the Italian Criminal Code),
- destruction or deterioration of habitat within a protected site (Art. 733-bis of the Italian Criminal Code):
- crimes against the cultural heritage (Art. 25 septiesdecies),
- laundering of cultural assets, destruction and looting of cultural assets and landscapes (Art. 25 duodevicies).
  
- **crimes envisaged by Italian Legislative Decree no. 152/2006 (Environmental standards),**
  - Art. 137 paragraphs 2, 3, 5, 11 and 13,
  - Art. 256, paragraphs 1, 3, , first and second periods, 4, 5 and 6 first period,
  - Art. 257, paragraphs 1 and 2,
  - Art. 258, paragraph 4, second period,
  - Art. 259, paragraph 1:
  - Art. 260, paragraph 1 and 2 (today Art. 452-querdecies of the Italian Criminal Code),
  - Art. 279, paragraph 5:
  
- **crimes envisaged by Italian Law no. 150/1992 on the international trade of animal and plant species in danger of extinction**
  - Art. 1, paragraphs 1 and 2,
  - Art. 2, paragraphs 1 and 2,
  - Art. 6, paragraph 4:
  - Art. 3-bis paragraph 1,
  
- **crimes envisaged by Italian Law no. 549/1993 on the protection of atmospheric ozone**
  - Art. 3, paragraph 6:

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- **crimes envisaged by Italian Legislative Decree no. 202/2007 on the pollution caused by ships**
- Art. 8, paragraphs 1 and 2,
- Art. 9, paragraphs 1 and 2.

This special part of the Model is an integral part of the environmental management system in place at Hitachi Rail STS S.p.A aimed at assuring the continuous improvement of environmental aspects in offices and on sites.

Hitachi Rail STS has adopted an Environmental Policy and has implemented the related Management System, defining the organization, responsibilities, operating procedures and the investments necessary.

It therefore undertakes to achieve the following objectives:

- to improve its activities also with a view to reducing its overall impact in terms of the climate-altering gases released into the atmosphere.
- to operate as a guarantee of compliance with the legal provisions applicable to its processes, by means of the formalization of procedures that facilitate awareness of the reference legislative framework,
- to prevent environmental pollution,
- to identify the significant direct and indirect environmental aspects for the offices and sites in order to control and monitor the impacts on the environment,
- to involve and sensitize the personnel and suppliers and contractors in regard to environmental topics,
- to improve environmental performance through the achievement of ever more ambitious thresholds, with the economically-feasible application of the best environmental technologies available
- compatibly with the technological evolution of the industry and with budget possibilities,
- to define indicators for easier performance control,
- to start an open dialog with the Public Authorities, the communities and the public to ensure a proper understanding of the actual environmental impacts and to collaborate towards the update of environmental regulations.

All corporate entities are in charge of assuring the scrupulous observance of the principles of the Environmental Management System, the preparation and update of which involves them actively.

See the relevant annex to the Model for a description of the environmental crimes.

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## 14.2 THE ENVIRONMENTAL MANAGEMENT SYSTEM

The management system that, on the basis of the consolidated experience, best allows for a response to the above needs is the environmental management system compliant with standard UNI EN ISO 14001:2004, which, when correctly designed and implemented, assures:

- knowledge of the environmental legislation effectively applicable to the business activities,
- the analysis of the significant environmental aspects of the organization as a whole and with reference to the specific temporary and/or mobile site,
- the planning of the operative control activities necessary to guarantee compliance with the relevant environmental provisions (of the law and/or contract) and other internal provisions as may be envisaged, according to the enterprise's environmental sensitivity and its reference context, to implement its environmental policy and achieve the environmental thresholds and objectives of said enterprise,
- the sensitization and training of personnel, with specific reference to those responsible for coordination and control,
- the definition of an organizational, management and control model for environmental matters, suitably able to satisfy the needs of Italian Legislative Decree no. 231/2001 with reference to the environmental crimes,
- the possibility of measuring the organization's environmental performance,
- the preparation and storage of records that can show the company management team and third parties compliance with all applicable environmental provisions.

Hitachi Rail STS has adopted an environmental management system and under the scope of the system has adopted a series of rules and procedures, both globally (valid for all Group companies, including abroad) and locally.

More specifically, the applicable global procedures are:

- management of the environmental aspects and impacts, including those relative to environmental offenses: the procedure presents the tasks and procedures by which to identify the environmental aspects, to assess the environmental impacts in normal, abnormal and emergency conditions, see the local and specific instructions (offices and sites) for an assessment of the significance and related criteria,
- emergency management: the procedure highlights the duties and procedures for emergency management, which impact the environment, see the instructions issued in Hitachi Rail STS S.p.A for the operative management of emergencies according to current legislation,
- management of environmental pollution and incidents: the procedure explains the duties and procedures by which to formalize and manage environmental pollution and incidents, see the instructions issued in Hitachi Rail STS S.p.A. for the operative management of incidents and the management of any pollution in accordance with current legislation,

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- management of operative control: the procedure explains duties and procedures for the management of significant environmental aspects, see the instructions issued in Hitachi Rail STS S.p.A. for the operative management of significant environmental aspects in accordance with current legislation,
- management of legislative compliance and environmental monitoring: the procedure presents duties and procedures for environmental legislative updates, for the verification of compliance and for the surveillance and monitoring of environmental aspects.

The following procedures (termed “instructions”) have been implemented:

- management of environmental impacts and aspects: the instruction describes duties, roles and responsibilities for the definition of the criteria identified, the assessment of environmental impacts and aspects in normal, abnormal and emergency conditions, initial environmental analysis (AAI), environmental declaration (DA) and environmental management plan (for sites),
- emergency management: the instruction describes the tasks, roles and responsibilities for emergency management that impact the environment in accordance with current legislation,
- management of environmental pollution and incidents: the instruction describes the duties, roles and responsibilities for the management of environmental pollution and incidents in accordance with current legislation,
- management of operative control: the instruction describes duties and procedures for the management of significant environmental aspects, with specific attention to:
  - waste management,
  - management of dangerous substances,
  - management of site environmental aspects (noise, emissions, powders, etc.).

Hitachi Rail STS is also in possession of UNI EN 45001 certification for all plants.

The advantages deriving from the certification of the SGA are as follows:

- the controls of the certification body are periodic (three-year certification, with annual maintenance check) and aim to examine the capacity to prevent environmental breach of the management system and not to determine liability for any such breach,
- the choice to submit its SGA voluntarily to the control of an independent entity bears witness to the organizational efforts made to assure an effective environmental management system.

With the support of HSE, the Employer organizes environmental training for all those identified as responsible for fulfillment of the related requirements.

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### 14.3 RISK FACTORS EXISTING IN HITACHI RAIL STS S.P.A

With reference to the crimes in breach of environmental standards, Hitachi Rail STS acknowledges the environment as a primary asset to be safeguarded and, to this end, plans its activities looking to strike a balance between economic initiatives and essential needs to protect the environment. The Company is constantly committed to ensuring that company operations are carried out in complete respect of the environment, also taking into account the development of the regulations and scientific innovations on the matter.

This continuous improvement is assured by the adoption of UNI EN ?certifications.

In order to prepare this Special Part, the activities have been considered that are carried out both in the offices and on the sites. Group procedures and applicable operating instructions have also been analyzed in respect of environmental protection and how they are applied by the site and office managers. This is also in order to identify which legal articles, included in Article 25 undecies, 25 septiesdecies and 25 duodevicies of Italian Legislative Decree no. 231/01, are applicable to the activities carried out and what breaches could potentially occur.

In the activities it manages with various roles in the offices and sites, Hitachi Rail STS could commit breaches of some of the laws mentioned under Article 25 undecies, 25 septiesdecies and 25 duodevicies of Italian Legislative Decree no. 231/01, in particular, in the opening and/or changing of new sites/offices and their management.

### 14.4 GENERAL PRINCIPLES OF CONDUCT

All those operating for and with Hitachi Rail STS and, in particular, those who, for any reason, oversee or control the Company's activities, on its behalf or in its interests, must apply the general principles of conduct indicated below.

Generally, conduct must be compliant with the provisions of law and internal procedures and it is prohibited to implement, collaborate towards or give rise to any conduct such that, considered individually or collectively, could directly or indirectly determine the types of crime envisaged to protect the cultural heritage and to prevent looting of landscapes.

More specifically, consistently with compliance with the ethical principles that have always guided the Company's action, below is a list of the main obligations that must be observed by the addressees of this Model:

- rigorously observe the rules, regulations and procedures on environmental matters that regulate the conduct of work at the sites and offices of Hitachi Rail STS,
- before starting work, obtain the necessary environmental authorizations and comply with the relevant terms and conditions,
- obtain evidence from suppliers and other third parties, on the basis of the nature of the services provided, of compliance with environmental regulations,
- comply, each insofar as coming under their sphere of operations and competence, with the current provisions on separate waste collection,

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- dispose of the waste produced, appointing the third party entities authorized to collect in compliance with authorization procedures,
- observe the rules and procedures for preparing the loading-unloading register and other systems for the control of waste traceability,
- notify the competent departments of any environmental emergencies,
- notify the competent departments of any inefficiencies and misalignments in environmental management,
- request authorization to connect for domestic drains and industrial establishments,
- comply, each insofar as coming under their sphere of operations and competence, with the current provisions on water drains,
- observe the rules for the respect of limit values for waste water,
- obtain evidence of samples and analyses in compliance with environmental standards and the rules of the competent bodies,
- verify the need for authorization to release emissions into the atmosphere and obtain such where necessary,
- correctly manage substances that are harmful to the ozone layer,
- observe the rules for respecting the landscape,
- observe the rules put in place to protect the landscape particularly when opening new construction sites.

The crime of the “unlawful combustion of waste” envisaged by Art. 256 bis of Italian Legislative Decree no. 152/2006 refers to the prohibitory sanctions set forth in Italian Legislative Decree no. 231/01. For this type of crime, the Company refers to the measures already envisaged in this special part with specific reference to conduct prescribing waste management.

With reference to the crimes introduced by Italian Law no. 68/2015: environmental pollution, environmental disaster and culpable damage to the environment in accordance with Articles 452 bis, 452 quater and 452 quinquies of the Italian Criminal Code, as well as crimes of association that give rise to “aggravating circumstances” in accordance with Art. 452 octies of the Italian Criminal Code, it is highlighted that the relevant risks would appear to already be overseen by the specific principles of control defined above, by the rules envisaged in the procedures, the Code of Ethics and the other Parts of the Model, to which reference is made.

In addition to the above, roles, responsibilities and operating procedures will be defined with a view to planning and implementing regular, systematic legislative conformity checks including the aspects envisaged in title VI - bis of the Italian Criminal Code.

As, in addition, under the scope of the risk areas, the conduct of third party companies to which the organization may entrust part of the activities becomes important, the specific control principles envisage the existence of a company regulation governing the selection of partners and suppliers, regulating the relevant contractual aspects and monitoring performance, with a view to

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guaranteeing that the partners and suppliers to which activities relevant in environmental terms are entrusted are suitable in technical, professional and authorization terms and are contractually bound to comply with current environmental standards and the specific requirements laid down by the organization. More specifically, this company regulation defines the roles, responsibilities and operating procedures for:

- the identification of the types of partners and suppliers of environmental relevance,
- the initial qualification of partners and suppliers through the verification of compliance with the regulatory requirements applicable to them and their environmental performance,
- the definition of information that must be given to partners and suppliers about the rules and regulations to be respected when going about their activities in a partnership and/or on behalf of the Company,
- supervision of the partners' and suppliers' work,
- reporting of any discrepancies/potential discrepancies with respect to the provisions of current environmental standards and the specific requirements established by the organization and the definition of corrective action aiming to avoid any repetition of the discrepancies/potential discrepancies identified,
- traceability of all activities relating to the selection process and assignment to third parties of activities of environmental relevance and all activities relative to the performance monitoring process of partners and suppliers.

## 14.5 THE ORGANIZATIONAL SYSTEM

The company Hitachi Rail STS S.p.A. is organized in the various functionally autonomous sites (sites and offices) through a system of delegations.

This system of delegations applies both for orders acquired directly by the Company and the participation in temporary consortia (ATI) with other partners, as per the agreements defined in the specific grouping.

The system of delegations defines powers, duties and responsibilities on environmental protection, as follows:

### ***Employer***

The employer guarantees compliance with the environmental procedures envisaged by the Integrated Management System (IMS) through the HSE function, technical site directors, and managers to the extent of their responsibility, by:

- attributing to the hierarchical line below him (Site Foreman and Site Manager, first and foremost) specific powers and duties to guarantee compliance with the law and regulations on environmental matters, as applicable to the relevant site, assessing the requirements of professionalism and competence and attributing them delegations and powers as necessary,
- monitoring the application of the delegated duties.

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### ***Technical Site Director and Site Manager***

The Technical Site Director and Site Manager must fulfill all obligations received by delegation from the Employer, monitoring compliance with environmental provisions in the site/office by the hierarchical line beneath them.

### ***Site Foreman***

As person appointed to carry out the activities connected with the development, including compliance with environmental legislation, the Site Foreman must:

- implement measures to prevent the environmental impacts resulting from the Initial Environmental Analysis (AAI),
- highlight any shortcomings in the prevention of environmental impacts,
- intervene in environmental emergency situations by taking the measures set forth in the AAI,
- monitor compliance with rules on the prevention of environmental impacts,
- monitor the efficiency of the measures, equipment and machinery.

The powers, duties and responsibilities of the Employer and Site Director or Site Manager, as regards authorizations, analyses of environmental impacts, waste management and operative control for the environment, are regulated as follows.

### **Authorizations**

#### **Employer**

If new activities are started, with the help of HSE, the Employer shall:

- verify that the necessary environmental documentation, prepared by the Project Manager with the assistance of the Site Director and/or Site Manager, is complete,
- ensure that works are not started before authorization is obtained.

#### **Technical Site Director and Site Manager**

In the event of activities in progress, the Technical Site Director or Site Manager shall:

- keep current authorizations up-to-date,
- verify the need for new authorizations or the supplementation/change of those in place,
- take action to obtain such authorizations,
- notify the Employer of such new authorizations necessary and obtained.

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## **Analysis of the environmental impacts**

### **Employer**

In collaboration with the Head of HSE, the Managers and Technical Site Directors, the Employer prepares the environmental impact assessments (Initial Environmental Analysis, AAI) related to:

- the activities carried out at the various sites (Genoa, Naples, Tito, Piossasco, Pistoia and Reggio Calabria),
- the activities carried out at temporary or mobile sites,
- after-sales assistance activities,

identifying the consequent measures to prevent negative environmental impacts, including the program of measures considered appropriate to guarantee an improvement in the environmental compatibility of the activities carried out and emergency management over time.

### **Technical Site Director and Site Manager**

The Technical Site Director or Site Manager shall, also using the support of HSE:

- analyze the specific environmental impacts deriving from the works envisaged and site organization,
- identify a program of measures deemed appropriate to guarantee the prevention of pollution and the reduction of the main environmental impacts.

## **Waste management**

### **Employer**

In order to guarantee correct waste management, the Employer has issued a procedure in which:

- the main categories of waste are identified and the correct methods for its temporary deposit, with particular reference to hazardous and non-hazardous special waste,
- the methods are defined used to confer waste to the collection and disposal companies, including the criteria for verifying that they have the necessary authorizations,
- the periodic due dates set by current legislation (Italian Legislative Decree no. 152/2006 as subsequently amended and supplemented) are summarized.

Through collaborators, the Employer verifies the correct application of the procedure, receiving the relevant reports.

### **Technical Site Director and Site Manager**

The Site Directors and Site Managers are responsible for the correct application of the procedure for the classification, storage and disposal of waste produced at their site, in particular:

- the responsibilities must be identified for managing waste on the site,

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- the correct classification, deposit and disposal of the waste produced by Hitachi Rail STS must be verified, as well as its registration,
- instructions must be given to ensure the rigorous surveillance of compliance with contractual requirements governing the management of waste produced by third parties on the site and documented evidence obtained.

## **Operative environmental control**

### **Employer**

With the collaboration of HSE, the Employer organizes environmental audits and supervision, in particular to make sure that:

- the procedures envisaged are applied correctly in all sites,
- all workers have received suitable information/training on environmental and pollution prevention matters, including as regards environmental crimes,
- the necessary environmental authorizations for Hitachi Rail STS to go about its business are suitable and maintained valid and effective,
- the procedures to be adopted in the event of an environmental emergency are adequate and periodically verified,
- a register is kept noting any incidents with significant environmental impacts in chronological order.

In addition, the Employer also periodically reviews the Environmental Management System.

### **Technical Site Director and Site Manager**

With the help of the appointed persons, the Technical Site Director or Site Manager shall:

- supervise observance of the environmental legislation and other environmental protection measures envisaged,
- guarantee that the environment management system, made operative through the preparation of the Initial Environmental Analysis, is effective,
- ensure application of the procedures to be adopted in the event of an environmental emergency,
- manage the site taking into account the other activities carried out at or near the site,
- prepare and manage a register noting any incidents with negative environmental impacts in chronological order.

## **Legislative adjustments**

In order to guarantee the legal conformity of the contracts, the Legal Department collaborates with HSE to define, in particular as regards the aspects relative to environmental protection, the clauses to be included in contracts with third parties.

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In order to guarantee the continuous regulatory update of the Management System and the procedures relative to environmental aspects, HSE identifies the applicable environmental legislation, suggests the changes to be made to the Model and notifies the Employer, the Site Directors and the Site Managers.

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## 15 SPECIAL PART "H"- CRIMES CONCERNING OBSTRUCTION OF JUSTICE

### 15.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are as follows (refer to the Model annex for a detailed description):

- inducement to not make statements or to make false statements to the judicial authority pursuant to Art. 377 *bis* of the Italian Criminal Code and envisaged in the Decree by Art. 25 *decies*,
- personal aiding and abetting: pursuant to Art. 378 of the Italian Criminal Code in accordance with Art. 10, paragraph 9 of Italian Law no. 146 of 03.16.2006.

### 15.2 AREAS EXPOSED TO RISK

The **Management of legal and amicable disputes and relations with the legal authority** is identified as an area at risk of the crime of inducement not to make declarations or to make false declarations to the legal authorities. This area includes the activities relating to disputes managed by the company, including on an international level, in an administrative, criminal or civil court.

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Merely by way of example, we can, for example, mention the hypothesis whereby a person, called to make a declaration to the legal authorities in connection with the perpetration of a crime abstracting involving the Company's liability, is caused, through threats (e.g. dismissal) or offers (e.g. promotion) to lie or not to make the declarations requested by the legal authorities, which may determine the Company's involvement in the proceedings.

As regards the crime of aiding and abetting, again by way of example, the hypothesis can be mentioned whereby logistic support (e.g. cover for a mission) is provided to a company representative under investigation for crimes committed abroad.

In accordance with Art. 377-bis of the Italian Criminal Code, a subject can be induced not to make a declaration or to make false declarations to the legal authorities with violence or threats or offers of money or other gains. In this latter regard, the areas instrumental to the perpetration of the crime such as the following, are considered as areas at risk for this crime too:

- H.1 finance and treasury,
- H.2 management of transfers and the reimbursement of costs, entertainment expenses, hospitality and gifts, sponsorships and donations,
- H.3 selection, hiring and management of personnel,
- H.4 procurement of goods, services and consultancy.

### **15.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the "Addressees").

The Company pursues a policy of transparency in relations with the Legal Authority and, more generally, with all Authorities with tasks of verification and control relating to the activities performed by the Company. To this end, the provisions of this Special Part are considered valid not only in regard to the bodies of the legal authority in this capacity, but also those holding control duties for the public administration or other entities.

This Special Part envisages the express prohibition for said Addressees of behaving in any way:

- such as to constitute the crimes considered in this special part (25-*decies* of the Decree and Italian Law no. 146/ 2006 and Art. 10 paragraph 9), also in the form of acting in concert,
- which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially such,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics,
- to coerce, in any way and using any means, in the interests or to the benefit of the company, the desire to answer the legal authority of persons called to make declarations or to cause them to avail themselves of the faculty not to answer,
- to encourage, in any way, persons called to make declarations to the legal authority to make untrue declarations,
- to disburse, offer or promise money, gifts, presents or other advantages to persons called to make declarations before the legal authority.

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The Model Addressees shall also comply with the following principles:

- to base their work and operations on complete compliance with current legislation and the Model and Code of Ethics
- to maintain clear, transparent, diligent and collaborative conduct with the legal authority,
- to make truthful, transparent and complete declarations to the legal authorities, representative of the facts.

With reference to the **management of disputes and relations with the legal authorities**, the Company's business shall comply with the following control principles as per Special Part A (Crimes to the detriment of the Public Administration).

Similarly, reference is made to Special Part A (Crimes to the detriment of the Public Administration) with regards to the control principles relative to the **areas instrumental to the perpetration of the crime** of inducement not to make declarations or to make false declarations to the legal authorities.

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## **16 SPECIAL PART “I”- CRIMES AGAINST INDUSTRY AND TRADE AND COUNTERFEITING CURRENCY, LEGAL TENDER, DUTY STAMPS, AND DISTINCTIVE SIGNS OR MARKS**

### **16.1 INTRODUCTION**

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are some of the crimes against industry and trade pursuant to Art. 25-*bis* 1 and letter f-*bis* of Art. 25-*bis* of the Decree (see the related annex to the Model for a detailed description), as follows:

- Disturbance of the freedom of industry or trade (Art. 513 of the Italian Criminal Code)
- Fraud against national industries (Art. 514 of the Italian Criminal Code)
- Fraud in trade (Art. 515 of the Italian Criminal Code)
- Sale of non-genuine foods marketed as genuine (Art. 516 of the Italian Criminal Code)
- Unlawful competition with threats or violence. (Article 513 bis of the Italian Criminal Code)
- Sale of industrial products with untruthful markings (Art. 517 of the Italian Criminal Code)

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- Manufacture and sale of goods developed with the usurpation of industrial property rights (Art. 517-ter of the Italian Criminal Code)
- Counterfeiting of geographical indications or denomination of origin of agricultural food products (Art. 517-quater of the Italian Criminal Code).

And, amongst the crimes pursuant to Art. 25-bis (crimes of forgery of money, public credit cards, stamp duty and identification instruments or marks), the situation envisaged by Art. 473 of the Italian Criminal Code “counterfeiting, alteration or use of distinctive marks or signs of intellectual works or industrial products”.

With regards to the case of Article 473, confiscation is always ordered of the objects that were used or intended to commit the crime and the objects that are the subject, product, price or profit, to whomever they belong. If no longer available, the court orders the confiscation of the goods available to the perpetrator for a value equal to the amount of the profit.

Confiscation does not apply when the objects that were used or assigned to commit the crime, or concerned therewith, the product, price or profit, belong to persons unrelated to the crime, if they can prove that there were unable to foresee the criminal use, even on an occasional basis, or criminal origin and that there was no lack of vigilance. In addition, again with reference to the situation pursuant to Art. 473 of the Italian Criminal Code, if the crime is committed systematically or through the preparation of organized means and activities, the criminal code envisages a specific aggravating circumstance.

The principles of conduct and control envisaged in this Special Part are considered abstractly able also to prevent the other types of crime, pursuant to Art. 25 bis, letter f-bis and Art. 25-bis1, not listed above, although not seeing any concrete risk of such being committed.

## 16.2 AREAS EXPOSED TO RISK

The areas considered at risk for crimes against industry and trade are as follows:

- I.1 Stipulation, execution and management of contracts/orders with private customers,
- I.2 Stipulation, execution and management of contracts/orders with public entities/customers and/or concession-holders of public services,
- I.3 Management of research and development and intellectual property.

With regards to the **stipulation, execution and management of contracts/orders** (both with private clients and public clients/entities and/or public service concession-holders), there is a potential risk of perpetration of crimes against the industry and trade, for example in the following hypotheses:

*Disturbance of the freedom of industry or trade (Art. 513 of the Italian Criminal Code)*

The crime could be committed in the case of the destruction/damage of products or components of third party companies competitors of the company in the interests and to the benefit of the company.

*Fraud in trade (Art. 515 of the Italian Criminal Code)*

The crime could be committed by means of the delivery of a product that is partly different to the technical specifications requested by the client.

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*Sale of industrial products with untruthful markings (Art. 517 of the Italian Criminal Code)*

The crime could be carried out by means of the use of intellectual works e.g. software, including of third parties, which recall similar works merely in order to mislead the final buyer.

*Unlawful competition with threats or violence. (Article 513 bis of the Italian Criminal Code)*

The crime could be carried out by means of threatening a competitor with unfair damages (e.g. damages to image) to obtain an undue benefit (e.g. withdrawal from the tender, price reduction, etc.).

With regards to the **management of research and development and intellectual property**, there is the potential risk of the perpetration of crimes against industry and trade, for example in the following hypotheses:

*Manufacture and sale of goods developed with the usurpation of industrial property rights (Art. 517-ter of the Italian Criminal Code)*

The crime could be committed by means of the pursuit and/or use, during development and/or production, of applications or products whose intellectual property is owned by third parties, without paying them the charges due to them by rights of ownership.

*Counterfeiting, alteration or use of logos of intellectual works or industrial products (Art. 473 of the Italian Criminal Code)*

The crime could be committed by means of the counterfeiting, alteration or use of distinctive marks, intellectual works or industrial products for the sole purpose of misleading the end buyer.

## **16.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES**

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

In the context of the above conduct it is forbidden in particular to:

- behave in such a way as to constitute the crimes considered in this special part (25 bis, letter f-bis and Art. 25-bis1 of the Decree), also in the form of acting in concert,
- behave in such a way that, although not constituting an offense among those considered above, could potentially become such,
- act in any way that is in breach of current law, regulation and corporate procedures or in any case not in line with principles expressed by this Model and Code of Ethics,
- act violently or with intimidation or impact the commercial, industrial or production activities of third parties in order to hinder/eliminate competition,
- act in such a way as to discourage the participation of other bidders, in the case of public tenders, or to obtain information useful to procuring unfair advantage to the detriment of other subjects involved,
- implement collusive agreements with other enterprises aimed at obtaining the award of tender contracts to the detriment of other bidders, or discourage bidders from submitting competitive bids,

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- implement acts of violence on third party property (e.g. damage or transform goods of third parties/competitors)
- spread news and reviews of the products and activities of a bidder such as to discredit it or misappropriate values of the products or enterprise of a competitor,
- directly or indirectly use any means that do not comply with the principles of professional correctness and are likely to damage the business of others, acts in unfair competition,
- use, in any way, shape or form, trademarks, patents, names and other distinctive markings of which it does not have exclusive ownership and/or legitimate title to use,
- market industrial products with patents, trademarks or other distinctive markings that are counterfeit or altered or not owned,
- sell intellectual works or industrial products with names, marks or logos such as to mislead the buyer as to the origin, source or quality of the work or product
- act in unfair competition and, in particular:
  - use names or logos that can cause confusion with names or logos legitimately used by others or slavishly imitate the products of a bidder or use any other means able to create confusion with the products and business of a competitor,
  - counterfeit, alter or use goods of any kind with counterfeit trademarks or industrial titles in order to damage the manufacturers,
  - sell or otherwise put into circulation intellectual products with national or foreign names, marks or logos able to mislead the counterparty or create potential confusion with similar products.

The Model Addressees shall also comply with the following principles:

- all activities and operations carried out on behalf of the company are based on complete compliance with current laws and the principles of correctness, transparency, good faith and the traceability of documentation:
- maximum compliance is assured between the effective conduct and that required by internal procedures, paying particularly close attention to all aspects regarding “sensitive” activities in areas “at risk of crime”,
- those performing controls and supervision in respect of compliance linked to the fulfillment of such “sensitive” activities pay particularly close attention to the fulfillment of said requirements:

With regards to the **stipulation, execution and management of contracts/orders** (both with private clients and public clients/entities and/or public service concession-holders), the Company’s business complies with the principles of control already described in Special Part A (Crimes against the public administration).

With reference to the **management of research and development and intellectual property**, the Company’s business complies with the following control principles (see also the corporate procedure on intellectual property - see the attached list of procedures):

- the company has defined procedures, organizational roles and powers for the protection of its own and third party intellectual property rights, such as patents, trademarks, know-how, copyright and other rights,

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- relations with the competent Patents and Trademarks Office for the registration of trademarks/brand names or the renewal of registered trademarks, are handled by specialized technical firms,
- ownership of industrial property rights is protected by means of specific contractual clauses in regard to suppliers and customers, which may provide for restrictions on the use of trademarks/patents/licenses, in the case of collaborations with partners, the parties concerned specifically agree on industrial property rights in collaboration agreements, the company can therefore use third party patented systems and/or products only upon obtaining advance formal authorization under the scope of the contract, similarly, the company can use software developed by third parties only upon obtaining prior specific authorization under the scope of agreements (with the exclusion of open source software for which only respect of the related license is required),
- to make sure that a product developed in-house has not already been patented by third parties, specific checks are run (searches in past records),
- if deemed necessary, specialized external companies can be appointed (patent agents) or alternatively searches can be carried out autonomously, accessing reference international databases, in order to verify the existence of previous registered brand names and/or trademarks,
- the external company issues a written report with the results of the searches performed and the situation of the registered trademarks and/or brand names,
- there is a database that keeps track of the trademarks and patents available to the company,
- the Intellectual Property Department coordinates the management of the group's industrial property through a specific IP Committee, which includes the managers of the technical departments,
- corporate publications and software are protected by copyright and the publication of technical information is authorized by the Intellectual Property Department,
- express prohibition of assigning benefits, such as, for example, a promise of employment, to officers of companies and/or university researchers/research centers in order to obtain a trade secret unlawfully.

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## 17 SPECIAL PART “L” - TAX OFFENSES

### 17.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crimes to which this Special Part refers are the following pursuant to Art. 25-*quinquiesdecies* of Italian Legislative Decree no. 231/2001 (refer to the relevant Model annex for a detailed description):

- Fraudulent declaration by using invoices or other documents for non-existent transactions (Art. 2, paragraph 1 e 2-bis, Italian Legislative Decree no. 74/2000),
- Fraudulent declaration through other devices (Art. 3 of Italian Legislative Decree no. 74/2000),
- Issuing of invoices or other documents for non-existent transactions (Art. 8 of Italian Legislative Decree no. 74/2000),
- Concealment or destruction of accounting documents (Art. 10 of Italian Legislative Decree no. 74/2000),
- Fraudulent avoidance of tax payments (Art. 11 of Italian Legislative Decree no. 74/2000),
- False declaration (Art. 4, Italian Legislative Decree no. 74/2000),
- Omitted declaration (Art. 5, Italian Legislative Decree no. 74/2000),
- Undue offsetting (Art. 10 quater of Italian Legislative Decree no. 74/2000).

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## 17.2 AREAS EXPOSED TO RISK

The areas of activity considered as more specifically at risk for this Special Part are:

- L.1 invoicing/reporting management
- L.2 management of relations with suppliers and the purchases sectors
- L.3 management of tax compliance: preparation and sending of data to the tax records and payment of tax

## 17.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES

The Company has principles of conduct able to eliminate the risk of the perpetration of crimes indicated in this Special Part.

More specifically, accounts are kept in compliance with current laws and regulations, the provisions of the Code of Ethics and the Company's values and policies.

Administrative and tax activities are managed by a specific Organizational Unit equipped with registered regulations indicating the tasks and activities performed by each senior figure. More specifically, the roles are important of the Administration, Finance and Auditing Manager and the Management Control Manager.

The unit has operating instructions and procedures that are particularly detailed.

The general principles of conduct regard:

1. Segregation of activities: both as regards active and passive invoicing, the principle of separation of assets is applied between the party choosing a supplier, the party executing the order and the party controlling the invoices.
2. Powers of authorization and signature, the powers of organization and signature are consistent with the organizational and managerial responsibilities assigned and clearly defined and known within the company.
3. Traceability: each transaction is suitably recorded. The decision-making, authorization and pursuit of the sensitive activity can be verified *ex post* by means of specific documented support.

The aim of this Special Part is that all addressees shall behave in such a way as to prevent the onset of the crimes envisaged. This Special Part integrates with the Special Parts dedicated to <<corporate crimes>> and <<crimes against the public administration>>. They set out the rules of conduct to be applied with specific reference to "invoicing/reporting management" and "management of relations with suppliers and purchases sectors" and, therefore, reference is made directly to the information given respectively in Special Part "A" and Special Part "B" of this Model.

As instead concerns the risk area "management of tax compliance", the following apply:

- a) Prohibitions:
  - Pursue tax evasion purposes,
  - Include fictitious liabilities in tax declarations and their preparation, using invoices or other documents for non-existent transactions. In this regard, they must check that the invoices

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and accounting documents refer to provisions effectively made by the issuer and received by the company,

b) Obligations:

- check that the invoices and accounting documents refer to provisions effectively made by the issuer and received by the company,
- abstain from carrying out simulated transactions and use of false documents or other fraudulent means to hinder the assessment and mislead the financial administration,
- abstain from specifying in income tax or VAT returns assets for an amount that falls below the effective value or fictitious liabilities or fictitious withholdings or receivables,
- abstain from issuing or producing invoices or other documents for non-existent transactions in order to allow third parties to avoid income tax or VAT,
- abstain from concealing or destroying all or part of accounting records or documents listed as compulsory so as to prevent the reconstruction of income or business volumes in order to avoid income tax or VAT or allow third parties to avoid such,
- abstain from the simulated disposal or implementation of other fraudulent acts on their own or other assets which entirely or partly makes the compulsory collection procedure by the financial administration ineffective, with the aim of avoiding payment of income tax or VAT or interest or administrative sanctions relative to such tax,
- act externally within the limits of the powers conferred,
- prepare specific protocols hinged on complete transparency in the case of relations with companies based abroad.

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## 18 SPECIAL PART “M” – SMUGGLING

### 18.1 INTRODUCTION

This Special Part has the following purposes:

- to define the general principles of conduct and control with which all Model Addressees must comply in order to prevent the perpetration of the crimes to which this Special Part refers,
- to ensure conditions of correctness and transparency in the conduct of the corporate business,
- to supply the Supervisory Body and other control departments with the tools necessary to monitor, control and verify.

The Model Addressees are, as defined in the General Part, the directors, auditors, managers, employees and collaborators with which contracts are stipulated, in any way, including on an occasional and/or merely temporary basis and in general all those who entertain relations of any kind with the Company.

In general, all company representatives must adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations:
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

The crime of smuggling is included in Title VII, Chapter I of the Consolidated Text of Customs Laws, Italian Presidential Decree no. 43/1973, Articles 282 to 301:

- Article 282 (Smuggling in the movement of goods through land boundaries and customs spaces)
- Article 283 (Smuggling in the movement of goods on boundary lakes)
- Article 284 (Smuggling in the shipping of goods)
- Article 285 (Smuggling in the movement of goods by air)
- Article 286 (Smuggling in non-customs zones)
- Article 287 (Smuggling for the undue use of goods imported with customs benefits)
- Article 288 (Smuggling in customs depots)
- Article 289 (Smuggling in cabotage and circulation)
- Article 290 (Smuggling in the export of goods admitted to the return of rights).
- Article 291 (Smuggling in temporary import or export)
- Article 291-bis (Smuggling of processed foreign tobacco)

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- Article 291-ter (Aggravating circumstances of the crime of smuggling of processed foreign tobacco)
- Article 291-quater (Association with the intent to commit crime aimed at the smuggling of processed foreign tobacco)
- Article 292 (Other cases of smuggling)
- Article 294 (Penalty for smuggling in the event of failure or incomplete assessment of the subject of the crime)
- Breach of Title VII Chapter II, i.e. for the events envisaged therein but only if exceeding 10 thousand euros in border fees avoided (Articles 302 *et seq.*).

Art. 295 of the Consolidated Customs Code rules that for the crimes envisaged in the previous Articles, in addition to a fine, imprisonment of three to five years shall also apply: a) when, in committing the crime or immediately thereafter in the supervised zone, the guilty party is found armed, b) when, in committing the crime or immediately thereafter in the supervised zone, three or more people guilty of smuggling are found together and in a situation such as to hinder the police force, c) when the events are connected to another crime against the public faith or public administration, d) when the guilty party is an associate to commit the crime of smuggling and the crime committed comes amongst those for which the association was established. The last paragraph envisages, for the same crimes, that imprisonment of up to three years shall be added to the fine when the amount of the border fees due exceeds Euro 49993.

## 18.2 AREAS EXPOSED TO RISK

The following areas are considered as being at risk of the crime of smuggling:

- M.1 finance and treasury,
- M.2 import/export.

## 18.3 ADDRESSEES OF THE SPECIAL PART - GENERAL PRINCIPLES OF CONDUCT AND CONTROL IN THE AREAS OF RISK ACTIVITIES

This Special Part refers to the conduct implemented by directors, managers and employees operating in the areas of the risk activities and external collaborators and partners, as already defined in the General Part (hereinafter all referred to as the “Addressees”).

This Special Part envisages the express prohibition for said Addressees of behaving in any way:

- such as to constitute the crimes considered in this special part, also in the form of acting in concert,
- which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially such,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics,

The Model Addressees shall also comply with the following principles:

- to base their work and operations on complete compliance with current legislation and the Model and Code of Ethics
- to maintain clear, transparent, diligent and collaborative conduct with the legal authority.

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## **19 ANNEX A: PREDICATE OFFENSES IN ACCORDANCE WITH ITALIAN LEGISLATIVE DECREE NO. 231/2001**

### **Failure to observe prohibitory sanctions (Art. 23 of the Decree)**

The crime punishes anyone who, when performing actions for the entity against which penalties or disqualifying interim measures have been imposed, breaches obligations or prohibitions pertaining to such penalties or measures.

For the purpose of this standard, all activities carried out by the Entity that may in any case interfere with the execution of a prohibitory sanction or disqualifying interim measure, shall be considered.

In this regard, it is recalled that the interim measures and prohibitory sanctions envisaged by Articles 9 and 45 of the Decree are:

- disqualification from exercising the activity,
- suspension or revocation of the authorizations, licenses or permits used to commit the offense,
- disqualification from contracting with the Public Administration, except to obtain public services,
- exclusion from benefits, financing, contributions or subsidies and revocation of those granted, prohibition to advertise goods or services.

More specifically, the crime may be committed when during or after proceedings relating to administrative liability in accordance with the Decree of the Entity to which the operator belongs or of another Entity with which said person, on behalf of the Company, entertains relations of any kind, a prohibitory measures shall be applied - as an interim or final measure - in accordance with the Decree.

By way of example, the case is mentioned of the Entity to which an interim disciplinary measure has been applied to the effect of prohibiting the stipulation of contracts with the public administration, which, in breach of this provision, through a third party or in a concealed manner, entertains contractual relations with said public administration.

The case can also be indicated in which, with the Entity having been banned from publicizing its goods or services, the Company continues to advertise its services by means of concealed forms of publicity.

**Below is a brief description of the crimes that constitute a basis for the application of the sanctions of Decree 231/2001.**

### **A. CRIMES TO THE DETRIMENT OF THE PUBLIC ADMINISTRATION**

Below is a brief description of the crimes considered under Articles 24 and 25 of the Decree

**Aggravated fraud to the detriment of the State or other public entity (Art. 640, paragraph 2, point 1 of the Italian Criminal Code),**

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The crime is committed when, using artifice or workarounds to mislead someone, the acting party procures unfair benefit for themselves or others, to the detriment of the State, another Public Entity or the European Union.

This crime can be committed when, for example, in preparing documents or data to take part in tender procedures, the public administration is supplied with untruthful information (for example supported by artifact documentation) in order to obtain the award. This also applies to the transmission to the financial administration of documentation containing false information in order to obtain a tax refund that is not due, or, more generally, to the transmission to social security institutions or local administrations or branches thereof, of communications containing false data with a view to obtaining any advantage or benefit for the Company.

### **Aggravated fraud to obtain public grants (Art. 640 bis of the Italian Criminal Code)**

The crime is committed when the fraud described above relates to public grants by any name, disbursed by the Government, other public entities or the European Union.

As regards the material object of the crime, it should be noted that contributions and subsidies are non-repayable pecuniary allocations which may be periodic or one-off, fixed or determined on the basis of variable parameters, and may be linked to the *an* or *quantum* or purely discretionary in nature, loans are negotiated acts characterized by the obligation to allocate the sums or to repay them or by further and different charges, subsidized loans are disbursements of sums of money with the obligation to repay the same amount, but with interest at a lower than market rate.

In any case, the rules take into account all cash disbursements characterized by being more beneficial than market conditions.

This situation may occur if artifice or workarounds are employed, for example disclosing untruthful data or preparing false documents in order to obtain public funding, for example to search for or support employment or pursue projects of public relevance.

### **Misappropriation of public funds (Art. 316 bis of the Italian Criminal Code)**

This refers to cases where any person who does not form part of the public administration and obtains aid, grants, subsidies, soft loans or other disbursements of the same type, whatever they may be called to support initiatives intended for one or more purposes, does not use them for their intended purpose.

Consider the application, for example, and obtaining of public finance disbursed in view of the employment by the Company of personnel of preferential categories or the restructuring of property damaged by natural disasters that, once achieved, is not assigned to this purpose.

### **Misappropriation of public funds (Art. 316 ter of the Italian Criminal Code)**

This offence occurs when grants, financing, soft loans or other disbursements of this kind are received from the Italian State or any other public organization or from the European Communities, as a result of the use or submission of false statements or documents, or failure to provide required information.

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In this case, differently to that seen in respect of the previous point (Art. 316 bis of the Italian Criminal Code), the intended purpose of the public funding disbursed is irrelevant, as the crime is committed at the time it is - unduly - obtained.

It is pointed out that said crime, of a residual nature, is only committed when the conduct does not meet the criteria for classification as the more serious crime of aggravated fraud to the detriment of the State (Art. 640 bis of the Italian Criminal Code).

By way of example, we would mention, in particular, the hypothesis of unduly obtaining public financing aimed at supporting entrepreneurial activities in certain sectors, through the production of false invoices attesting to non-existent provisions, or the production of documentation certifying the existence of the requirements for obtaining the financing.

### **Computer fraud (Art. 640 - ter, paragraph 1 of the Italian Criminal Code)**

This hypothesis of crime occurs when, by altering the function of a computer or telematic system or manipulating the data contained therein, an unfair profit is obtained, damaging the State, another public entity or European Communities.

Interference may take place in various forms: during data collection and entry, during processing and during issue. In all these cases, the intervention takes place on the memory of a processor on the correct function of which the material perpetrator of the crime interferes so as to obtain an undue enrichment to the detriment of the State, another public entity or European Communities.

For example, this offense is committed by modifying information relating to the accounting situation of a contractual relationship with a public body, or by altering tax and/or social security data contained in a database belonging to the Public Administration.

### **Notion of public official and public servant (Articles 357 and 358, 322 bis of the Italian Criminal Code)**

Before analyzing the crimes of concussion and corruption, it is important to outline the notions of public official and public servant, the perpetrators of said crimes.

In particular, *public officials* or *public servants* are defined:

- subjects performing a public legislative or administrative function such as, for example:
  - parliament and government members,
  - regional and provincial councilors,
  - European parliament members and members of the European Council,
  - subjects performing accessory duties (operators in charge of storing parliamentary deeds and documents, of preparing typed reports, treasurers, technicians, etc.),
- subjects performing a legal public function, such as, for example:
  - magistrates (ordinary court magistrates, Courts of Appeal, Supreme Court of Cassation, Superior Court of the Waters, Regional Administrative Court, Council of State, Constitutional Court, military courts, people's judges of the Courts of Assise, justices of the peace, honorary deputy prosecutors, members of formal arbitration panels and parliamentary inquiry commissions, magistrates of the European Court of Justice and the various international courts, etc.),

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- subjects performing related duties (legal police agents and officers, financial police and military police, clerks, secretaries, legal custodians, bailiffs, witnesses, conciliation boards, bankruptcy curators, operators in charge of the issue of certificates at the court clerks, experts and consultants of the Public Prosecution, liquidator commissioners in bankruptcy procedures, liquidators in composition proceedings, special commissioners of the extraordinary administration of large enterprises in a crisis, etc.),
- subjects performing an administrative public function, such as, for example:
- employees of the government, of international and foreign organizations and local entities (for example officers and employees of the State, the European Union, supranational organizations, foreign governments and local entities, including the regional, provincial and local authorities and the “Comunità montane”, subjects performing accessory duties with respect to the institutional purposes of the government, such as municipal technical office members, members of the construction commission, head of the administrative office of the amnesty office, municipal boards, operators in charge of proceedings regarding the occupation of public land, municipal correspondents assigned to the placement office, employees of state-owned companies and municipal-owned companies,
- persons in charge of collecting tax, health care staff of public facilities, ministerial and superintendency personnel, etc.),
- employees of other public national and international entities (for example officers and employees of the Chamber of Commerce, the Bank of Italy, the Supervisory Authorities, public welfare institutes, ISTAT, the UN, FAO, etc.),
- private individuals performing public duties or public services (for example notaries, private entities operating under concessions or whose activities are in any case regulated by provisions of public law or which in any case perform activities of public interest or which are controlled entirely or partly by the State, etc.).

Activities that, although regulated by provisions of public law or authorizations, in any case consist of performing simple duties or providing purely material works and that, therefore, mainly entail the simple application or execution of instructions without any autonomy or discretion, are not considered as public services.

The figures of the public official and public servant are identified not on the basis of the criteria or dependency on a public entity, but rather with reference to the nature of the activity they concretely perform, i.e., respectively, public duty and public service.

A subject extraneous to the public administration can therefore also be classed as a public official or public servant when carrying out the activities defined as such by Articles 357 and 358 of the Italian Criminal Code.

In addition, Art. 322 bis extends the potential punishment of the crimes of corruption and concussion and other crimes against the PA to also include hypotheses in which the offense involves:

- members of the European Community Commission, the European Parliament, the Court of Justice and the European Community Court of Auditors,
- officers, agents operating at the European Community or a subject performing equivalent duties,
- those who, under the scope of the other European Union Member States, carry out functions or activities corresponding to those of public officials and public servants,

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- persons who perform functions or activities corresponding to those of public officials and of public servants within foreign countries not belonging to the European Union or international public organizations.

### **Concussion and undue inducement to give or promise benefits (Articles 317, 319-quater of the Italian Criminal Code)**

The crime of concussion is committed if the Public Official or Public Servant, in abuse of his authority or power, induces someone to unduly give or promise, to himself or a third party, any money or other benefits.

The crime of undue inducement to give or promise undue advantages occurs when, taking advantage of his role and powers, the public official or public service officer incites somebody to give promise unduly to him or others, money or other benefits to which they are not entitled.

The crime of concussion under review entails a certain degree of risk for the Company in accordance with Italian Legislative Decree no. 231/01 insofar as the Company - in particular through the Transportation Solutions Business Unit - in the specific activities of its business of constructing transport lines, both directly and through the establishment of consortia, operates in certain cases on the basis of public concessions (of public entities such as, for example, local councils) and in this area acts as public servant. This type of crime can therefore be considered in theory in the case where a public servant makes undue use of his powers to force or lead someone to unduly give or promise money or other benefits, so as to obtain economic or personal gain.

In cases where the Company does not operate as public servant, the entity may in any case be held liable in cases where an Employee or Agent of the Company, in its interests or to its benefit, *acts in concert* in committing the crime of the public official or public servant who, in exploiting their position, demands undue services, or, if the company representative concretely provides public offices or public services and, in this capacity, favors the Company through abuse of its office.

### **Corruption (Articles 318-319-319bis-320-321 of the Italian Criminal Code)**

The crime of corruption for the exercise of the function takes place where a public official or public servant is unduly given or promised, for himself or others, monies or other benefits for the exercise of his duties or powers.

The crime of corruption for an action against official duties occurs when a public official or public servant receives, for himself or a third party, money or other benefits or accepts promise thereof, for failing to perform or the late performance of their official duties, for an action contrary to their official duties.

The crime therefore exists both if the public official, in exchange for payment or in general any benefit, acts in a way connected with his duties (for example: speeding up a process coming under his purview) and where he acts in conflict with his duties (for example: guaranteeing the unlawful award of an order).

For the crime of corruption for an act in conflict with official duties, Article 319-bis of the Italian Criminal Code rules an increase in the penalty if the events concern the conferment of public

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employment, salaries or pensions or the stipulation of contracts in which the public official belongs is an interested party, as well as the payment or reimbursement of taxes.

In accordance with Art. 321 of the Italian Criminal Code, the penalties envisaged for public officials and public servants shall also apply to private citizens giving or promising monies or other benefits to them.

### **Instigation to corruption (Art. 322 of the Italian Criminal Code)**

The penalty envisaged for this crime applies to anyone offering or promising undue monies or other benefits to a public official or public servant for the exercise of his duties or powers, if the promise or offer are not ascertained. Equally, the conduct is sanctioned of the public official or public servant who solicits a promise or the giving of money or other gains for the exercise of his duties or powers.

### **Corruption in legal acts (Art. 319-ter of the Italian Criminal Code)**

The crime is committed where someone offers or promises a public official or public servant monies or other benefits in order to favor or damage a party in civil, criminal or administrative proceedings.

The Company may therefore be called to answer to the crime if, as party to legal proceedings, it should corrupt, including through a third party (for example its defense counsel) a public official (not only a magistrate but also a clerk or other officer or witness), in order to obtain a positive outcome.

### **Concussion, corruption, undue inducement to give or promise benefits and instigation to the corruption of members of the International Criminal Court or of the bodies of the European Community and officers of the European Community and foreign states (Art. 322 bis of the Italian Criminal Code)**

- By virtue of the provision in question, the crimes of concussion, undue inducement to give or promise benefits and corruption (Articles 317-320 - 319-quater and 322, third and fourth paragraphs) apply, even if committed by:
  - members of the European Community Commission, the European Parliament, the Court of Justice and the European Community Court of Auditors,
  - functionaries and agents hired by contract in accordance with the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities,
  - persons appointed by Member States or any public or private entity at the European Community, who exercise duties corresponding to those of functionaries or agents of the European Community,
  - members and operators of entities established on the basis of the Treaties instituting the European Communities,
  - those who, under the scope of the other European Union Member States, carry out functions or activities corresponding to those of public officials and public servants,
  - judges, the public prosecutor, assistant public prosecutors, functionaries and agents of the International Criminal Court, persons appointed by the States that are party to the Treaty establishing the International Criminal Court, who exercise duties corresponding to those

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of the Court's own functionaries or agents, members and operators of entities established on the basis of the Treaty establishing the International Criminal Court.

The rules governing corruption (Articles 319 quarter, 321 and 322) also apply even if the monies or other benefits are given, offered or promised:

- to the persons specified above,
- to the persons exercising duties or activities corresponding to those of public officials and public servants under the scope of other foreign States or international public organizations, if the fact is committed to procure undue advantage for oneself or others in international economic operations.

### **Trafficking in unlawful influence (Art. 346-bis of the Italian Criminal Code)**

This circumstance - added to the list of offenses envisaged as Art. 25 of the Decree by Italian Law no. 3 of January 09, 2019 ("*Measures for fighting crime against the public administration and on the statute-barring of the crime and on transparency of political parties and movements*") - punishes anyone who, apart from cases of complicity in the offenses referred to in articles 318, 319, 319-ter and the corruption offenses referred to in article 322-bis, exploits or boasts of existing or alleged relations with a public official or a public service appointee or one of the other individuals referred to in article 322-bis, unduly causes to give or promise, to himself/herself or to others, money or other benefits, as the price of his illicit mediation towards a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis, or to remunerate him in relation to the exercise of his functions or powers.

The same situation shall also punish those who unduly give or promise money or other benefits.

Aggravating circumstances are considered if the subject who is unduly given or promised, for himself or others, monies or other benefits is a public official or public servant and if the offenses are committed in relation to the exercise of judicial business or to compensate the public official or public service officer or one of the other subjects mentioned in Article 322-bis in relation to the performance of an act which is contrary to the official duties or the omission or delay of an act of his office.

### **Bid rigging (Art. 353 of the Italian Criminal Code)**

This crime is integrated where, with violence or threats, or with gifts, promises, collusions or other fraudulent means, the tender in public auctions or in private tenders on behalf of public companies is prevented or disturbed Administrations, or bidders are removed from them. The crime also occurs in the case of private tenders on behalf of private individuals directed by a public official or legally authorized person.

### **Disturbed freedom of the procedure for choosing the contractor (art. 353-bis of the Italian Criminal Code)**

The article punishes anyone who, unless the fact constitutes a more serious crime, with violence or threats, or with gifts, promises, collusion or other fraudulent means, disturbs the administrative procedure aimed at establishing the content of the notice or other equivalent act in order to influence the methods of choice of the contractor by the public administration.

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**Fraud in public supplies (Art. 356 of the Italian Criminal Code)** the provision punishes anyone committing fraud in the execution of supply contracts or the fulfillment of other contractual obligations indicated in the previous Article, with imprisonment from one to five years and a fine of at least Euro 1,032. The penalty is increased in the cases envisaged by the first subsection of the Article above.

**Fraud to the detriment of the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development (Art. 2 of Italian Law no. 898/1986)** the provision punishes where the events do not constitute the more serious crime envisaged by Article 640-bis of the Italian Criminal Code, anyone who, by producing false data or news, unduly obtains, for himself or others, aid, premiums, indemnity, returns, contributions or other disbursements totally or partially paid by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development with imprisonment from six months to three years. When the amount unduly received is equal to or less than 5,000 euros, only the administrative sanction applies pursuant to the following Articles. 2. For the purpose of the provisions of paragraph 1 above and those of paragraph 1 of Article 3, the national quotas envisaged by the European Community legislation in addition to the amounts paid by said Funds, as well as disbursements paid for entirely by national finance on the basis of European Community legislation, shall be considered as equivalent to disbursements by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. 3. In the judgment, the court also determines the amount unduly received and sentences the guilty party to return it to the administration that had arranged for its disbursement pursuant to paragraph 1.

**Embezzlement (Art. 314 of the Italian Criminal Code)** the provision punishes the public official or public servant who, through his office or service, is in possession or in any case has use of money or other third party objects, misappropriating such, with imprisonment from four to ten years and six months.

**Embezzlement through profiting from a third party error (Art. 316 of the Italian Criminal Code)** the public official or public servant who, in going about his duties or service, profits from a third party error to unduly receive or withhold, for himself or a third party, monies or other benefits, is punished by imprisonment from six months to three years.

**Abuse of office (Art. 323 of the Italian Criminal Code)** unless the matter constitutes a more serious crime, the public official or public servant who, in going about his duties or service in breach of specific rules of conduct laid down by the law or acts with the force of law, and which leave no room for discretion, or failing to abstain from such in the event of a personal interest or interest of a close friend or family member or in the other cases prescribed, deliberately obtains for himself or others an unfair financial advantage or damages others unfairly, is punished by imprisonment from one to four years.

## **A1. CRIMES OF TERRORISM AND SUBVERSION OF THE DEMOCRATIC ORDER**

Below is a brief description of the main crimes considered under Articles 25-quater, the perpetration of which can in any case benefit the Company.

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Art. 3 of Italian Law no. 7 of January 14, 2003 ratified and executed in Italy the International Convention for the Suppression of the Financing of Terrorism stipulated in New York on December 09, 1999, adding Art. 25 quater to the Decree.

**Subversive associations (Art. 270 of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone in the territory of the state who promotes, establishes, organizes or directs associations aimed at violently establishing the dictatorship of one social class over the others, or at violently suppressing a social class or, in any case, at violently subverting the social or economic orders established in the State or, finally, aiming to violently suppress all political and legal orders of society.

**Associations with the aim of committing national or international terrorism or subversion of the democratic order (Art. 270-bis of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone promoting, establishing, organizing, directing or financing associations that propose to carry out acts of violence for terrorism purposes or to subvert the democratic order.

For the purpose of criminal law, terrorism also occurs when the acts of violence are directed against a foreign state or an international organization or institution.

**Assistance to members (Art. 270-ter of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone, outside the cases of action in concert to commit the crime or aiding and abetting, who gives refuge or lodgings, hospitality, means of transport and communication tools to any of the persons involved in the associations indicated in Articles 270 and 270-bis of the Italian Criminal Code above. Anyone perpetrating the event in the favor of a close friend or family member cannot be punished.

**Enrollment with the purpose of committing national or international terrorism (Art. 270-quater of the Italian Criminal Code)**

This hypothesis of crime is committed in regard to anyone, outside the cases pursuant to Article 270-bis, who enrolls one or more persons to carry out acts of violence or to sabotage essential public services for terrorism purposes, even if directed against a foreign country, international organization or institution.

**Organization of transfers with the purpose of committing terrorism (Art. 270 - quater1 of the Italian Criminal Code)**

This hypothesis of crime is committed in regard to anyone, outside the cases pursuant to Articles 270-bis and 270-quater, who organizes, finances or spreads propaganda for travel abroad with a view to acting for terrorism, as described by Art. 270-sexies.

**Training in activities with the purpose of committing national or international terrorism (Art. 270 quinquies of the Italian Criminal Code)**

This hypothesis of crime is committed in regard to anyone who, outside the cases pursuant to Article 270-bis, trains or in any case provides instruction on the preparation or use of explosive materials, fire arms or other weapons, harmful or hazardous bacteriological or chemical

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substances and all other techniques or methods for carrying out acts of violence or sabotaging essential public services, for terrorism purposes, even if directed against a foreign country, international organization or institution. The rule also applies to the person trained and the person who has, even autonomously, acquired instruction on the carrying out of acts of violence or sabotaging essential public services, acts in a manner aimed purely at committing terrorism, as described by Art. 270-sexies.

**Conduct with the purpose of committing terrorism (Art. 270-sexies of the Italian Criminal Code)**

Any conduct that, by nature or context, may seriously damage a country or an international organization, and which is carried out with the aim of intimidating the population or forcing the public powers or an international organization to act or not act in any particular way or to destabilize or destroy the essential, constitutional, social and economic public structures of a country or an international organization, as well as any other conduct defined as terrorism or committed for the purpose of terrorism, by conventions or other provisions of international law that are binding on Italy, shall constitute conduct with the purpose of committing terrorism.

**Attacks for the purpose of terrorism or subversion (Art. 280 of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone for the purpose of terrorism or the subversion of the democratic order, makes an attempt against the life or safety of a person.

The crime is aggravated if the attack against the personal safety results in the very serious injury or death of the person or if the act is against persons who exercise legal or penitentiary functions or duties of public safety in the exercise or as a result of their duties.

**Act of terrorism with lethal or explosive devices (Art. 280-bis of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone who for the purpose of terrorism carries out any act aimed at damaging third party movable or immovable objects through the use of explosive or in any case lethal devices.

**Kidnapping for the purposes of terrorism or subversion (Art. 289 bis of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone who, for the purpose of terrorism or the subversion of the democratic order, kidnaps someone.

The crime is aggravated by the death, whether or not intended, of the kidnapped person.

**Instigation to commit a crime against the personality of the State (Art. 302 of the Italian Criminal Code)**

This hypothesis of crime is committed by anyone who instigates someone to commit any of the offenses committed with criminal intent envisaged by the Criminal Code title dedicated to crimes against the personality of the State, for which the law establishes life imprisonment or imprisonment. Cases where the instigation is not acted upon or, if acted upon, the crime is in any case not committed, constitute attenuating circumstances.

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**Political conspiracy by means of political conspiracy and agreement through association (Articles 304 and 305 of the Italian Criminal Code)**

These hypotheses of crime are committed respectively by anyone agreed or associated in order to commit any of the crimes pursuant to the point above (Art. 302 of the Italian Criminal Code).

**Armed band, training and participation, assistance with conspiracy participants or members of an armed band (Articles 306 and 307 of the Italian Criminal Code)**

These hypotheses of crime are committed by anyone promoting, establishing or organizing an armed band in order to commit any of the crimes indicated under Article 302 of the Italian Criminal Code or anyone who, outside the cases of acting in concert in committing a crime or aiding and abetting, should give refuge, provide lodgings, hospitality, means of transport or communication tools to anyone involved in the association or band in accordance with Articles 305 and 306 of the Italian Criminal Code.

**Art. 2 New York Convention of December 09, 1999**

This rule punishes anyone who, by any means, directly or indirectly, unlawfully and deliberately provides or collects funds with the aim of having them used, or knowing that they will be used, entirely or partly in order to commit:

- an act that constitutes a crime in accordance with and as defined by one of the treaties listed in the annex,
- any other act aimed at killing or seriously injuring a civilian or any other natural person not directly involved in hostilities in a situation of armed conflict when, by nature or context, said act aims to intimidate a population or oblige a government or organization to act or not to act in any specific way.

The express referral to Art. 2 of the New York Convention is construed as a closing rule that applies outside the situations of crime recalled previously.

**B. CORPORATE OFFENSES**

Below is a brief description of the crimes considered under Articles 25-ter and 25-sexies of Italian Legislative Decree no. 231/2001, the perpetration of which can in any case benefit the Company.

In this respect, note that Art. 25-sexies was introduced into the body of the Decree by Art. 9 of Italian Law no. 62 of April 18, 2005 (European Community Law for 2004), which incorporated Directive 2003/6/EU of the European Parliament and the Council of January 28, 2003 on insider dealing and market manipulation (market abuse).

**False corporate communications (Art. 2621, 2621-bis)**

The offence of false corporate disclosures (Art. 2621 of the Italian Civil Code) is committed by consciously including untrue material facts in financial statements, reports or other corporate disclosures under the law and intended for the shareholders or public, or omitting material information, the disclosure of which is required by law, about the financial position, financial performance cash flows of the company or group to which it belongs in such a way that it is intentionally misleading.

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Apart from the cases envisaged by Art. 2622, the Directors, General Managers, Managers in charge of preparing the company accounts, Auditors and Liquidators, who, in order to obtain, for themselves or others, unfair profits, in the financial statements, reports or other corporate communications intended for shareholders or the public, envisaged by the law, aware that they state important material facts that are untrue or omit important material facts whose communication is required by the Law on the economic, financial or equity position of the company or group to which it belongs, so as to concretely mislead others, are punished with the penalty of imprisonment from one to five years. The same penalty applies even if the untrue statements or omissions concern property owned or managed by the company on behalf of third parties.

### **Minor events (Art. 2621- bis of the Italian Civil Code)**

Unless they constitute a more serious offense, a penalty of six months to three years' imprisonment applies if the facts referred to in Article 2621 are minor, taking into account the nature and size of the company and the way in which they were committed or their effects.

Unless they constitute a more serious offense, the same punishment as per the paragraph above applies when the facts referred to in Article 2621 concern companies that do not exceed the limits indicated in the second paragraph of Article 1 of Royal Decree 267 of March 16, 1942. In this case, the offense is prosecutable on complaint by the company, shareholders, creditors or other recipients of company communications.

Falsity in corporate communications is sanctioned by two different incriminating provisions - Art. 2621 and 2622 of the Italian Civil Code - the typical conduct of which coincides almost entirely and which differ, first and foremost, for the different corporate context in which the falsity takes place: the first (Art. 2621 of the Italian Civil Code) punishes false corporate communication in unlisted companies, the second (Art. 2622 of the Italian Civil Code) instead refers specifically to listed companies.

The situation pursuant to Art. 2621 occurs with the knowing posting in the financial statements, reports or other corporate communications addressed to shareholders or the public, envisaged by the law, or relevant material facts that are not true (false statements) or omit relevant material facts, communication of which is required by the law, on the economic, equity and/or financial position of the company or group to which it belongs (falsity through omission), the falsity, both active and by omission, must be carried out in a manner that is concretely able to mislead others.

Please also note that:

- the notion of “corporate communication” envisaged by the law includes all communications envisaged by the law addressed to shareholders or the public, including draft financial statements, reports, documents for publication in accordance with Articles 2501-ter - 2504-novies of the Italian Civil Code in the event of merger or spin-off or in the event of interim dividends in accordance with Art. 2433 bis of the Italian Civil Code,
- the presentation of events not compliant with the truth or the concealing of information the disclosure of which is required by the law can be carried out not only through the material alteration of accounting data but also through an artifice estimated assessment of goods or values inserted in said communications (e.g. estimated valuations on tangible or financial fixed assets that are a part of the Company’s assets, carried out differently from the criteria indicated in the report or envisaged by the law or in any case on the basis of parameters that are unreasonable),

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- the conduct must be intended to achieve unfair profit for himself or others,
- false or omitted material facts must be relevant and such as to significantly alter the representation of the economic, equity or financial position of the Company or Group to which it belongs,
- liability is also extended to include the hypothesis whereby the information relates to assets held or administered by the Company on behalf of third parties,
- the crime can be prosecuted automatically, except for the sole case in where the events pursuant to Art. 2621 of the Italian Civil Code regard companies that do not exceed the limits indicated by the second paragraph of Article 1 of Royal Decree no. 267 of March 16, 1942, for which prosecution is on complaint,

The perpetrators of this offense are the directors, general managers, managers responsible for preparing the company's accounting documents, auditors and liquidators (offense “proper”). The crime can be committed in the interests of the Company, if applicable, for example, through the creation of concealed illiquid reserves, obtained through the under-valuation of positive items or the over-valuation of negative ones, to foster the self-financing of the corporate business or to cover any losses booked during the corporate year.

### **Falsehood in a prospectus (Art. 173-bis of the Consolidated Law on Finance)**

The situation sanctions the conduct of those who, in suitable manners, presents false information or conceals data or information in the prospectuses required to solicit investment or admission to listing on regulated markets or in documents to be published during public offers of purchase or exchange, with the intention of misleading the addressees of the prospectus and with the aim of achieving unfair profit for himself or others.

### **False reports or disclosures of the independent auditing firm (Art. 2624 of the Italian Civil Code))**

The crime is committed by the parties responsible in the independent auditing firm who, in a bid to achieve unfair profit for himself or others, in reports or other communications, aware of the falsity and the intent of misleading the addressees of the communications, certify the falsehood or conceal information about the economic, equity or financial position of the company, entity or audited party, in such a way as to mislead the addressees of the communications as to said situation, thereby financially damaging said addressees.

The sanction is greater if:

- the conduct has caused financial damages to the addressees of the communications,
- the events are committed by the person responsible in the independent auditing firm auditing a public-interest entity or an entity subject to the intermediary system,
- the events are committed by the person responsible in the independent auditing firm auditing a public-interest entity or an entity subject to the intermediary system for monies or other benefits or promises, or acting in concert with the directors, general managers or auditors of the company audited,

The parties concerned are those responsible in the independent auditing firm (offense of office), but the members of the administrative bodies of Hitachi Rail STS and its employees may be involved in the form of acting in concert to commit the crime. Action in concert can, in fact, be hypothesized in accordance with Art. 110 of the Italian Criminal Code, of the directors, auditors or

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other subjects of the audited company, who have determined or instigated the unlawful conduct of the person responsible for the statutory audit.

Italian legislative Decree no. 39 of 2010 (Implementation of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts) introduced the new crime of Falsity in reports or communications of persons responsible for the statutory audit, ruling, at the same time, the abrogation of Art. 2624 of the Italian Civil Code.

As Art. 25-ter makes specific reference to Art. 2624 of the Italian Civil Code as a basis for the administrative offense, the abrogation of the provision of the Italian Civil Code, not accompanied by the integration of Art. 25-ter with the reference made to the new situation of Art. 27 of Italian Legislative Decree no. 39 of 2010 must determine, as a consequence, the non-applicability of the administrative sanction pursuant to Italian Legislative Decree no. 231 of 2001 to the new crime of *Falsity in reports or communications of the parties responsible for the statutory audit*.

*The lack of consolidated case law on the point, however, suggests, prudently, that due consideration also be given to this situation.*

### **Preventing control (Art. 2625 of the Italian Civil Code)**

The crime consists of hindering or preventing the conduct of controls - legally assigned to shareholders or other corporate bodies - through the concealing of documents or other artifice.

The crime, which is assigned exclusively to directors, can entail the entity's liability only in the event that the conduct has caused a damage.

The situation applies not only when, through the concealing of documents or other artifice, said activities are prevented but also when they are merely hindered.

For the purpose of this rule, the activities implemented by the members of the Board of Directors are considered as well as any action taken by employees collaborating with them, which may impact the initiatives and control activities due to shareholders or other corporate bodies.

More specifically, they are activities that impact:

- shareholder control initiatives envisaged by the Italian Civil Code and other regulatory deeds, such as, by way of example Art. 2422 of the Italian Civil Code, which envisages the right of shareholders to inspect the corporate books,
- the control activities of the board of auditors, envisaged by the Italian Civil Code and other regulatory provisions, such as, by way of example, Articles 2403 and 2403-bis, which envisage the power of members of the Board of Auditors to proceed with inspections and controls and to ask directors for information about the performance of corporate operations or certain business affairs.

In this case too, as Art. 25-ter refers expressly to Art. 2625 of the Italian Civil Code, as a basis for the administrative crime, the change in the provision of the Italian Civil Code determined by Italian Legislative Decree no. 39 of 2010 (Art. 37) should, as a consequence, result in the application of the administrative sanction pursuant to Italian Legislative Decree no. 231 of 2001 o the crime of *Prevented control* in the new concept.

### **Undue return of conferrals (Art. 2626 of the Italian Civil Code)**

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This hypothesis of crime consists of proceeding, outside cases of the lawful reduction of the share capital, with the simulated or actual return of conferrals to shareholders or the release of such from the obligation to make them.

Only the directors can perpetrate the crime, save for the possibility of punishing, for action in concert in accordance with Art. 110 of the Italian Criminal Code, also any shareholders that instigated or determined the unlawful conduct on the part of the directors.

### **Unlawful allocation of profits and reserves (Art. 2627 of the Italian Civil Code)**

This offense consists of the allocation of profits or advances on profits not effectively achieved or allocated by law to reserves, or of the allocation of reserves, even if not constituted with profits, which the law rules cannot be distributed.

The return of profits or replenishment of reserves prior to the terms envisaged for the approval of the financial statements extinguishes the offense.

The directors perpetrate the crime, with, in accordance with Art. 110 Italian Criminal Code, liability potentially also lying with any shareholders that instigated or determined the unlawful conduct on the part of the directors.

### **Unlawful operations on shares or units of companies or the parent company (Art. 2628 of the Italian Civil Code)**

The situation punishes directors who, outside the cases permitted by the law, acquire or subscribe to shares or stocks, damaging the integrity of the share capital or legally-restricted reserves or, outside the cases permitted by the law, acquire or subscribe shares or stocks issued by the parent company, damaging the share capital or legally-restricted reserves.

The law then establishes grounds for exclusion from punishment in the event that the share capital or reserves are restored before the deadline set for approval of the financial statements relative to the year in connection with which the conduct was implemented.

The rule seeks to protect the integrity and effectiveness of the share capital and legally-restricted reserves with respect to phenomena involving their “watering down”, which may prejudice the interests of the creditors: in particular, the conduct of directors purchasing or subscribing shares or stocks of its own company or of the parent company is punished in particular (see Art. 2359 of the Italian Civil Code), outside the cases permitted by the law (see, in particular, Articles 2357, 2359-bis, paragraph 1, 2360, 2474 and 2529 of the Italian Civil Code), thereby damaging the corporate assets.

The circumstance that the case in point refers expressly to only the cases of purchase and subscription of treasury shares or stocks suggests that today the conduct described under Art. 2358 of the Italian Civil Code relative to the concession of loans and the supply of guarantees by the company for the purchase of treasury shares, no longer applies criminally.

The crime can only be perpetrated by directors: the disposing shareholder or director of the parent company can answer for the crime by way of action in concert only if he has determined or instigated the directors to commit the crime.

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The crime in question is punishable as general misconduct, consisting of the desire to purchase or subscribe shares or stocks in the company, accompanied by the awareness of the irregularity of the transaction and the desire - or at the very least, acceptance of the risk - to procure harm to the share capital.

Transactions on treasury shares belong to the physiological management of the company and can perform various economic-corporate functions, many of which are pursued in the interests or to the benefit of the entity and are therefore able, where the crime is implemented pursuant to Art. 2628 of the Italian Civil Code, to give rise to a concurrent liability of the entity. Consider, for example, investments of social funds made for financial speculation, or the leveraging of shares in order to address the prospect of hostile takeover bids, or, again, for banks listed on the stock exchange, transactions aimed at regulating their share performance, avoiding oscillation of the security in the event of an absence of demand for the company's shares. The configuration of a concurrent liability of the entity in the event that the buy-back transaction is intended more specifically for internal purposes within the company, not directly related to a general interest of the entity: thus, for example, in the event of the purchase of shares made in order to strengthen the power of a majority with respect to the minorities or to alter existing power structures.

A final consideration regards leverage buy-outs aimed at the purchase of a company asset or investments in companies (stocks or shares), financed by a considerable amount of debt and a limited or null amount of own funds, permitted by the use of the assets concerned by the acquisition and cash flow that the investment will generate in the future. The criminal relevance of these transactions - which has been debated in the past - is today expressly excluded by the legislator: as we can read in fact in the report "leverage buy outs... are expressly considered starting from the delegation law, which confers on it the rules of legitimacy (Art. 7, letter d)". Art. 2501-bis of the Italian Civil Code - introduced by the corporate law reform (Italian Legislative Decree no. 6/2003), which came into force on January 1, 2004 - expressly envisages the possibility of proceeding with the "merger of companies, one of which has contracted debt to acquire control over the other when, as a result of the merger the latter's assets are given as generic guarantee or used as a source for the repayment of this debt".

### **Operations damaging creditors (Art. 2629 of the Italian Civil Code)**

The rule punishes directors that, in breach of the provisions of law protecting creditors, perform transactions reducing the share capital or mergers or spin-offs in a way such as to damage creditors.

It is therefore a crime that can be committed in any way with the effect of damaging creditors.

With reference to transactions reducing share capital, the following examples apply of criminally-relevant conduct: execution of the resolution to reduce the share capital despite the opposition of corporate creditors or the lack of Court resolution.

With reference to mergers or spin-offs, we can recall the execution of such transactions before the deadline pursuant to Art. 2503, paragraph 1, where the exceptions set out therein do not apply or in the event of opposition and without Court authorization.

Particular risk profiles are seen in respect of activities relating to:

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- transactions to reduce share capital (see, for example, the reduction of the share capital for surplus, Art. 2445 of the Italian Civil Code)
- Company mergers or spin-offs (see, for example, Art. 2503 and 2506-ter of the Italian Civil Code).

### **Failure to disclose conflicts of interests (Art. 2629-bis of the Italian Civil Code)**

The crime in question is committed when a member of the board of directors or management board of a company, with shares listed on regulated Italian or other European Union Member State markets or distributed to the public to a significant extent (in accordance with Art. 116), breaching the regulations on the interests of directors envisaged by the Italian Civil Code, causes itself or third parties a damage.

The rule aims to strengthen, through the criminalization of the conduct of the director, the civil sanction (the challenge of the BoD resolution) envisaged by Art. 2391 of the Italian Civil Code for the cases in which a director of a listed company or company with distributed securities or a company subject to supervision in accordance with the Consolidated Banking Law and laws on insurance and pension funds, fails to disclose a personal interest with respect to that of the company in a given transaction.

More specifically, Art. 2391 of the Italian Civil Code requires members of the board of directors to notify (other members of the board and auditors) of any interest they, on their own behalf or for third parties, may have in a given company transaction, specifying the relevant nature, terms, origin and scope.

Considering that in the vast majority of cases of transactions implemented by directors in conflict of interests, the company is the damaged party, as, moreover, is highlighted by the same rule, it is necessary to establish when the failure to notify the conflict of interests is committed in the interests or to the benefit of the entity.

On the basis of these considerations, the hypothesis of greater importance is that in which the director has damaged not the company for which he works but rather third parties that have come into contact with and entertained legal relations with the company of any type.

The crime of failure to notify the conflict of interests is, in fact a crime of damage, insofar as for it to be perpetrated there must be effective harm of the legal asset protected by the criminal rule. Therefore, in the hypothesis of crime considered, the damage is an essential element of the situation and the sanction prepared by the legislator for the offense caused to the protected asset strikes not the mere omission but rather only the omission that caused damage to the company or third parties.

Consider, for example, third party creditors (suppliers, guarantors, etc.) of the company which, following conclusion of a business affair by a director who also has an interest in the transaction, have seen their credit claim damaged or third parties who, in good faith, have relied on the transactions implemented by the company.

These situations could arise not only in connection with conduct adopted by the companies individually, but also from a group perspective where certain potentially disadvantageous transactions, although carried out in the prospect of compensation Group advantages and,

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therefore, considered to be in the interests of the corporate structure as a whole, may instead have disadvantages for third parties to the Group.

### **Fictitious formation of capital (Art. 2632 of the Italian Civil Code)**

This offense is committed in the event of the following conduct: a) formation or increase of share capital using fictitious means of the attribution of corporate shares/units in an amount that, in total, exceeds the share capital, b) mutual subscription of shares or units, c) considerable over-valuation of the conferrals of goods in kind or credits, or the equity of the company, in the event of a transformation.

The perpetrators of this offense are the directors and contributing shareholders.

### **Undue allocation of corporate assets by liquidators (Art. 2633 of the Italian Civil Code)**

This crime is committed in the form of the allocation of corporate assets between shareholders before payment of the corporate creditors or the provisioning of the amounts necessary to pay them, which damages creditors.

Compensation of the damages suffered by creditors before proceedings are launched extinguishes the offense.

The perpetrators of this offense are only the liquidators.

### **Unlawful influence of the shareholders' meeting (Art. 2636 of the Italian Civil Code)**

The offense occurs when a majority is secured in a shareholders' meeting by simulated acts or fraudulent means in order to obtain , an unfair profit for themselves for others.

The offense can be committed by anyone, therefore even by subjects outside the company.

The rule aims to prevent that fraudulent conduct (such as, for example, the fictitious transfer of units to persons of trust in order to obtain votes in the shareholders' meeting or the fictitious subscription of a loan with the pledge of shares so as to allow the pledgee to exercise the right to vote in the shareholders' meeting) has an unlawful impact on the formation of the shareholders' meeting majority.

For the purpose of this rule, conduct is considered that aims to convene the shareholders' meeting, grant admission to attend the shareholders' meeting and calculate votes for the resolution, as well as the related support activities.

It should be recalled that the entity's liability only applies when the conduct envisaged by the Article in question is implemented in the Entity's interests. This makes it difficult to hypothesize the crime in question, which, as a rule, is perpetrated to foster the interests of a party and not of the "entity".

### **Stock manipulation (Art. 2637 of the Italian Civil Code)**

Market abuse carried out through the alteration of the dynamics relative to the correct formation of the price of financial instruments is today punished, as a crime, by Articles 2637 of the Italian Civil Code (stock manipulation).

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The hypothesized crime pursuant to Art. 2637 of the Italian Civil Code differs from a different hypothesis of crime, that punished by Art. 185 of the Consolidated Law on Finance, in connection with the nature of the financial instruments, the price of which could be impacted by the conduct punished. In the event of stock manipulation, unlisted financial instruments are considered or those for which no application has been submitted for trading on a regulated market, in the event of the crime of market manipulation pursuant to Art. 185 of the Consolidated Law on Finance, they must be listed financial instruments or those for which an application has been submitted for trading on regulated markets.

The conduct constituting the crime of stock manipulation consists of:

- the dissemination of false news (information-based manipulation): more specifically, the news is considered false “when, in creating a false representation of reality, such as to mislead operators, resulting in an irregular rise or fall of prices”,
- in carrying out simulated transactions or other artifice able to significantly alter the price of listed or unlisted financial instruments (action-based manipulation): the term “other artifice” means “any conduct that, through deceit, may alter the normal performance of prices”. For the offense to exist, there need merely be a situation of danger, regardless of whether or not there effectively is a change in prices brought about by artifice.

In addition, the crime of stock manipulation also punishes conduct aimed at significantly impacting the reliance that the public places on the equity stability of banks or banking groups.

### **Hindrance of the exercise of duties of the Public Supervisory Authorities (Art. 2638 of the Italian Civil Code)**

The crime can be committed in two different ways, both aimed at hindering the supervision of the appointed public authorities:

- declaring, in communications to the supervisory authority envisaged in accordance with the law, material facts that are not true, even if subject to assessment, on the economic, equity and/or financial position of those supervised,
- concealing, using other fraudulent means, all or part of events that should have been disclosed, again regarding the economic, equity and/or financial position of those supervised,

The crime can also be carried out hindering, in any way, also by deliberately omitting communications due to supervisory authorities.

The perpetrators of this offense are the directors, the general managers, the managers appointed to prepare the company's accounting documents, the auditors and the liquidators of companies or entities and the other subjects supervised by law by the public supervisory authorities or bound by obligations in their regard.

The new crime figure meets the need to coordinate and standardize the situations regarding the numerous hypotheses in current regulations of falsity in communications to the supervisory bodies, hindering duties and failure to notify the authorities. Thus the legislator completes the criminal protection of the corporate information, in this case as regards its direction to the industry supervisory authorities.

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## **Fraudulent transfer of values (art. 512-bis of the Italian Criminal Code)**

This article punishes anyone who untruthfully attributes ownership or availability of money, goods or other benefits to others in order to evade the legal provisions regarding asset prevention measures or smuggling, or to facilitate the commission of one of the crimes referred to in articles 648, 648 bis and 648 ter of the Italian Criminal Code.

## **B1. CORRUPTION AMONG PRIVATE INDIVIDUALS**

### **Corruption among private individuals**

Italian Legislative Decree no. 38/2017 implemented the Framework Decision 2003/568/GAI of the European Union Council in respect of the fight against corruption in the private segment, which reformed Art. 2635 of the Italian Civil Code

The new wording of Art. 2635 of the Italian Civil Code reads *“Unless the act constitutes a more serious offense, directors, general managers, managers responsible for preparing the company's financial reports, statutory auditors and liquidators of companies or private entities who, also through a third party, solicit or receive, for themselves or others, undue money or other benefits, or accept the promise of such, in order to carry out or omit an act in violation of the obligations inherent in their office or the obligations of loyalty, shall be punished by imprisonment of from one to three years. The same punishment applies if the fact is committed by a person who, within the organizational context of the company or private entity, exercises management functions that differ from those of the individuals referred to in the previous sentence. The penalty applies of imprisonment of up to one year and six months applies if the events are committed by anyone subject to the management or supervision of any of the subjects indicated under the first paragraph. Whomever, even through a third party, offers, promises or gives money or other benefits that are not due to the persons indicated in the first and second paragraphs, is punished with the penalties provided for therein. The penalties established in the previous paragraphs are doubled if the company has securities that are listed on regulated markets of Italy or other European Union Member States or disseminated amongst the public to a significant extent, in accordance with Art. 116 of the consolidated act of provisions on financial intermediation, pursuant to Italian Legislative Decree no. 58 of February 24, 1998 as subsequently amended. Without prejudice to the provisions of article 2641, the measure of confiscation for an equivalent value may not be lower than the value of the benefits given, promised or offered.”*

The reform extends the list of perpetrators, including not only those holding senior administration or control positions but also those who work exercising managerial roles with companies or private entities.

The third paragraph of Art. 2635 of the Italian Civil Code includes active corruption between private parties.

The “extraneous” party can be punished in the same way, namely anyone who, including through a third party, offers, promises or gives any undue monies or other benefits to persons indicated in the first and second paragraph (the latter relative to the hypothesis whereby the events are committed by parties subject to the management or supervision of a subject pursuant to the first paragraph). This type of crime (with the correlated sanction hypothesis) is also extended to include conduct implemented in regard to those who, under the scope of the entity’s or company’s

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organization, exercise non-senior management roles of any type already mentioned at paragraph one of the relevant Article.

The new type also envisages an extension of the conduct through which a corruption agreement is reached, now also identified in the solicitation (for passive corruption) and offer (for active corruption) of monies or other benefits not due respectively by the *intraneous* or extraneous subject, as a basis for the corruption agreement, the fulcrum of the dis-value of the new type.

Finally, the conduct “through third party” is expressly typified, with additional liability assigned for the intermediary, of the intraneous or extraneous party, depending on whether we are dealing with passive or active corruption.

Again, the sixth paragraph of Art. 2635 of the Italian Civil Code is amended, relative to the confiscation, by means of the addition of the words “or offer” to the expression “given or promised benefits”, also in order to link the provision to the new configuration of the incriminating situation.

The main innovation of the reform consists, however, of the elimination of the causal link between the transgression of the official obligations and to loyalty and the “*harm to the company*”, this latter element is radically expounded from the structure of the case in point. Italian Legislative Decree no. 38/2017 has also introduced, *ex novo*, Art. 2635-bis of the Italian Civil Code, which punishes instigation to corruption between private parties.

The rule reads that “Anyone offering or promising monies or other undue benefits to directors, general managers, managers appointed to prepare the company's accounting documents, auditors and liquidators, companies or private entities, and anyone working there in a managerial capacity, in exchange for an act or omission being committed in breach of obligations relating to the office or obligations of loyalty, is subject, if the offer or promise is not accepted, to the penalty established in the first paragraph of Article 2635, reduced by one third.

The penalty pursuant to the first paragraph applies to directors, general managers, managers appointed to prepare the company's accounting documents, auditors and liquidators, companies or private entities, and anyone working there in a managerial capacity, who solicit, for themselves or others, directly or through a third party, a promise or giving of monies or other benefits, in exchange for an act or omission in breach of the obligations relating to their office or obligations of loyalty, if the solicitation is not accepted”.

In active terms, anyone offering or promising undue monies or other benefits to an *intraneous* person in order that they act or fail to act in breach of the obligations pertaining to their duties or obligations to loyalty, if the offer or promise is not accepted (Art. 2635-bis, paragraph 1 of the Italian Civil Code). In passive terms, on the other hand, the *intraneous* person soliciting a promise or giving of money or other gains in order to act or fail to act in breach of these same obligations shall be punished if said proposal is not accepted (Art. 2635-bis, paragraph 2 of the Italian Civil Code).

### **C. MANSLAUGHTER AND GRIEVOUS OR VERY GRIEVOUS BODILY HARM COMMITTED IN BREACH OF HEALTH AND SAFETY AT WORK LEGISLATION**

Italian Law no. 123 of August 03, 2007 introduced into Italian Legislative Decree no. 231 of June 08, 2001 (hereinafter the “Decree”), Art. 25 septies, thereafter replaced by Art. 300 of Italian Legislative Decree no. 81 of April 09, 2008, which envisages the liability of entities for the crimes

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of manslaughter and grievous and very grievous bodily harm, committed in breach of health and safety at work legislation.

Below is a brief description of the crimes considered under Art. 25 *septies* of the Decree.

**Manslaughter (Art. 589 of the Italian Criminal Code)**

For the purpose of the Decree, the conduct applies of anyone accidentally causing the death of someone following breach of the rules for the prevention of injuries at work.

**Bodily injury caused through negligence (Art. 590)**

The relevant situation to the Decree is that which sanctions anyone accidentally causing grievous or very grievous bodily harm to others, following breach of the rules to prevent accidents at work.

As regards the definition of a criminally-relevant injury, specific consideration is given to those that can give rise to any *illness* consisting of an *anatomical or functional alteration of the body*.

In this regard, we note that the types of injuries taken into consideration, for the purpose of the Decree, are only those of grievous or very grievous bodily harm. Grievous bodily harm are injuries that have endangered the life of the person or caused an illness or incapacity to fulfill duties that has continued for more than 40 days, or the permanent weakening of a sense or organ, instead, very grievous bodily harm are injuries in which there is the loss of a sense or limb or a mutilation such as to make the limb unusable or loss of use of an organ or the capacity to procreate or a permanent, serious speech difficulty or, finally, the permanent scarring or deformation of the face.

In both cases, the responsibility of the subjects appointed in the company to adopt and implement preventive measures exists only where there is a causal link between the failure to adopt or comply with the provision and the harmful event.

The employer shall - in compliance with the general obligation laid down by Art. 2087 of the Italian Civil Code and the Consolidated Law pursuant to Italian Legislative Decree no. 81/08 - adopt, in the exercise of business, all measures that, according to the specificity of the work, experience and technique, be necessary to protect the physical integrity and moral personality of the work providers, with specific regards to those aimed at limiting harmful events that - in accordance with the general criterion of predictability - are expected as potentially able to happen in connection with the specific circumstances of the concrete case. Therefore, the entrepreneur is obliged to take all accident prevention precautions prescribed by the best technology available at the time, regardless of costs. If it should be impossible to guarantee safety, the employer shall cease the activity or use of the equipment that may give rise to a dangerous situation. The entrepreneur is also bound by a duty to inform workers of any danger situations existing in the workplaces and the precautions necessary to prevent such.

**C1. CRIMES OF EMPLOYMENT OF CITIZENS OF THIRD COUNTRIES WITH INVALID RESIDENCY AND CRIMES AGAINST INDIVIDUAL FREEDOM**

Italian Legislative Decree no. 109 of 7.16.2012, with the introduction of Art. 25 - duodecies to Italian Legislative Decree no. 231/2001 envisages by way of predicate offenses for the liability of the legal entity pursuant to Italian Legislative Decree no. 231/2001 certain types of crimes envisaged by Italian Legislative Decree no. 286 of 7.25.1998 “Consolidated text of provisions regulating immigration and rules on the condition of the foreigner”.

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**Art. 22, paragraph 12 bis of Italian Legislative Decree 286/1998**

This rule sanctions the employer hiring foreign workers who do not have a residence permit, or whose permit has expired and whose renewal has not been requested, within the terms of the law, or has been revoked or annulled, in the aggravated hypothesis, namely where:

- more than 3 workers are employed,
- or if the workers hired are children under legal working age,
- or if the workers hired are subject to other working conditions that suggest exploitation pursuant to Art. 603-bis paragraph 3 of the Italian Criminal Code.

**Art. 12, paragraph 3 of Italian Legislative Decree no. 286/1998**

This situation punishes anyone who, in breach of the provisions of the Consolidated Law, promotes, manages, organizes, finances or transports foreigners into State territory or acts in other ways aimed at illegally bringing them into State territory or the territory of another State of which the person is not a citizen and to which said person has no right of permanent residency, if:

- the events regard the entrance or unlawful stay within the territory of the State of five or more persons,
- the person transported has been exposed to dangers such as to be life-threatening or risk his safety in order to achieve entrance or unlawful stay,
- the person transported has been subjected to inhumane or degrading treatment to achieve entrance or unlawful stay,
- the events are committed by three or more people acting in concert or using international transport services or counterfeiting or altered documents or in any case documents that have been obtained unlawfully,
- the perpetrators have weapons or explosive materials available to them.

**Art. 12, paragraph 3-bis of Italian Legislative Decree no. 286/1998**

This rule envisages a more severe penalty if two or more of the hypotheses envisaged by paragraph 3 apply.

**Art. 12, paragraph 3-ter of Italian Legislative Decree no. 286/1998**

This provision envisages an even more severe penalty if the events pursuant to paragraph 3:

- are committed in order to recruit persons to be assigned to prostitution or in any case sexual or working exploitation or regard the entrance of children to be used in unlawful activities in order to encourage their exploitation,
- are committed in order to gain direct or indirect profit.

**Art. 12, paragraph 5 of Italian Legislative Decree no. 286/1998**

The situation punishes anyone who, in order to profit unfairly from the condition of illegality of the foreigner, or under the scope of the other crimes envisaged by Article 12, fosters their remaining in the State territory, in breach of the provisions of the consolidated law, with a more severe penalty envisaged when the events are committed with the action in concert of two or more people.

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It is recalled that in accordance with Art. 10 of Italian Law no. 146/2006, the crimes pursuant to Art. 12, paragraphs 3, 3-bis, 3-ter and 5 of Italian Legislative Decree no. 286/1998 apply even if committed in a transnational manner, i.e. if, in accordance with Art. 3 of Italian Law no. 146 of 03.16.2006, are committed entirely or partly in more than one State or have substantive effects in another State or if they involve an organized criminal group involved in criminal activities in more than one State.

The crimes against individual freedom have, instead, been included amongst the predicate offenses of the administrative liability of the legal entity as per Italian Law no. 228/2003 “Measures against people trafficking”, which introduced Art. 25 quinquies.

### **Enslavement or maintaining in slavery or servitude (Art. 600 of the Italian Criminal Code)**

The situation punishes anyone who exercises powers over a person which correspond to those of the right of property or anyone who reduces or maintains a person in a state of continuous subjection, forcing him to work or provide sexual services or to beg or in any case to carry out illegal activities which involve the exploitation or to submit to the removal of organs.

According to the rule, the enslavement or maintenance in a state of slavery occurs when:

- the conduct is carried out by means of violence, threats, deception, abuse of authority or taking advantage of a situation of vulnerability, physical or mental inferiority or a situation of need,
- or by means of the promise or giving of amounts of money or other benefits to the person with authority over said person.

The crime typifies two types of conduct that can be punished because it can be committed both in the form of enslavement or maintaining in slavery and reducing to and maintaining in servitude.

The first conduct is simply described as “exercise over a person of powers corresponding to those of the right of ownership. The reducing to or maintenance in such a situation is distinguished according to when the exercise of the relevant powers takes place: initial, in the first case, with a direct transfer to a situation of slavery, indirect and subsequent in the second case, when the subject has already been enslaved.

The crime is free form, because it rotates around the enslavement, an event that can be pursued with various types of violent or non-violent conduct. Naturally, the conduct must be reiterated, as can also be seen from the textual fact of the exercise of powers.

The second form of conduct, which is the real new feature of the 2003 reform, sanctions the reduction into or maintenance in servitude. The condition of servitude is defined by the legislator as a “continuous subjection, which forces work or sexual services or begging or in any case the carrying out of unlawful activities which involve exploitation”. In turn, a state of subjection must be the result of “violence, threats, deception, abuse of authority or taking advantage of a situation of vulnerability, physical or mental inferiority or a situation of need or by promising or giving sums of money or other advantages to those in authority over the person”.

It is therefore a habitual crime, which must also be permanent, which requires multiple forms of conduct functional to the transformation of the free man into a servant.

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The terms “violence or threat” are used by the rule to refer to the typical contents of the crime of private violence.

“Deception” in turn suggests the concern to fight conduct that can be objectively dangerous and insidious.

“Abuse of authority” targets the unlawful exercise of the powers or faculties a subject may, for various reasons, have.

The conduct of “taking advantage a situation of vulnerability , physical or mental inferiority” also highlights the legislative intent of extending the protection as far as possible, to include all forms of instrumentalization of a situation of inferiority of the victim.

The last form of conduct consists of the “promising of giving of sums of money or other advantages to those in authority over the person”: this wording includes hypothesized negotiation of persons (particularly children), both apparent and masked.

### **People trafficking (Art. 601 of the Italian Criminal Code)**

The first paragraph of Art. 601 punishes anyone who recruits, brings into State territory, transfers even outside such territory, transports, transfers authority over the person, hosts one or more persons in the conditions described at Article 600 or acts in the same way in regard to one or more persons, through deception, violence, threat, abuse of authority or benefiting from a situation of vulnerability, physical or psychological inferiority or need, or by means of the promising or giving of monies or other benefits to the person who has authority over them, so as to cause or force them to work or provide sexual services or to beg or in any case to act unlawfully, which entails exploitation or the removal of organs.

The second paragraph of Art. 601 punishes anyone, even outside the manners described at the first paragraph who acts in the manner described therein in regard to children.

The third paragraph of Art. 601 envisages an aggravating circumstance in regard to the captain or officer of the national or foreign ship committing any of the events envisaged by the first or second paragraph or acting in concert to do so.

Finally, the fourth paragraph envisages the punishment of the member of the crew of the national or foreign ship used, before departure or during navigation, for trafficking, even if none of the events envisaged by the first or second paragraph have actually occurred or slaves trafficked.

The rule therefore describes four different crime hypotheses.

The first is the exercise of any conduct (recruitment, introduction into the State, transfer even outside there, transport, transfer of authority over the person and hospitality) in regard to the person already in a state of slavery or servitude.

The second situation applies in regard to anyone acting in this way in respect of a person who is not in a state of slavery or servitude, however requires such conduct to be carried out in specific alternative ways (deceit, violence, threat, abuse of authority or exploiting a situation of vulnerability, psychological or physical inferiority or need, promising or giving of money or other benefits to the person exercising authority over the person “trafficked”) and which aims to cause

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or force the victim to carry out certain activities (work or sexual services, begging, unlawful activities entailing exploitation, the removal of organs).

The third situation, envisaged by the second paragraph, regards victims who are children aged under eighteen, for whom no specific forms of aggression are envisaged insofar as for the crime to be committed it shall suffice for the conduct to be implemented and the pursuit of the purposes indicated by the first paragraph.

Finally, the fourth situation, envisaged by the fourth paragraph of Art. 601 of the Italian Criminal Code, covers a crime “proper” that can only be committed by the member of the crew of a ship, initially envisaged by the Italian Code of Navigation (Art. 1153) and now included in the Italian Criminal Code by Italian Legislative Decree no. 21/2018.

### **Sale and purchase of slaves (Art. 602 of the Italian Criminal Code)**

This rule punishes anyone who, outside the cases indicated by Article 601, purchases or sells or transfers a person in the situation pursuant to Article 600.

### **Unlawful intermediation and exploitation of labor (Art. 603-bis).**

Unless the act constitutes a more serious offense, punishment shall consist of imprisonment from one to six years and a fine from 500 to 1,000 euros for each worker recruited, for anyone who: 1) recruits labor for the purpose of assigning it to work for third parties in conditions of exploitation, taking advantage of the workers' state of need or, 2) uses, hires or employs labor also through the intermediation activity referred to in point 1), subjecting the workers to conditions of exploitation and taking advantage of their state of need. If the events are committed by means of violence or threat, the penalty of imprisonment from five to eight years applies and a fine from 1,000 to 2,000 euros per worker recruited.

“Caporalato” is a phenomenon that consists of the recruitment, by persons often tied to criminal organizations, of workers transported to the workplace to be made available to a company. The workers are often people in financial difficulty and/or illegal immigrants without residency permits, who are in a very weak position, paid very little, working with very long, hard shifts and often maltreated, subjected to violence and threats by the “caporali”, i.e. the persons managing worker trafficking.

The exploitation of the caporali envisages: non-application of contracts of employment, a salary of a few dozen euros per day, between 8 and 12 hours of work, violence, blackmail, removal of documents, imposition of housing and supplies of essential, imposition of transport at the workplace by the caporali.

Caporalato, i.e. the unlawful intermediation and exploitation of the labor, had been included amongst the criminal offenses listed in the Italian Criminal Code in 2011, with Article 603-bis, set under title XII of Book II of crimes against the person and, in particular, crimes against individual freedoms. The situation of the new crime was, however, somewhat complicated insofar as it envisaged the identification of a organized intermediation, yet did not define “intermediation” and established a series of specific conduct that constituted exploitation.

The new law rewrites the crime, simplifying it, adding the crime of unlawful intermediation and the exploitation of labor to the crimes for which, if sentenced, the mandatory confiscation of the money, goods or other benefits is always ruled, for which the sentenced person cannot justify the origin

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and includes the liability of the legal entities in accordance with Italian Legislative Decree no. 231/2001.

### **Child prostitution (Art. 600-bis of the Italian Criminal Code)**

Anyone who acts in any of the following ways will be punished by imprisonment from six to twelve years and with a fine from Euro 15,000 to Euro 150,000:

- 1) recruits or induces into prostitution a person aged under eighteen years old,
- 2) fosters, exploits, manages, organizes or controls the prostitution of a person aged under eighteen or otherwise benefits from such.

Unless the act constitutes a more serious offense, anyone performing sexual acts with a child aged between fourteen and eighteen years old, in exchange for monies or other benefits, even if only promised, shall be punished by imprisonment from one to six years and with a fine from Euro 1,500 to Euro 6,000.

### **Child pornography (Art. 600 ter of the Italian Criminal Code)**

Anyone who acts in any of the following ways will be punished by imprisonment from six to twelve years and with a fine from Euro 24,000 to Euro 240,000:

- 1) using children aged under eighteen for pornographic exhibitions or spectacles or to produce pornographic materials,
- 2) recruiting or inducing children aged under eighteen to take part in pornographic exhibitions or spectacles or profiting from such spectacles.

The same penalty shall apply to those selling pornographic materials as per the first paragraph.

Anyone outside the hypotheses of the first and second paragraph, using any means, including telematic, distributes, disseminates, spreads or publicizes pornographic materials as per paragraph one, or who distributes or disseminates news or information aimed at the solicitation or sexual exploitation of children aged under eighteen years old, is punished by imprisonment from one to five years and a fine from 2,582 euros to 51,645 euros.

Anyone who, outside the hypotheses of the first, second and third paragraph, should offer or sell to others, including free of charge, the pornographic materials pursuant to the first paragraph, is punished by imprisonment of up to three years and a fine from Euro 1,549 to Euro 5,164.

### **Tourism initiatives aimed at exploiting child prostitution (Art. 600-quinquies of the Italian Criminal Code)**

Anyone organizing or advertising travel aimed at using prostitution to the detriment of children or in any case including such activities is punished by imprisonment from six to twelve years and with a fine from 15,493 euros to 154,937 euros.

### **Possession of pornographic material (Art. 600-quater)**

Anyone who, outside the hypotheses envisaged by Article 600-ter, knowingly procures or possesses pornographic materials created using children aged under eighteen, is punished with imprisonment of up to three years and a fine of at least Euro 1,549.

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The penalty is increased up to two thirds if the material held is of considerable quantity.

### **Virtual pornography (Art. 600-*quater*1 of the Italian Criminal Code)**

This rule envisages the application of the provisions pursuant to Articles 600-*ter* and 600-*quater* even when the pornographic materials show virtual images created using images of children aged under eighteen years old or part thereof, but the penalty is reduced by one third.

The term “virtual images” is used to refer to images created using graphical processing techniques that are partly or entirely not associated with real situations, the quality of representation of which is such as to show unreal situations as though they were true.

### **Solicitation of children (Art. 609-*undecies*)**

Anyone who, with the aim of committing the crimes pursuant to Articles 600, 600-*bis*, 600-*ter* and 600-*quater*, even if relative to pornographic materials pursuant to Article 600-*quater*.1, 600-*quinquies*, 609-*bis*, 609-*quater*, 609-*quinquies* and 609-*octies*, solicits a child aged under sixteen years old, is punished, if the events do not constitute a more serious offense, with imprisonment from one to three years. “Solicitation” means any act aimed at obtaining the trust of a child through artifice, flattery or threats, potentially also using the Internet or other networks or means of communication.

## **D. CRIMES OF THE HANDLING, LAUNDERING AND USE OF MONEY, GOODS OR BENEFITS OF UNLAWFUL ORIGIN AND SELF-LAUNDERING**

In implementing Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Italian Legislative Decree no. 231 of 2007 has comprehensively reorganized the anti money laundering regulations included in our legal system.

Insofar as is relevant here, it is noted that in introducing Art. 25-*octies* into the Decree, which envisages the liability of entities for crimes of money laundering, handling of stolen goods and the use of monies, goods or utilities of unlawful origin, the legislator arranged for the abrogation of paragraphs 5 and 6 of Art. 10 of Italian Law no. 146 of 2006 on the combating of organized transnational crime. This rule envisages the liability and sanctions as lying with the entities in accordance with the Decree for such crimes only if the specific conditions are met as laid down by Art. 3 of the same Law with regard to the definition of transnational crime. Consequently, in accordance with Art. 25-*octies*, the entity will now be punishable for the crimes of handling stolen goods, money laundering and the use of unlawful capital committed in its interests or to its benefit, even if taking place nationally.

The legislative change has therefore called for an update of the Model, taking into account the nature of the activities implemented by Hitachi Rail STS S.p.A also in a national scope.

*Handling, laundering and use of money, goods or benefits of unlawful origin (Art. 25-*octies* of the Decree)*

The common purpose of the rules set by Articles 648, 648-*bis* and 648-*ter* is to prevent and repress the release into the lawful economy of money, goods or benefits originating from crime, in order to:

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- avoid the “contamination” of the market with capital acquired unlawfully and, therefore, “net” of the costs that operators acting lawfully find themselves paying,
- facilitate the identification of those “handling” such goods so as to make it possible to assess the crimes implemented,
- discourage crime perpetrated for profit.

In light of this premise, it is easy to see why the crimes in question are considered by doctrine and criminal case law as *multiple offenses* insofar as they potentially harm not only the assets of the person offended directly by the predicate offense, who clearly sees their chances of recovering the stolen goods reduced, but also the justice administration, due to the dispersion of the goods of unlawful origin in such a way as to hinder the Authority’s assessment of the predicate offenses and, more generally, the economic system due to the clear harm caused to the principle of free competition and respect for economic rules by the laundered money’s release into the lawful economic and financial systems.

Below is a brief description of the crimes considered under Art. 25-octies of the Decree:

### **Handling stolen goods (Art. 648 of the Italian Criminal Code)**

The rule punishes anyone who, outside the cases of action in concert in the crime, acquires, handles or conceals money or objects obtained from crime or in any case is involved in having them acquired, handled or concealed: such conduct must be knowing, i.e. with the representation of the criminal origin. Handling assumes that another crime has been committed (the “predicate offense”). It should be specified that the crime does not need to be included in the list of crimes against assets or in any case which harm assets, as the handling of objects obtained from *any* crime is punished. Acquisition is intended in a broad sense, including all trades, free of charge or in exchange for payment, able to transfer an object to the property of the party acquiring it.

Handling refers to any way by which possession is obtained of assets originating from crime (including other than purchase and sale), even if only temporarily or through complacency. Concealing indicates the material hiding of the goods received, of criminal origin.

Handling can also take place through involvement in the acquisition, handling or concealing of the object. This conduct is seen in all mediation able to ensure that someone else handles an item obtained through crime.

Punishment of handling is not excluded by the simple fact that the perpetrator, from whom the money or objects stem, cannot be charged or punished or where crime cannot be pursued (Art. 648, last paragraph).

This hypothesis is punished by imprisonment from two to eight years and a fine from Euro 516 to Euro 10,329. The penalty is reduced if the events are particularly minor.

### **Laundering (Art. 648-bis of the Italian Criminal Code)**

This offense occurs, outside cases of action in concert to commit the crime, when a person replaces or transfers money, goods or other utilities originating from a non-culpable offense, or carries out other transactions in relation to them, so as to hinder the identification of their criminal origin.

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This hypothesis is punished by imprisonment from four to twelve years and a fine from Euro 5,000 to Euro 25,000. The penalty is increased when on crimes is committed in the exercise of a professional activity.

**Use of money, goods or utilities of unlawful origin (Art. 648-ter of the Italian Criminal Code)**

This hypothesis of crime is committed, outside cases of action in concert to commit crime and in the cases envisaged by Articles 648 and 648-bis of the Italian Criminal Code, if money, goods or other benefits obtained from crime are used in economic or financial activities. In this case, imprisonment is envisaged from four to twelve years and a fine from Euro 5,000 to Euro 25,000. The penalty is increased when on crimes is committed in the exercise of a professional activity.

In said cases, the financial penalty is applied to the Company from two hundred to eight hundred quotas and a prohibitory sanction of up to two years. The financial penalty can therefore reach approximately 1.25 million euros (in particularly severe cases, the sanction may be tripled).

In the hypothesis of money laundering, the entity is subjected to prohibitory sanctions.

As regards the **material object**, the basic assumption shared by the three situations is the prior committing of a crime that generated an unlawful cash flow, such meaning everything related to the criminal act, and, therefore, the profit, price, product of the crime and all else used to commit the offense.

As specifically regards the crime of money laundering, the legislator mentions, as the material object of the crime, *money, goods and other benefits*: this notion therefore includes not only the means of payment but also real estate, businesses, securities, precious metals, credit rights, etc., namely everything that, just like money, can have economic use or, in any case, be involved by rights. The crime is committed even when the objects come from a chain of intermediaries and, therefore, not directly from the crime assumed, as long as, as will be clarified, the perpetrator is aware of the criminal origin of the goods (and it may also concern the equivalent, i.e. the profit made, for example, from the sale of the goods concerned by the crime or the goods acquired with the money obtained from said crime).

As regards the **type of predicate offense** of handling, laundering and using goods of unlawful origin, the legislator uses fairly vague terms (“*any crime*” in Art. 648 of the Italian Criminal Code, “*crime committed without intent*” in Art. 648-bis of the Italian Criminal Code and “*crime*” in Art. 648-ter of the Italian Criminal Code).

Without prejudice, therefore, to the exclusion of violations, i.e. minor offenses punished by fines or arrest, all crimes aimed at generating unlawful flows of money can constitute the basis for the crimes in question: consider, in particular, robbery, seizure, extortion, the trafficking of weapons or drugs, corruption, tax crimes, usury, financial crimes, corporate crimes, European Community crimes, not excluding, as mentioned, even the possibility of handling goods in turn obtained from handling. There is therefore no need for legal assessment of the existence of the predicate offense nor indeed the identification of its perpetrator, as the crimes in question can also be committed if the perpetrators of the predicate offense are unknown.

The difference between the three situations is first and foremost outlined with reference to the **objective element**.

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The crime of *handling* requires acquisition, handling or concealing: the first hypothesis exists with reference to any trade, in exchange for payment or free of charge, which transfers the goods to the person acquiring them, the second includes any act entailing the transfer of availability, even if only temporarily, of the goods, finally, the third implies the willful concealing of the object, including on a temporary basis, after having had use thereof.

In accordance with Art. 648, the conduct of those intervening in the acquisition, handling or concealing of the goods is also of criminal relevance, i.e. the intermediation aimed at assuring the transfer of the goods, without, moreover, there being any need for this latter to actually and concretely take place.

The crime of *money laundering* consists of the replacement, in the transfer of goods of unlawful origin or, in any case, the carrying out of any transaction in connection with such, in such a way as to conceal the identification of the origin of the goods: it is, therefore, by virtue of this latter reference, a crime of free form, which ends up sanctioning any action taken to hinder or make it more difficult to identify the perpetrator of the predicate offense.

Art. 2 of Italian Legislative Decree no. 231 of 2007 provides an articulated list of the conduct that can be classified as money laundering, mentioning, in particular, “the conversion or transfer of goods.... the concealing or layering of the real nature, origin, location, arrangement, movement, ownership of the goods or rights over such... the acquisition, possession or use of the goods”.

In addition, the FATF (Financial Action Task Force), upon completion of studies performed, has noted that the money laundering process can be considered as structured into three characterizing phases: placement, layering and integration. The first phase entails the introduction of dirty money, as a rule in split form, into the legal financial circuits through traditional (banks and insurance companies) and non-traditional (exchange offices, sellers of precious metals, goods mediators, casinos) financial institutes or other means (e.g. smuggling). The second phase generally takes place through subsequent transfers aimed at losing track of documents attesting to the source of dirty money through, for example, the use of false credit documents or bills of exchange in foreign countries. Finally, the last phase aims to attribute an apparent legitimacy on goods of criminal origin, returning them to the legal financial circuit through, for example, the issue of invoices relative to non-existent transactions.

Finally, the situation of Art. 648-ter regards the use of money, goods or other benefits of unlawful origin in economic or financial activities. In actual fact, the meaning to be attributed to the term “use” is uncertain, as it could be intended in a restrictive sense, i.e. as investment in order to obtain a profit, or broader sense, i.e. as all form of use of unlawful capital in economic and financial activities, regardless of the purpose of the acting party. Said economic activities must, however, it is considered, be lawful, as the crime aims to protect the legal market connected with the production and circulation of goods and services.

In moving onto the **subjective element** of the three situations, the following is highlighted.

The offense of *handling* consists of the deliberate acquisition, handling, concealing or brokering the transfer of the goods, aware of their criminal origin, not requiring precise circumstances of time, manner and place in connection with the predicate offense. This awareness can be gleaned from objective circumstances relating to the transaction, such as, in particular, the qualities and characteristics of the goods sold and the related price, the condition or identity of the seller. Specific malice is instead not required as regards the crime of *money laundering* for which the

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generic crime shall apply of awareness of the criminal origin of the goods and the adoption of the typical or atypical conduct incriminated.

Finally, similar considerations apply to the crime pursuant to Art. 648-ter, whereby the crime is characterized by the awareness and desire to allocate the unlawful capital for which - again in this case generically - the unlawful origin is known, to an economically useful purpose.

### **Art. 648, ter 1 Self-laundering**

*This crime is committed by anyone who, having committed or conspired to commit a crime uses, diverts or replaces in business or speculative economic or financial activities the money, goods or other utilities obtained from the commission of that crime in such a way as to materially conceal their criminal origin. When the offense involves money or property from an infringement, the penalty is reduced.*

The new situation flanks the crime of money laundering and the use of money, goods and benefits of unlawful origin already envisaged by Art. 648 bis and ter of the Italian Criminal Code in the fight against crime.

## **E. COMPUTER CRIMES AND UNLAWFUL PROCESSING OF DATA AND CRIMES INVOLVING THE BREACH OF COPYRIGHT**

Italian Law no. 48 of March 18, 2008 - Ratification and implementation of the Council of Europe Convention on Cybercrime, drawn up in Budapest on November 23, 2001, and rules for the adaptation of the internal system - has amended various provisions contained in the criminal code in terms of computer crime and introduced into Italian Legislative Decree no. 231 of June 08, 2001, Art. 24-bis setting out the provision for new types of administrative crimes deriving from the committing of computer crimes and unlawful processing of data.

These are situations aimed at preventing and fighting crime committed to damage a third party computer or telematic system or pertinent data, information and programs.

In accordance with Art. 1 of the Agreement, the notion of “computer system” includes “any equipment or set of interconnected or connected equipment, one or more items of which, on the basis of a program, automatically processes data”. “Computer data” includes, moreover, “any presentation of facts, information or concepts in a manner subject to be used in a computerized system, including a program that can allow a computerized system to perform a task”.

More specifically, the administrative liability of the entity has been envisaged for the following computer crimes committed in the interests or to the benefit of the entity:

### **Falsehood in a public computer document or one with evidential efficiency (Art. 491-bis of the Italian Criminal Code)**

The rule in question extends to include computer documents, the punishment envisaged by the crimes pursuant to Chapter III of crimes against the public faith and, in particular, the crimes of falsity in deeds (Articles 476-493-bis of the Italian Criminal Code).

“Computer document” means the public document of legal relevance and evidentiary purpose, able to guarantee the truthfulness and genuineness of the inter-subjective economic and legal relations.

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### **Unlawful access to a computer or telematic system (Art. 615 ter of the Italian Criminal Code)**

The interest protected by the rule is that of the confidentiality of information transmitted via computerized and telematic means.

The conduct consists of:

- unlawful access (physical or from a remote position) to a protected system,
- remaining/staying in a protected system - following authorized access - against the express or tacit wishes of the party with the right to exclude.

This is a common offense - which can be committed by anyone and relates to conduct only - which occurs when simply performing the unlawful action.

The subjective element consists of the generic crime, intended as awareness and desire to commit the typical events envisaged.

In terms of acting in concert to commit crime, a twofold charge can be considered for computer fraud too (Art. 640-ter of the Italian Criminal Code), which, however, must include the manipulation of the system, an element that is not necessary to commit the crime of unlawful access.

### **Possession and unlawful disclosure of computer or telematic system access codes (Art. 615 quater of the Italian Criminal Code)**

The interest protected through the rule in question is similar to that of the previous provision.

The object of the conduct consists of codes, keywords or any other tool able to allow the party performing the act to access computer and telematic systems protected by security measures.

The conduct consists of:

- the unlawful acquisition of codes,
- the production of codes, through the creation of a true copy of the original,
- distribution - to indeterminate subjects - of codes using public information means,
- communication - to determined subjects - through the transmission of codes,
- delivery through the material giving of codes,
- communication of indications or instructions able to grant unlawful access.

The crime is common - as it can be committed by anyone - and is only committed if the action is carried out in the manner specified by the legislator.

The subjective element consists of the specific crime, consisting of the provision and desire to complete the action, coupled with the purpose of procuring a benefit for oneself or others, or damaging others.

### **Dissemination of equipment, devices or computer programs aimed at damaging or interrupting a computer or telematic system (Art. 615-quinquies of the Italian Criminal Code)**

The rule sanctions not only conduct relating to “computer programs” but also “devices” and “equipment”.

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The provision therefore includes not only the software but also the hardware, and all equipment or devices whose operation is such as to damage a computer system or alter its function.

The crime is committed pursuant to Art. 615-quinquies of the Italian Criminal Code not only through the acquisition of viruses and malware in general, but also the production and import of dongles, smart cards, skimmers, etc., where, naturally, they are adopted for unlawful use such as to damage or alter a computer system or the data and programs it contains.

Following the reform implemented with the adhesion to the Budapest Convention, which rules, at Art. 6, punishment in cases of “procurement for use”, at present, even merely possession malware is a conduct that can be sanctioned.

The subjective element consists of the specific crime insofar as the events can be punished where it is committed “in order to unlawfully damage a computer or telematic system, the information, data or programs it contains or which are pertinent to it, or to foster the total or partial interruption or alteration of its function”.

### **Interception, impediment or unlawful interruption of computer or telematic communications (Art. 617 quater of the Italian Criminal Code)**

The interest protected by the rule is that of the confidentiality and inviolability of communication.

The object of the conduct therefore consists of the contents of the confidential communication exchanged between two or more subjects through computer systems.

The conduct consists of the interception, impediment or fraudulent interruption of said communications and the crime is committed when awareness is gained of the contents of a message being transmitted.

The penalty is more severe if the act is committed:

- to the detriment of a computer or telematic system used by the State or another public entity or enterprise performing a public service or satisfying a public need,
- by a public official or public servant with abuse of power or breach of duties inherent to the function or service or with abuse of the capacity as system operator,
- by anyone lawfully or unlawfully operating as a private investigator.

The subjective element consists of the generic crime, with the awareness and desire to commit the typical events envisaged by the rule sufficing.

### **Installation of equipment aimed at intercepting, preventing or interrupting computer or telematic communications (Art. 617-quinquies of the Italian Criminal Code)**

Just like Art. 617-quater of the Italian Criminal Code, this rule punishes anyone who, outside the cases permitted by the law, installs equipment able to intercept, prevent or interrupt computer or telematic communication.

The crime is of danger, as it is committed when even the mere suitability of the equipment to intercept, prevent or interrupt computer or telematic communication is ascertained and regardless of the effective damage of the protected asset.

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The subjective element consists of the generic crime, i.e. the desire to install equipment for which the capacity to intercept, prevent or interrupt communication from or to a computer system or between multiple computer or telematic systems, is known.

**Damage of information, data and computer programs (Art. 635-bis of the Italian Criminal Code)**

Following the reform applied with the adhesion to the Budapest Convention, the legislator has amended this rule, clarifying the criminally-relevant conduct.

This situation therefore punishes anyone who destroys, damages, erases, alters or eliminates computer programs, data or information.

Aggravating circumstances apply if the act is committed with violence to the person or with threats or in abuse of the capacity of system operator.

The crime can be tried upon complaint by the party and is classified as common and of conduct only - in free form. Moreover, it is a subsidiary situation, as it exists when no more serious crime can be considered.

The subjective element consists of the generic crime, i.e. the provision and desire of the typical fact envisaged by the incriminating rule. **Damage of information, data and computer programs used by the State or by other public body or, in any case, of public utility (Art. 635-ter of the Italian Criminal Code)**

The rule punishes anyone acting directly to destroy, damage, delete, alter or eliminate information, data or computer programs used by the State or other Public Body or of public utility.

The material object of the action consists of:

- data information and programs used by the public entities,
- data, information and programs of public utility (and, therefore, both public and private, as long as intended to satisfy a public interest).

Aggravating circumstances apply if the act results in the destruction, deterioration, cancellation, alteration or suppression of the information, data or computer programs, or if it is committed with violence to the person or threats or through abuse of the capacity of system operator.

It is therefore a crime aggravated by the event, hence the act exists even in the absence of any effective damage.

**Damage of computer or telematic systems (Art. 635-quater of the Italian Criminal Code)**

Unless the fact constitutes a more serious crime, anyone who, by means of the conduct described by Art. 635-bis, or through the introduction or transmission of data, information or programs, destroys, damages or makes entirely or partially unusable third party telematic or computer systems, or seriously hinders their operation, is punished by imprisonment of one to five years.

The penalty is increased if the act is committed with violence to the person or with threats or abusing the capacity of system operator.

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This crime is therefore committed with the destruction, damage, removal from service or serious hindering of the operation of a third party computer or telematic system, differently to the situation described previously, that regulated by Art. 635-quater of the Italian Criminal Code envisages as material object, to which the damage applies, the entire computer and telematic system.

The crime can be committed by means of the conduct indicated by Art. 635-bis of the Italian Criminal Code (destruction, deterioration, erasure, alteration or elimination of computer programs, information or data) or through the introduction or transmission of data, information or programs, both action intended to damage the system and damage caused in a mediated manner through the destruction, damage, erasure, alteration or elimination of information, data or programs or the introduction or transmission of data, information or programs, are of criminal relevance.

It is therefore a crime of event because, in order to constitute the typical acts, it is essential to ascertain the effective damage or hindrance to operation.

The distinction drawn between the damage of data (punished in accordance with Art. 635-bis of the Italian Criminal Code) and the damage of the system is therefore linked to the consequences of the conduct: if the elimination or alteration of data, information and programs makes the system unusable or at least its operation seriously hindered, the more serious situation is considered of damage to computer or telematic systems envisaged in fact by Art. 635-quater of the Italian Criminal Code.

### **Damage of computer or telematic systems of public utility (Art. 635 quinquies of the Italian Criminal Code)**

Art. 635-quinquies of the Italian Criminal Code corresponds, including in terms of sanctions, to the “old” crime envisaged by the abrogated Art. 420 of the Italian Criminal Code, paragraphs 2 and 3 of the Italian Criminal Code, of an attack to a computer or telematic system of public utility.

The rule expressly recalls the conduct pursuant to Art. 635-quater of the Italian Criminal Code, envisaging that if the events pursuant to Art. 635-quater aim to destroy, damage or make partly or entirely unusable computer or telematic system of public utility or seriously hinder operation, the penalty is imprisonment from one to four years.

With respect to this crime, similarly to that envisaged by the previous Article, the sphere of conduct subject to punishment is extended, envisaging that the events may be aimed not only at damaging or destroying the system but also at making it unusable or seriously hindering its operation.

It is a crime that is committed in advance, which does not require any effective damage to be caused.

The effective damage of the system, its destruction or the fact that it is left entirely or partially unusable, is considered as aggravating circumstances, which significantly increase the penalty, additional aggravating circumstances are envisaged if the events are committed with violence against a person or threats or through abuse of the capacity of system operator.

Differently to that established by the abrogated Art. 420, paragraph 3 of the Italian Criminal Code, the serious hindrance to the operation of the system or partial or complete interruption of the system no longer constitute aggravating circumstances.

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Finally, whilst for Art. 635-ter of the Italian Criminal Code the material object of the damage regards computer data or programs used by the public entities or pertinent to it, or in any case of public utility, the crime pursuant to Art. 635-quinquies of the Italian Criminal Code exists only where the conduct aims to damage, destroy, etc. computer or telematic systems of public utility.

For the crime to exist, therefore, the fact that the systems are used by public entities shall not alone suffice, they must be of public utility.

### **Computer fraud of the electronic signature certifier (Art. 640-quinquies of the Italian Criminal Code)**

The conduct that can be punished in accordance with this rule consists of the breach of the legal obligations envisaged for the issue of a qualified certificate relative to the electronic signature.

It is a crime “proper” as it can only be carried out by the subject providing qualified electronic signature certification services.

The subjective element consists of the specific crime insofar as the events can be punished where committed by the qualified certifier in order to procure unfair profit for himself or others or to cause damage to others.

National cybernetic security perimeter (Art. 1, paragraph 11 of Italian Law no. 133/2019)

The rule punishes the conduct of anyone who, in order to hinder or impact the fulfillment of procedures pursuant to paragraph 2, letter b) or paragraph 6, letter a) or inspections and supervision envisaged by paragraph 6, letter c), provides information, data and elements of fact that are not truthful, relevant to the preparation or update of the lists pursuant to paragraph 2, letter b) or for the communication pursuant to paragraph 6, letter a) or the conduct of inspections and supervision pursuant to paragraph 6), letter c) or fails to notify such data, information or elements of fact by the deadlines prescribed.

With Italian Law no. 99 of 07.23.2009, which introduced Art. 25 novies of the Decree, the administrative liability of the Entities was envisaged also in connection with the **crimes of copyright protection and the protection of other rights connected with its exercise**. More specifically, these are some of the types of crimes intended to protect copyright and the right to make exclusive use of intellectual rights, as per Italian Law no. 633/1941, as follows:

- the making available to the public, through the release into a system of telematic networks, by means of connections of any type, of protected intellectual works or parts thereof (Art. 171, paragraph 1),
- the making available to the public, through the insertion in a system of telematic networks and with connections of any kind, of an original work not intended for publicity, or with usurpation of the authorship of the work, or with deformation, mutilation or other modification of the work itself, if this causes offense to the honor or reputation of the author (Art. 171, paragraph 3),
- the unlawful duplication, to profit therefrom, of programs for processors or the import, distribution, sales, possession for commercial or business purposes or leasing, again in order to gain profit, of programs contained on storage devices not marked by the SIAE or means of any type intended purely to allow for or facilitate the arbitrary removal or

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functional avoidance of devices applied to protect a program for processors (Art. 171 bis, paragraph 1),

- the copying, transfer to another storage device, distribution, communication, presentation or public demonstration, in order to benefit therefrom, on storage devices not marked by SIAE, of a database, in breach of the provisions of laws protecting copyright (Articles 64 quinquies and 64 sexies) or the extraction or reuse of the database in breach of the provisions of law protecting the rights of the author of the database (Articles 102 bis and 102 ter) or the distribution, sale or lease of a database (Art. 171 bis, paragraph 2),
- if committed for profit and not for personal gain: a) the unlawful copying, reproduction, transmission, public distribution using any means of all or part of an intellectual work intended for the television or cinematographic circuit the sale or hire of disks, tapes or similar storage devices or any other storage device containing phonograms or videograms of musical, cinematographic or audiovisual or similar works or sequences of moving images, b) the unlawful reproduction, transmission or public distribution, using any procedure, of entire or parts of literary, dramatic, scientific or teaching, musical or dramatic-musical works or multimedia works, even if included in collective or composite works or databases, c) also outside the hypotheses of action in concert in the duplication or reproduction, the introduction into State territory, possession for sale or distribution, distribution, the release to the market, the rental or in any case transfer for any reason, public broadcasting, broadcasting via television using any procedure, broadcasting over the radio, public listening, unlawful duplications or reproductions pursuant to letters a) and b), d) the possession for sale or distribution, release to the market, sale, rental, transfer in any way, public broadcasting, broadcasting by radio or television using any procedure, of video cassettes, music cassettes, any storage device containing phonograms or videograms of musical, cinematographic or audiovisual works or sequences of moving images or other storage device for which it is prescribed, in accordance with this law, that marking be applied by the Italian society of authors and publishers (SIAE), not bearing such mark or bearing a counterfeit or altered mark, e) for lack of agreement with the lawful distributor, the re-transmission or broadcasting using any means of an encrypted service received by means of devices or parts of devices used to decode transmissions of conditional access, f) the introduction into the State territory, possession for sale or distribution, distribution, sale, rental, transfer in any way, commercial promotion, installation of devices or elements of special decoding, which grant access to an encrypted service without paying the required fees, f-bis) the manufacture, import, distribution, sale, rental, transfer in any way, advertising for sale or rental or possession for commercial purposes of equipment, products or components or the provision of services with the main aim or commercial purpose of avoiding effective technological measures implemented to protect protected works or materials (Art. 102-quater) or that are mainly designed, produced, adapted or developed in order to make it possible or facilitate the avoidance of such measures. Technological measures include those applied or remaining following the removal of the measures consequent to voluntary initiative by the holders of the rights or agreements between the latter and the exception beneficiaries, or following the execution of administrative or legal orders, h) the unlawful removal or alteration of electronic information on the system of rights (Art. 102-quinquies) or the distribution, import for distribution, broadcasting by radio or television, communication or making available to the public of works or other protected materials from which the electronic information has been removed or altered (Art. 171 ter, paragraph 1, letters a, b, c, d, e, f, f-bis and h).

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- the reproduction, duplication or unlawful distribution, sale or in any case release to the market, transfer in any way or unlawful import of more than fifty copies or examples of works protected by copyright and related rights (Art. 171 ter, paragraph 2, letter a),
- if committed, for the purpose of profit, communication to the public through release to a system of telematic networks, by means of concessions of any type, of a copyright protected intellectual work, or part thereof (Art. 171 ter, paragraph 2, letter a-bis),
- the implementation of conduct pursuant to Art. 171-ter, paragraph 1 by anyone in the business of the reproduction, distribution, sale or marketing, import of works protected by copyright and related rights (Art. 171 ter, paragraph 2, letter b),
- the promotion or organization of the unlawful activities pursuant to Art. 171 ter, paragraph 1 (Art. 171 ter, paragraph 2, letter c),
- the failure to notify, within 30 days of the date of release to the market on national territory or import, the data necessary to clearly and uniquely identify the storage devices not marked or the false declaration relating to the fulfillment of the obligations relating to SIAE marking (Art. 181 bis, paragraph 2) (Art. 171 septies),
- fraudulent production, sale, import, promotion, installation, change, use for public and private use or equipment or part of equipment serving to decode audiovisual transmission with conditional access made by ether, satellite, cable, in both analogue and digital form (Art. 171-octies).

## F. ORGANIZED CRIME

With Italian Law no. 94 of July 15, 2009, Art. 2, paragraph 29, Art. 24-ter was added to the Decree, identifying organized crime as a predicate offense for sanctioning entities, identified in Articles:

### **416 of the Italian Criminal Code - association with the intent to commit crime.**

*“When three or more people associate with the aim of committing crime, those who promote or constitute or organize the association are punished, for this alone, by imprisonment from three to seven years.*

*Merely for the fact of taking part in the association, the penalty is imprisonment from one to five years.*

*The heads shall be subject to the same penalty as established for the promoters.*

*If the associates carry weapons in the countryside or public routes, imprisonment applies from five to fifteen years.*

*The penalty is increased if the number of associates is ten or more.*

*If the association aims to commit any of the crimes pursuant to Articles 600, 601, 601-bis and 602 and Article 12, paragraph 3-bis of the Consolidated Law of provisions on the regulation of immigration and the condition of the foreigner, pursuant to Italian Legislative Decree no. 286 of July 25, 1998 and Articles 22, paragraphs 3 and 4 and 22 bis, paragraph 1 of Italian Law no. 91 of April 01, 1999, imprisonment shall apply from five to fifteen years in the cases envisaged by the first paragraph and from four to nine years in the cases envisaged by the second paragraph. (Following the coming into force of Italian Legislative Decree no. 21/2018 on the reservation of code and by virtue of Art. 7 of said legislation, the reference made to Art. 22 bis is now intended as relating to Art. 601 bis of the Italian Criminal Code).*

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*If the association aims to commit any of the crimes envisaged by Articles 600-bis, 600-ter, 600-quater, 600-quater.1, 600-quinquies, 609-bis, when the events are committed to the detriment of a child aged under eighteen, 609-quater, 609-quinquies, 609-octies, when the events are committed to the detriment of a child aged under eighteen, and 609-undecies, imprisonment shall apply from four to eight years in the cases envisaged by the first paragraph and from two to six years in the cases envisaged by the second paragraph.”*

**- 416 bis of the Italian Criminal Code - Mafia-type association, including foreign.**

*“Anyone who is a member of a Mafia-type association numbering three or more people, shall be punished by imprisonment from ten to fifteen years.*

*Anyone promoting, directing or organizing the association shall be punished, for this alone, with imprisonment from twelve to eighteen years.*

*The organization is a mafia-type organization when those who belong to it make use of the intimidation force of the associative ties and of the resulting condition of subjection and of the code of silence to commit crimes, to acquire direct or indirect control of economic activities, concessions, authorization, public services and contracts, or to obtain undue profit or advantage for itself or others , or to obstruct the free exercise of voting rights to procure votes for itself or others in public elections. ....”*

**416-ter of the Italian Criminal Code - Political-Mafia electoral exchange.**

*“Anyone accepting, directly or through intermediaries, a promise or procure votes by subjects belonging to the associations pursuant to Article 416-bis or in the ways described at the third paragraph of Article 416-bis in exchange for the supply or promise of the supply of money or other benefits or in exchange for the willingness to satisfy the interests or needs of the Mafia-type association, shall be punished by the penalty established in the first paragraph of Article 416-bis. The same penalty applies to anyone promising, directly or through intermediaries, to procure votes in the cases as per the first paragraph.*

*If anyone accepting the promise of votes, following the agreement of the first paragraph, should be elected in the relevant elections, the penalty shall apply as envisaged by the first paragraph of Article 416-bis, increased by half.*

*In the event of sentencing for the crimes pursuant to this Article, the perpetual prohibition from public offices shall always apply”.*

**630 of the Italian Criminal Code - seizure of persons for the purposes of kidnapping or extortion**

*“Anyone seizing a person in order to achieve, for himself or others, unfair profits as the price for release, shall be punished by imprisonment from twenty-five to thirty years.*

*If the seizure results in the death, as a consequence not desired by the criminal, of the person seized, the guilty party is punished by imprisonment of thirty years.*

*If the guilty party causes the death of the person seized, a life sentence is applied.*

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*Anyone involved who, in disassociating from the others, acts in such a way that the subject seized is released, without this being the consequence of payment of the ransom demanded, shall be subject to the penalties envisaged by Article 605. If, however, the person seized dies, as a consequence of the seizure, after release, the penalty is imprisonment from six to fifteen years.*

*Anyone involved who, in disassociating from the others, acts, outside the case envisaged by the previous paragraph, to prevent the crime from having any additional consequences or concretely helps the police or legal authorities collect decisive evidence by which to identify or capture those involved, shall have the life sentence replaced by a sentence of imprisonment from twelve to twenty years and the other penalties are reduced by one third to two thirds.*

*Where attenuating circumstances apply, the penalty envisaged by the second paragraph sees the life sentence replaced by imprisonment from twenty to twenty-four years, the penalty envisaged by the third paragraph sees the life sentence replaced by imprisonment from twenty-four to thirty years. If there are several attenuating circumstances, the penalty to be applied as a result of the reductions, cannot be any less than ten years, in the hypothesis envisaged by the second paragraph, and fifteen years, in the hypothesis envisaged by the third paragraph.*

*The limits to the penalty envisaged in the previous paragraph may be exceeded if the attenuating circumstances apply pursuant to the fifth paragraph of this Article.”*

**- Art. 74 Italian Presidential Decree no. 309 of October 09, 1990 - association for the purpose of illegal drug trafficking (Italian Law no. 162 of June 26, 1990, Art. 14, paragraph 1 and 38, paragraph 2).**

*“1. When three or more persons associate in order to commit multiple crimes of those envisaged by Article 73, the person who promotes, establishes, manages, organizes or finances the association is punished for this alone with imprisonment of at least twenty years.*

*2. Anyone taking part in the association is punished with imprisonment of at least ten years.*

*3. The penalty is increased if the number of associates is ten or more or if the associates include persons using drugs.*

*4. If the association is armed, the penalty, in the cases indicated by paragraphs 1 and 3 shall be no less than twenty-four years of imprisonment and, in the case envisaged by paragraph 2, twelve years of imprisonment. The association is considered armed when participants have the availability of weapons or explosive materials, even if hidden or held in a depot.*

*5. The penalty is increased if the circumstances apply pursuant to letter e) of paragraph 1 of Article 80.*

*6. If the association is established to commit the events described by paragraph 5 of Article 73, the first and second paragraph of Article 416 of the Italian Criminal Code apply.*

*7. The penalties envisaged by paragraphs 1 to 6 are reduced from half to two thirds for anyone who has effectively taken action to secure evidence of the crime or to remove decisive resources from the association used to commit the crimes.*

*7-bis. The sentenced party is ordered to have the objectives used or allocated to commit the crime confiscated and the goods that are the profit or product thereof, unless such belong to a person*

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*extraneous to the crime, or, when not possible, goods available to the guilty party for a value equivalent to said profit or product, shall be confiscated.*

8. *When the crime envisaged by Article 75 of Italian Law no. 685 of December 22, 1975 is referenced in laws and decrees, abrogated by Article 38, paragraph 1 of Italian Law of June 26, 1990, the reference is intended as made to this Article”.*

**- Crimes indicated under Art. 407, paragraph 2, letter a) point 5 of the Italian Code of Criminal Procedure - crimes of illegal manufacture, introduction into the State, marketing, sale, possession and carrying in public places of war or war-type weapons.**

*“5) crimes concerning the illegal manufacture, introduction into the State, marketing, sale, possession and carrying in a public place, of war or war-type weapons or part thereof, of explosives, unlawful weapons and more common shooting weapons, except for those envisaged by Article 2, paragraph three of Italian Law no. 110 of April 18, 1975”.*

With the introduction, with Italian Law no. 94 of July 15, 2009, Art. 24-ter of the Decree, organized crime is a predicate offense, even if committed in a non-transnational manner.

Therefore, with the introduction of Art. 24-ter of the Decree, the importance of the category of transnational offenses has almost entirely been eliminated, hence, for the purpose of the Model, it is best to focus attention on Art. 24-ter and, therefore, on the common denominators of organized crimes, which apply regardless of whether or not they are classified as transnational offenses. In this respect, case law on association to commit crime is copious and consolidated.

Crimes by association are characterized first and foremost due to the existence of an association tie that tends to be stable, set to continue even beyond the crime planned. Consequently, as the essence is the association, the criminal plans may be to a certain extent undetermined and it does not cease if the agreement only regards a single certain type of crime, as shown by associations to traffic drugs or illegal immigration or the smuggling of tobacco, as the indeterminate nature of the number of crimes, timing and procedures, suffices. Finally, the association is characterized by the existence of an organizational structure, albeit minimal, adequate to the pursuit of the criminal objectives.

Crimes by association are autonomous figures of crime with respect to the scope crimes, they are conceived as crimes of danger that are committed with the agreement or three or more persons and are regardless of whether or not crimes are committed, they are here intended as committed, even if none of the crimes hypothesized has actually taken place. Participation may take various forms, no specification of such is required.

Finally, note that case law has considered the concept of external action in concert in an association to commit crime, namely the crime committed by the person who, although not an associate and indeed outside the association structure, merely provides service to such on an occasional, non-institutionalized basis, as long as there is a causal link to the aim of committing crime.

Special attention must be paid to the last paragraph of Art. 24-ter of the Decree, according to which:

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*“if the body or an organizational unit of same is used on a permanent basis solely or primarily to allow or facilitate the commission of offenses indicated in paragraphs 1 and 2, final disqualification from carrying on the activity is imposed...”.*

The paragraph repeats what is already envisaged under Art. 16, paragraph 3 of the Decree but, reported in this context, may take on the meaning of giving particular relevance to the phenomenon, meaning a desire to suitably strike the organizational units that, although forming part of lawful organizations, go about unlawful activities. To this end, there may be certain subsidiaries or “dummy” units that at times operate as parallel organizations to the main organization.

With regards to the “Mafia-type associations, including foreign”, the definition is given by Art. 416 bis of the Italian criminal Code, at paragraph 3, the text of which is given above (and to which reference is made), the explicit purpose is the management and control of economic activities, highlighting the phenomenon of the enterprise that, to use the language of the Court of Cassation, operates lawfully and only in episodes commits a crime, juxtaposing the criminal activity with the economic activity in which the crime takes place.

It is recalled that in accordance with Art. 10 of Italian Law no. 146 of March 16, 2006, the predicate offenses for the sanction of legal entities pursuant to Italian Legislative Decree no. 231/2001 include some organized crimes and the hindrance of justice, as long as committed in the manner indicated by the same Law under Art. 3 for the definition of transnational crime.

The crimes in question are the following:

- association with the intent to commit crime (Art. 416 of the Italian Criminal Code),
- Mafia-type association, including foreign (Art. 416-bis of the Italian Criminal Code),
- inducement not to make declarations or to make false declarations to the legal authorities (Art. 377-bis of the Italian Criminal Code),
- personal aiding and abetting (Art. 378 of the Italian Criminal Code),
- association with the intent to commit crime aimed at the smuggling of processed foreign tobacco (Art. 291-quater of Italian Presidential Decree no. 43 of 1.23.1973),
- association aimed at the unlawful trafficking of drugs (Art. 74 of Italian Presidential Decree no. 309 of 10.9.1990).

The definition of transnational offense is given in Art. 3 of the same Italian Law no. 146 of March 16, 2006, which reads: *“1. For the purpose of this Law, a transnational offense is considered to be an offense punishable by imprisonment of not less than a maximum of four years, if an organized criminal group is involved, as well as:*

*a) is committed in more than one State,*

*b) or is committed in one State, but substantially prepared, planned, directed or controlled from another State,*

*c) or is committed in one State, but with the involvement of a criminal organization operating in more than one State,*

*d) or is committed in one State but with substantial effects in another State.”*

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For a description of the crimes pursuant to Articles 416 of the Italian Criminal Code, 416-bis of the Italian criminal Code and 74 of Italian Presidential Decree no. 309/1990, which apply both if committed nationally and in a transnational manner, reference is made to that described previously.

Here, we would add the description of the crime pursuant to Art. 291-quater of Italian Presidential Decree no. 43/1973, which is only relevant if committed in a transnational manner.

**- Art. 291-quater of Italian Presidential Decree no. 43/1973** - association with the intent to commit crime aimed at the smuggling of processed foreign tobacco

When three or more persons associate in order to commit multiple crimes of those envisaged by Article 291-bis, the persons who promote, establish, manage, organize or finance the association are punished, for this alone, with imprisonment from three to eight years.

Anyone taking part in the association is punished with imprisonment from one to six years.

The penalty is increased if the number of associates is ten or more.

If the association is armed or if the circumstances apply pursuant to letters d) or e) of paragraph 2 of Article 291-ter, the penalty of imprisonment from five to fifteen years applies in the cases envisaged by paragraph 1 of this Article, and from four to ten years in the cases envisaged by paragraph 2. The association is considered armed when participants have the availability, in order to achieve the purpose of the association, of weapons or explosive materials, even if hidden or held in a depot.

The penalties envisaged by Articles 291-bis, 291-ter and this Articles are reduced from one third to half in regard to any defendant who, in dissociating from the others, takes action to prevent the criminal activities from having additional consequences, also concretely helping the police or legal authorities to collect decisive evidence in reconstructing the events and identifying and capturing the perpetrators of the crime or identifying resources relevant to the committing of the crimes.

It is specified that Art. 291-bis, the conduct of which is expressly recalled by Art. 291-quater, punishes anyone who introduces, sells, transports, purchases or possesses in the State territory, a quantity of smuggled foreign processed tobacco in excess of a conventional ten kilograms.

Art. 291-ter, again expressly recalled by Art. 291-quater, envisages aggravating circumstances in the case where the events envisaged by Article 291-bis are committed using means of transport that belong to persons extraneous to the crime (paragraph 1) or when (paragraph 2):

- a) in committing the crime or in adopting conduct aimed at assuring the price, product, profit or impunity of the crime, the guilty party uses weapons or ensures that it had them when committing the crime,
- b) in committing the crime or immediately thereafter, the perpetrator is found, together with two or more persons, in conditions such as to hinder the police forces,
- c) the events are connected with another crime against the public faith or public administration,
- d) in committing the crime, the perpetrator used means of transport that, with respect to the certified characteristics, have been altered or changed in such a way as to hinder the intervention of the police force or to cause danger to public safety,

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- e) in committing the crime, the perpetrator used partnerships or capital companies or funding in any way established in States that have not ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, drawn up in Strasbourg on November 08, 1990, ratified and made executive in accordance with Italian Law no. 328 of August 09, 1993, and which in any case has not stipulated and ratified legal assistance conventions with Italy, concerning the crime of smuggling.

For a description of the situations pursuant to Articles 377-bis and 378 of the Italian Criminal Code, reference is made to Special Part “H” given over to crimes of hindering justice.

## **G. CRIMES IN BREACH OF ENVIRONMENTAL STANDARDS**

Italian Legislative Decree no. 121/2011 introduced into Italian Legislative Decree no. 231 of June 08, 2001 (hereinafter the “Decree”), Art. 25-undecies, envisaging the liability of entities for environmental offenses.

Art. 25-undecies was subsequently amended by Italian Law no. 68 of May 22, 2015 “*Provisions on environmental crimes*”, which extended the liability of entities to include the new types of crime that the same Law has included in the second book of the Italian Criminal Code (Title VI-bis “Of environmental crimes”).

Below is a brief description of the crimes today considered under Art. 25-undecies of the Decree.

The extension to include environmental crimes under the company’s liability envisaged by Italian Legislative Decree no. 231/2001 is set to have a significant impact on enterprises carrying out business that may, directly or indirectly and in a culpable manner, damage or prejudice the environment.

It is recalled that for these crimes, the law sanctions both culpable and intentional conduct.

The specific crimes are included in the following legislative texts:

- Italian Criminal Code: Articles 452-bis, 452-quater, 452-quinquies, 452-octies, 452-sexies, 727-bis and Art. 733-bis,
- Italian Legislative Decree no. 152/2006: Consolidated Environment Act integrated with Italian Legislative Decree no. 128/2010 and Italian Legislative Decree no. 205/2010,
- Italian Law no. 150/1992 on the international trade of animal and plant species in danger of extinction,
- Italian Law no. 549/1993 on the protection of atmospheric ozone
- Italian Legislative Decree no. 202/2007: on the pollution caused by ships.

Below is a definition of the criminal figures recalled by Art. 25-undecies:

### **Art. 452-bis Italian Criminal Code: environmental pollution**

*“Anyone who unlawfully causes an significant and measurable damage or deterioration of the following shall be punished by imprisonment from two to six years and a fine from Euro 10,000 to Euro 100,000:*

- 1) *water or air or extensive, significant portions of the ground and subsoil,*
- 2) *an ecosystem, biodiversity, including agricultural, flora and fauna.*

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*In the event the pollution is produced in a protected natural area or area of outstanding natural beauty, or an environmental, historic, artistic, architectural or archaeological protected zone, or to the detriment of protected animal or vegetable, the penalty is increased,*

**Art. 452- quater Italian Criminal Code: environmental disaster**

*“Except in the cases provided for in Article 434, anyone who unlawfully causes an environmental disaster shall be punished with five to fifteen years imprisonment. Environmental disaster is defined as:*

- 1) the irreversible alteration of an ecosystem's balance,*
- 2) the alteration of the balance of an ecosystem whose elimination is particularly onerous and can only be achieved with exceptional measures,*
- 3) the damage to public safety because of the significance of the event due to the extent of the contamination or its harmful effects or to the number of people injured or exposed to hazard.*

*In the event the pollution is produced in a protected natural area or area of outstanding natural beauty, or an environmental, historic, artistic, architectural or archaeological protected zone, or to the detriment of protected animal or vegetable, the penalty is increased”.*

**Art. 452-quinquies Italian Criminal Code: culpable damage to the environment**

*“If any of the facts referred to in Articles 452-bis and 452-quater is committed with gross negligence, the penalties provided for by the same articles are reduced by one-third to two-thirds.*

*If the perpetration of the events referred to in the preceding paragraph results in a risk of environmental pollution or environmental disaster, the penalties are further decreased by one third”.*

**Art. 452- octies Italian Criminal Code: aggravating circumstances**

*“In the event the association as defined in Art. 416 is directed, whether exclusively or concurrently, toward the commission of any of the offenses contemplated by this section, the penalties contemplated by said article 416 are increased.*

*When the conspiracy referred to in article 416-bis is intended to commit any of the crimes referred to in this title, or to acquire the management or otherwise the control of environment-related economic activities, concessions, authorizations, contracts or public services, the penalties provided for in said article 416-bis are increased.*

*The penalties in the first and second paragraphs have increased from one third to one half if the Association belong to public officials or employees of a public service who exercise functions or perform services in environmental matters”.*

**Art. 452-sexies Italian Criminal Code: trafficking and abandoning of radioactive waste**

*“Save in the event the fact constitutes a more serious offense, the unlawful purchase, sale, receipt, transport, import, export, procurement for third parties, holding, transfer, abandoning or in any way disposing of highly radioactive material is punished by imprisonment from two to six years and a fine from Euro 10,000 to Euro 50,000.*

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The penalty pursuant to the first paragraph is increased if the events result in the danger of damaging or deteriorating:

- 1) water or air or extensive, significant portions of the ground and subsoil,
- 2) an ecosystem, biodiversity, including agricultural, flora and fauna.

If the event endangers the life or safety of people, the penalty shall be increased by up to a half”.

**Art. 727-bis Italian Criminal Code: “killing, destruction, capture, detention of any protected species of wild animal or plant”.**

“Unless the act constitutes a more serious offense, anyone who, outside the cases permitted, kills, captures or holds protected wild animals is punished with arrest from one to six months or a fine of up to 4,000 euros, save cases in which the action involves a negligible quantity of such animals and has a negligible impact on the conservation of the species.

Anyone who, outside the cases permitted, destroys, takes or holds protected wild plants, is punished by a fine of up to 4,000 euros, unless the action regards a negligible quantity of such animals and has a negligible impact on the conservation of the species”.

For the purpose of the application of Art. 727-bis of the Italian Criminal Code, the term protected wild animals and plants are those indicated in annex IV to Directive 92/43/EC and annex I to Directive 2009/147/EC.

**Art. 733-bis Italian Criminal Code “destruction or damage of habitat within a protected site”.**

“Anyone who, outside the cases permitted, destroys a habitat within a protected site or in any case damages it, compromising its state of conservation, is punished with arrest of up to eighteen months and a fine of at least 3,000 euros”.

For the purpose of applying Art. 733-bis of the Italian Criminal Code, “habitat within a protected site” is any habitat of species for which a zone is classified as a special protection zone in accordance with Article 4, paragraphs 1 or 2 of Directive 2009/147/EC or any natural habitat or habitat of a species for which a site is designated as a special conservation zone in accordance with Art. 4 of Directive 92/43/EC.

With regards to the perpetration of crimes contemplated by Italian Legislative Decree no. 152 of April 3, 2006, the following fines are levied on the entity:

- **for the crimes pursuant to Art. 137 (“criminal penalties”):**
  - o for the breach of paragraphs 3 and 5, first period, and 13, a fine between one hundred and fifty and two hundred and fifty quotas,
  - o for the breach of paragraphs 2 and 5, second period, and 11, a fine between two hundred and three hundred quotas.

**Art. 137 (criminal penalties)**

“1. Anyone opening or preparing new industrial waste water drains, without authorization, or continuing to make or maintain such drains after authorization has been suspended or revoked, is punished with arrest from two months to two years or with a fine from 1,500 euros to 10,000 euros.

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2. When the conduct described under paragraph 1 regards industrial waste water drains containing hazardous substances included in the families and groups of substances indicated in tables 5 and 3/A of Annex 5 to part three of this Decree, the penalty is arrest from three months to three years and a fine from 5,000 euros to 52,000 euros.

3. Anyone who, outside the hypotheses pursuant to paragraph 5 or Art. 29-quattordices, paragraph 3, drains industrial waste water containing hazardous substances included in the families and groups of substances indicated in tables 5 and 3/A of Annex 5 to part three of this Decree without observing the provisions of the authorization or other provisions of the competent authority in accordance with Articles 107, paragraph 1 and 108, paragraph 4, is punished with arrest of up to two years.

5. Anyone, in connection with the substances indicated in table 5 of Annex 5 to part three of this Decree, in draining industrial waste water exceeds the limit values set in table 3 or, if draining to the ground, in table 4 of Annex 5 to part three of this Decree, or the more restrictive limits set by the autonomous regions or provinces or the competent authority in accordance with [Article 107, paragraph 1](#), is punished with arrest of up to two years and a fine from three thousand euros to thirty thousand euros. If the limit values set for the substances contained in table 3/A of said Annex 5 are also exceeded, arrest shall apply from six months to three years and a fine from 6,000 euros to 120,000 euros.

11. Anyone not observing the prohibitions of drains envisaged by Articles 103 and 104 is punished by arrest of up to three years.

13. The penalty always applies of arrest from two months to two years if the drainage into the sea water by ships or aircraft contains substances or materials for which there is an absolute ban on spillage in accordance with the provisions of international conventions in force on the matter and ratified by Italy, save where they are in quantities such as to be made rapidly harmless by physical, chemical and biological processes that take place naturally in the sea and as long as there is preventive authorization by the competent authority”.

- **for the crimes pursuant to Art. 256** (“unauthorized waste management”):
  - o for the breach of paragraphs 1, letter a) and 6, first period, a fine up to two hundred and fifty quotas.
  - o for the breach of paragraphs 1, letter b), 3, first period, and 5, a fine between one hundred and fifty and two hundred and fifty quotas.
  - o for the breach of paragraph 3, second period, a fine between two hundred and three hundred quotas.

The fines contemplated by paragraph 2, letter b) are reduced by half in the case of perpetration of the offense described in Article 256, paragraph 4, of Italian Legislative Decree no. 152 of April 03, 2006.

#### **Art. 256 Leg. Decree 152/2006: unauthorized waste management**

“1. Outside the cases sanctioned by Art. 29-quattordices, paragraph 1, anyone collecting, transporting, recovering, disposing of, trading in and intermediating waste without the prescribed authorization, registration or communication pursuant to Articles 208, 209, 210, 211, 212, 214, 215 and 216 is punished:

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a) by arrest from three months to one year or a fine from two thousand, six hundred euros to twenty-six thousand euros, if non-hazardous waste,

b) by arrest from six months to two years and a fine from two thousand, six hundred euros to twenty-six thousand euros, if hazardous waste.

3. Outside the cases sanctioned by Art. 29-quattordices, paragraph 1, anyone creating or managing an unauthorized landfill is punished by arrest from six months to two years and a fine from two thousand, six hundred euros to twenty-six thousand euros. The penalty of arrest from one to three years and a fine from five thousand, two hundred euros to fifty-two thousand euros shall apply if the landfill is partly or entirely used to dispose of hazardous waste. The judgment or sentence given in accordance with Article 444 of the Italian Code of Criminal Procedure is followed by confiscation of the area on which the unlawful landfill is developed, if owned by the perpetrator or joint perpetrator of the crime, without prejudice to the obligations to reclaim or restore the original condition of the site.

4. The penalties pursuant to paragraphs 1, 2 and 3 are halved in the event of failure to observe the provisions contained in or referred to by authorizations, and in the event of failure to comply with the requirements and conditions laid down for registrations or communications.

5. Anyone who, in breach of the prohibition pursuant to Article 187, carries out activities that are not permitted entailing the mixing of waste, is punished with the penalty pursuant to paragraph 1, letter b).

6. Anyone temporarily depositing hazardous sanitary waste at the place it is produced, in breach of the provisions of Article 227, paragraph 1, letter b), shall be punished by arrest from three months to one year or a fine from two thousand, six hundred euros to twenty-six thousand euros. The administrative fine shall apply from two thousand, six hundred euros to fifteen thousand, five hundred euros for quantities of up to two hundred liters or equivalent”.

- **for the crimes pursuant to Art. 257** (“site reclamation”):
  - o for breach of paragraph 1, a fine up to two hundred and fifty quotas,
  - o for the breach of paragraph 2, a fine between one hundred and fifty and two hundred and fifty quotas.

#### **Art. 257 Leg. Decree 152/2006: site reclamation**

“1. Unless the act constitutes a more serious offense, anyone polluting the ground, subsoil, surface water or underground water, exceeding the risk threshold concentrations, is punished by arrest from six months to one year or with a fine from two thousand, six hundred euros to twenty-six thousand euros, if not proceeding with reclamation in compliance with the project approved by the competent authority under the scope of the proceedings pursuant to Articles 242 et seq. If communication is not made pursuant to Article 242, the transgressor is punished by arrest from three months to one year or a fine from one thousand euros to twenty-six thousand euros.

2. The penalty of arrest from one to two years and the fine from five thousand, two hundred euros to fifty-two thousand euros applies if the pollution is caused by hazardous substances”.

- **for breach of Art. 258, paragraph 4, second period** (“breach of disclosure obligations, the keeping of compulsory registers and forms”), the fine from one hundred and fifty to two hundred and fifty quotas.

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**Art. 258 Leg. Decree 152/2006: breach of disclosure obligations, the keeping of compulsory registers and forms**

Following the coming into force of Italian Decree Law no. 135/2018 (“Urgent provisions on support and simplification for enterprises and the public administration”), which eliminated, starting January 01, 2019, the waste traceability control system SISTRI), the provisions of Art. 258 apply “in the text in force prior to the changes made by Italian Legislative Decree no. 205/2010” (Art. 6, paragraph 3 of Italian Decree Law no. 135/2018).

*“4. Anyone transporting waste without the form pursuant to Article 193 or indicating incomplete or incorrect data on said form, shall be punished by an administrative fine from one thousand, six hundred euros to nine thousand, three hundred euros. The penalty applies pursuant to Article 483 of the Italian Criminal Code, in the case of the transport of hazardous waste. This latter penalty also applies to anyone who, in preparing a waste analysis certificate, provides false indications as to the nature, composition and chemical-physical characteristics of the waste and those using a false certificate during transport”.*

- **for breach of Art. 259, paragraph 1** (“unlawful trafficking of waste”), the fine is from one hundred and fifty to two hundred and fifty quotas.

**Art. 259 Leg. Decree 152/2006: unlawful trafficking of waste**

*“1. Anyone delivering waste in a form that constitutes unlawful trafficking in accordance with Article 26 of Regulation (EEC) no. 259 of February 1, 1993 or delivering waste listed in Annex II of said Regulation in breach of Article 1, paragraph 3, letters a), b), c) and d) of the Regulation, shall be punished by a penalty of a fine from one thousand, five hundred and fifty euros to twenty-six thousand euros and arrest of up to two years. The penalty is increased if hazardous waste is delivered”.*

- **for the crime pursuant to Art. 260** (“organized unlawful waste trafficking”), the fine from three hundred to five hundred quotas, in the case envisaged by paragraph 1 and from four hundred to eight hundred quotas in the case envisaged by paragraph 2.

If the entity or an organizational unit of same is used on a permanent basis solely or primarily to allow or facilitate the perpetration of offenses indicated in Art. 260, disqualification from carrying on the activity pursuant to Art. 16, paragraph 3 of Italian Legislative Decree no. 231/2001, is imposed, such disqualification being final.

The reference made to Art. 260 of Italian Legislative Decree no. 152/2006 is intended as made to Art. 452-quaterdecies of the Italian Criminal Code by virtue of the provisions of Art. 7 of Italian Legislative Decree no. 21/2018 on the code reservation.

**Art. 452-quaterdecies of the Italian Criminal Code: organized unlawful waste trafficking**

*1. Anyone who, with gainful intent and with multiple operations and organized, continuous means and activities, transfers, receives, transports, exports, imports or in any way unlawfully manages significant quantities of waste shall be punished by imprisonment from one to six years.*

*2. If the waste is highly radioactive, the penalty of imprisonment from three to eight years shall apply.*

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**Art. 279 Leg. Decree 152/2006: sanctions**

*“2. Anyone who, in operating a plant, breaches the emissions limits established by the authorization, by Annexes I, II, III or V to the fifth part of this Decree, the plans and programs or regulations pursuant to Article 271, shall be punished by arrest of up to one year and a fine of up to 10,000 euros. If the limit values breached are contained in the integrated environmental authorization, the sanctions envisaged by legislation regulating such authorization, shall apply.*

*5. In the cases envisaged by paragraph 2, the penalty of arrest of up to one year shall always apply if the exceeding of the emissions limits also results in the exceeding of the air quality limits set by current legislation”.*

In connection with the perpetration of the crimes envisaged by Italian Law no. 150 of February 07, 1992 “regulation of crimes relative to the application in Italy of the convention on the international trade of animal and plant species in danger of extinction”, the following fines are applied to the entity:

- **for the breach of Articles 1, paragraph 1, 2, paragraphs 1 and 2, and 6, paragraph 4**, the fine of up to two hundred and fifty quotas.

**Art. 1**

*1. Unless the act constitutes a more serious offense, for the species listed in Annex A to said Regulation as subsequently amended, punishment shall apply of arrest from six months to two years and a fine from fifteen thousand euros to one hundred and fifty thousand euros to anyone who, in breach of the provisions of Regulation (EC) no. 338/97 of the Council of December 09, 1996 as subsequently implemented and amended:*

*imports, exports or re-exports any species, under whatsoever customs regime, without the required certificates and licenses, or with invalid certificates and licenses in accordance with Article 11, paragraph 2a of Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments,*

*fails to comply with the safety requirements for any species, specified in licenses or certificates issued in compliance with Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments,*

*c) uses any examples in a manner not in compliance with the provisions of authorizations or certificates issued with the importation license or other subsequent license,*

*d) transports or permits transit, including on behalf of others, of any species without the required license or certificate issued in accordance with Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments and, in the case of export or re-export from a third-party country and party to the Washington Convention, issued in compliance with that Convention, or without sufficient proof of their existence,*

*e) trades in plants reproduced artificially in conflict with the requirements of article 7, paragraph 1, letter b) of Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent*

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*enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments,*

*f) detains, uses for profit, purchase, sells, exhibits or holds for sale or commercial purposes any species without the required documentation.*

*In the event of recurring crimes, the penalty shall apply of arrest from one to three years and a fine from thirty thousand euros to three hundred thousand euros. If this crime is committed when going about business activity, the judgment shall also result in the suspension of license from a minimum of six months to a maximum of two years.*

## **Art. 2**

*1. Unless the act constitutes a more serious offense, for the species listed in Annexes B and C to said Regulation as subsequently amended, punishment shall apply of fine of from twenty thousand euros to two hundred thousand euros or arrest from six months to one year, to anyone who, in breach of the provisions of Regulation (EC) no. 338/97 of the Council of December 09, 1996 as subsequently implemented and amended:*

*imports, exports or re-exports any species, under whatsoever customs regime, without the required certificates and licenses, or with invalid certificates and licenses in accordance with Article 11, paragraph 2a of Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments,*

*fails to comply with the safety requirements for any species, specified in licenses or certificates issued in compliance with Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments,*

*c) uses any examples in a manner not in compliance with the provisions of authorizations or certificates issued with the importation license or other subsequent license,*

*transports or permits transit, including on behalf of others, of any species without the required license or certificate issued in accordance with Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments and, in the case of export or re-export from a third-party country and party to the Washington Convention, issued in compliance with that Convention, or without sufficient proof of their existence,*

*trades in plants reproduced artificially in conflict with the requirements of article 7, paragraph 1, letter b) of Regulation (EC) no. 338/97 of the Council dated December 09, 1996 and subsequent enactments and amendments and Regulation (EC) no. 939/97 of the Commission dated May 26, 1997, and subsequent amendments,*

*f) detains, uses for profit, purchase, sells, exhibits or holds for sale or commercial purposes any species without the required documentation, limited to the species pursuant to Annex B of the Regulation.*

*2. In the event of recurring crimes, the penalty shall apply of arrest from six month to eighteen months and a fine from twenty thousand euros to two hundred thousand euros. If this crime is*

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*committed when going about business activity, the judgment shall also result in the suspension of license from a minimum of six months to a maximum of eighteen months.*

**Art. 6**

*“1. Without prejudice to the provisions of Italian Law no. 157 of February 11, 1992, it is forbidden for any person to detain live examples of any wild mammal or reptile species or live examples of mammals or reptiles bred in captivity which constitute a danger to the public health and safety.*

*4. Anyone breaching the provisions of paragraph 1 shall be punished with arrest of up to six months or a fine from Euro 15,000 to Euro 300,000”.*

- **for the breach of Article 1, paragraph 2**, the fine is from one hundred and fifty to two hundred and fifty quotas.

**Art. 1**

*2. In the event of recurring crimes, the penalty shall apply of arrest from six month to eighteen months and a fine from twenty thousand euros to two hundred thousand euros. If this crime is committed when going about business activity, the judgment shall also result in the suspension of license from a minimum of six months to a maximum of two years.*

- **for the offenses contemplated in the Italian Criminal Code and recalled by Article 3-bis, paragraph 1 of the same Italian Law no. 150 of 1992**, respectively:
  - o a fine up to two hundred and fifty quotas, in the case of perpetration of an offense for which law establishes imprisonment of not more than one year,
  - o a fine between one hundred and fifty and two hundred and fifty quotas, in the case of perpetration of an offense for which law establishes imprisonment of not more than two years,
  - o a fine between two hundred and three hundred quotas, in the case of perpetration of an offense for which law establishes imprisonment of not more than three years,
  - o a fine between three hundred and five hundred quotas, in the case of perpetration of an offense for which law establishes imprisonment of more than three years.

**Art. 3 bis**

*“1. The penalties pursuant to book II, title VII, chapter III of the Italian Criminal Code shall apply to the situations envisaged by Article 16, paragraph 1, letters a), c), d), e) and l) of Regulation (EC) no. 338/97 of the Council of December 09, 1996 as subsequently amended, on the falsification or alteration of certificates, licenses, notifications of import, declarations, communications of information for the acquisition of a license or certificate, use of false or altered certificates or licenses”.*

4) in connection with the perpetration of the crimes envisaged by Article 3, paragraph 6 of Italian Law no. 549 of December 28, 1993, “measures protecting the stratospheric ozone layer and the environment”, the entity shall be charged a fine from one hundred and fifty to two hundred and fifty quotas.

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**Art. 3 (cessation and reduction of harmful substances)**

1. *The production, consumption, import, export, detention and marketing of toxic substances as listed in table A to this Law are regulated by the provisions of Regulation (EC) no. 3093/94.*

2. *As from the date this law comes into effect, the authorization of plants envisaging the use of the substances listed in table A annexed to this Law is forbidden, without prejudice to the provisions of Regulation (EC) no. 3093/94.*

3. *By Decree of the Ministry of the Environment, together with the Ministry of Industry, Trade and Craft, the final date is established, in compliance with the provisions and timing of the progressive elimination program pursuant to Regulation (EC) no. 3093/94, by which time the substances pursuant to table A annexed to this law must no longer be used, for the maintenance and recharging of equipment and plants already sold and installed as at the date on which this law comes into force and the timing and methods for the cessation of the use of the substances pursuant to table B, annexed to this law and the essential uses of the substances pursuant to table B are also identified, in relation to which derogations may be granted to the provisions of this paragraph. The production, use, marketing, import and export of the substances pursuant to tables A and B annexed to this law shall cease on December 31, 2008, without prejudice to the substances, processes and productions not included in the scope of application of Regulation (EC) no. 3093/94, according to the definitions set out therein.*

4. *The adoption of terms other than those set out in paragraph 3, deriving from the current revision of Regulation (EC) no. 3093/94, shall entail the replacement of the terms indicated in this law and the simultaneous adjustment to set out the new terms.*

5. *Enterprises intending to cease production and use of the substances pursuant to table B attached to this law, before the prescribed deadlines, can stipulated specific program agreements with the Ministries of industry, trade and crafts and the environment, in order to benefit from the incentives pursuant to Article 10, with priorities correlated to the advance of disposal times, as per the procedures to be established by Decree of the Ministry of Industry, Trade and Crafts, by agreement with the Ministry for the Environment.*

6. *Anyone in breach of the provisions of this Article shall be punished by arrest of up to two years and a fine of up to triple the value of the substances used for production, import or marketing. In more serious cases, the judgment shall also result in revocation of the authorization or license on which basis the activities constituting the crime are pursued.”*

5) in connection with the perpetration of the crimes envisaged by Italian Legislative Decree no. 202 of November 06, 2007 “Implementation of Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements”, the following fines shall apply to the entity:

- **for the crime pursuant to Article 9, paragraph 1**, a fine of up to two hundred and fifty quotas.

**Art. 9 (culpable pollution)**

*“Unless the fact constitutes a more serious offense, the Captain of any ship, flying any flag, including the members of the crew, the owner and manager of the ship, if the breach is committed*

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*with their cooperation, who act culpably in violation of the provisions of Art. 4, shall be punished with a fine from Euro 10,000 to Euro 30,000”.*

- **for the crimes pursuant to Articles 8, paragraph 1, and 9, paragraph 2**, a fine between one hundred and fifty and two hundred and fifty quotas.

If the entity or an organizational unit of same is used on a permanent basis solely or primarily to allow or facilitate the perpetration of offenses indicated in Art. 8, disqualification from carrying on the activity pursuant to Art. 16, paragraph 3 of Italian Legislative Decree no. 231/2001, is imposed, such disqualification being final.

**Art. 8 (intentional pollution)**

*“Unless the fact constitutes a more serious offense, the Captain of any ship, flying any flag, including the members of the crew, the owner and manager of the ship, if the breach is committed with their concerted action, who act deliberately in breach of the provisions of Art. 4 are punished by arrest from six months to two years and a fine from Euro 10,000 to Euro 50,000”.*

**Art. 9 (culpable pollution)**

*“If the breach pursuant to paragraph 1 causes permanent damage or, in any case, particularly serious damage, to the quality of water, animal or plant species or parts thereof, arrest shall apply from six months to two years and a fine from Euro 10,000 to Euro 30,000”.*

- **for the crime described in Article 8, paragraph 2**, a fine between two hundred and three hundred quotas.

**Art. 8 (intentional pollution)**

*“If the breach pursuant to paragraph 1 causes permanent damage or, in any case, particularly serious damage, to the quality of water, animal or plant species or parts thereof, arrest shall apply from one to three years and a fine from Euro 10,000 to Euro 80,000”.*

Finally, relevance is also assigned to Art. 256-bis of Italian Legislative Decree no. 152/2006, which, although not included in the predicate offenses on the environment recalled by Art. 25-undecies of Italian Legislative Decree no. 231/2001, envisages the application of the prohibitory sanctions pursuant to Art. 9, paragraph 2 of Italian Legislative Decree no. 231/2001 against owners of enterprises or those responsible for activities for the unlawful combustion of waste committed under the scope of a business activity or in any case an organized activity.

**Art. 256-bis Leg. Decree 152/2006: Unlawful combustion of waste**

Article inserted by Art. 3-ter, paragraph 1 of Italian Decree Law no. 136 of December 10, 2013, converted, with amendments, by Italian Law no. 6 of February 2014.

*1. Unless the fact constitutes a more serious offense, whoever sets fire to abandoned refuse or refuse deposited in an uncontrolled manner is liable to imprisonment for a period of between two and five years. In the case of setting fire to hazardous waste, the penalty is imprisonment for a term of three to six years. The person responsible is obliged to restore the state of the places, to compensate for environmental damage and to pay, also in recourse, the expenses for reclamation.*

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2. The same sanctions are applied to those who carry out the conduct referred to in Article 255, paragraph 1, and the conduct of the offenses referred to in Articles 256 and 259 in relation to the subsequent illegal combustion of waste.

3. The penalty is increased by one third if the crime referred to in paragraph 1 is committed within the context of a business activity or an organized activity. The owner of the company or the person in charge of the activity, however organized, is also responsible under the autonomous profile of the omitted supervision of the work of the material authors of the crime that can be traced back to the company or the activity itself, the sanctions provided for by Art. 9, paragraph 2 of Italian Legislative Decree no. 231 of June 08, 2001.

4. The penalty is increased by one third if the events pursuant to paragraph 1 are committed in territories that, at the time of the conduct, and in any case within the five years prior, are or have been involved by declarations of state of emergency in the waste industry, in accordance with Italian Law no. 225 of February 24, 1992.

5. The means used to transport the waste concerned by the crime pursuant to paragraph 1 of this Article, incinerated in areas or plants that are not authorized, are confiscated in accordance with Article 259, paragraph 2, unless the vehicle belongs to a person extraneous to the conduct as per said paragraph 1 of this Article and does not constitute the action in concert of persons in committing the crime. The judgment or conviction given in accordance with Article 444 of the Italian Code of Criminal Procedure results in the seizure of the area in which the crime is committed, if owned by the perpetrator or joint perpetrator of the crime, without prejudice to the obligations to reclaim and restore the original state of the sites.

6. The sanctions apply pursuant to Article 255 if the conduct pursuant to paragraph 1 concerns the waste pursuant to Article 184, paragraph 2, letter e).

As regards Hitachi Rail STS, the following crimes can be hypothesized:

- Destruction or deterioration of habitat within a protected site, Art. 733-bis of the Italian Criminal Code,
- Discharges and waste, Art. 137 of Italian Legislative Decree no. 152/06,
- Unauthorized waste management activities, Art. 256 of Italian Legislative Decree no. 152,
- Site reclamation, Art. 257 of Italian Legislative Decree no. 152/06,
- Unlawful trafficking of waste, Art. 259 of Italian Legislative Decree no. 152/06,
- Crimes in the control of waste traceability, Art. 260 bis of Italian Legislative Decree no. 152/06,
- Lack of authorizations for industrial activities, Art. 279 of Italian Legislative Decree no. 152/06,
- Cessation and reduction of the use of harmful substances, Art. 3, paragraph 6 of Italian Law no. 549/93,
- Unlawful waste combustion, Art. 256 bis of Italian Legislative Decree no. 152/06,
- Environmental pollution, Art. 452 bis of the Italian Criminal Code,
- Environmental disaster, Art. 452 quarter of the Italian Criminal Code,
- Culpable crimes against the environment, Art. 452-quinquies of the Italian Criminal Code,
- Aggravating circumstances Art. 452-octies of the Italian Criminal Code.

## H. CRIMES CONCERNING OBSTRUCTION OF JUSTICE

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Article 4, paragraph 1 of Italian Law no. 116 of August 03, 2009, as replaced by Article 2 of Italian Legislative Decree no. 121 of July 07, 2011, introduced into Italian Legislative Decree no. 231/2001, Art. 25-decies (inducement not to make declarations or to make false declarations to the legal authorities).

**Inducement not to make declarations or to make false declarations to the legal authorities (Art. 377-bis of the Italian Criminal Code)**

The crime is punished when a subject, using violence or threats, or with the offer or promise of money or other benefits, induces the person called to make declarations able to be used in criminal proceedings before the legal authority, not to do so, or to make untruthful declarations, when he has the option not to answer.

The crime could take on abstract relevance in terms of the application of the Decree with regards to the hypothesis whereby a subject with the faculty not to make declarations to the legal authority, should be induced to reticence or to make false declarations in the interests or to the benefit of the Entity (for example not to reveal information that could damage the Entity in the context of the proceedings), in exchange for threats (dismissal, demotion) or promises (or money or promotion).

The situation pursuant to Art. 377 bis of the Italian Criminal Code aims to protect the genuine nature of proceedings of those called to report in events before the legal authority. The conduct is perpetrated when declarations are not made or false declarations are made in the interests or to the benefit of the company and following violence or threat, or with the offer or promise of money or other gains.

It is recalled that said situation, in accordance with Art. 10 of Italian Law no. 146/2006, also applies if committed in a transnational manner.

**Personal aiding and abetting (Art. 378 of the Italian Criminal Code)**

The crime punishes anyone who, after a crime has been committed and outside the hypotheses of action in concert, helps someone avoid the investigations of the legal authority, including those carried out by bodies of the international criminal court, and to avoid research carried out by these same subjects.

The crime is also committed even if the person helped is not a defendant or is found not to have committed the crime.

The perpetration of the crime by a company representative in the interests or to the benefit of the Entity, can entail the latter's administrative liability only if committed in a transnational manner, i.e., if, in accordance with Art. 3 of Italian Law no. 146 of 03.16.2006, are committed entirely or partly in more than one State or have substantive effects in another State they involve an organized criminal group involved in criminal activities in more than one State.

**I. CRIMES AGAINST INDUSTRY AND TRADE**

Italian Law no. 99 of July 23, 2009, "Provisions for the development and internationalization of companies, as well as on energy" introduces (Art. 15, paragraph 7) into Italian Legislative Decree no. 231/01, Art. 25-bis.1 "Crimes against industry and trade" as well as amending Article 25-bis, introducing letter f-bis, as follows:

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### **Disturbance of the freedom of industry or trade (Art. 513 of the Italian Criminal Code)**

*“Anyone using violence on objects or fraudulent means to prevent or interfere with the operation of an industry or trade is punished upon report by the offended person, if the event does not constitute a more serious crime, with imprisonment of up to two years and a fine from Euro 103 to Euro 1,032.”*

### **Fraud against national industries. (Art. 514 of the Italian Criminal Code)**

*“Anyone putting up for sale or otherwise circulating on the national or foreign markets, industrial products, with counterfeit or altered names, trademarks or logos, damages the national industry and shall be punished by imprisonment from one to five years and a fine of at least Euro 516.*

*If for the trademarks or logos, the provisions of internal laws or international conventions on the protection of industrial property have been observed, the penalty is increased and the provisions of Articles 473 and 474 do not apply”.*

### **Fraud in trade (Art. 515 of the Italian Criminal Code)**

*“Anyone who, in going about a commercial activity, or in a sales outlet open to the public, delivers the buyer a movable object in lieu of another, or a movable object which, by origin, source, quality or quantity, differs from that declared or agreed, is punished, where the event does not constitute a more serious crime, with imprisonment of up to two years or a fine of up to Euro 2,065.*

*If the objects are valuables, the penalty is imprisonment of up to three years or a fine of at least Euro 103.”*

### **Sale of non-genuine foods marketed as genuine (Art. 516 of the Italian Criminal Code)**

*“Anyone selling or otherwise releasing to the market non-genuine foods as genuine foods, shall be punished by imprisonment of up to six months or a fine of up to 1,032 euros”.*

### **Sale of industrial products with untruthful markings (Art. 517 of the Italian Criminal Code)**

*“Anyone who sells or otherwise puts into circulation intellectual works or industrial products, with national or foreign names, trademarks or distinctive signs , capable of misleading the buyer as to the origin, provenance or quality of the work or product, is liable to imprisonment for up to two years and a fine of up to twenty thousand euros if the offense is not provided for as a crime by another provision of law”,*

### **Manufacture and sale of goods developed with the usurpation of industrial property rights (Art. 517-ter of the Italian Criminal Code)**

*“Without prejudice to the application of Articles 473 and 474, anyone who, being able to know of the existence of the title of industrial ownership, manufactures or industrially uses objects or other goods created by usurping a right of industrial property or in breach of such, is punished, upon petition by the offended person, with imprisonment of up to two years and a fine of up to Euro 20,000.*

*The same penalty applies to anyone who, in order to gain profit therefrom, introduces into the territory of the State, holds for sale, puts up for sale offering directly to consumers or otherwise releases to the market the goods pursuant to the first paragraph.*

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*The provisions apply as per Articles 474-bis, 474-ter, second paragraph and 517-bis, second paragraph.*

*The crimes envisaged by the first and second paragraphs are punished as long as the provisions of domestic laws have been observed, along with European Community Regulations and international agreements on intellectual or industrial property protection”.*

**Counterfeiting of geographical indications or denomination of origin of agricultural food products (Art. 517-quater of the Italian Criminal Code)**

*“Anyone counterfeiting or in any case altering geographic indications or designations of origin of agricultural food products shall be punished by imprisonment of up to two years and a fine of up to Euro 20,000.*

*The same penalty applies to anyone who, in order to gain profit therefrom, introduces into the territory of the State, holds for sale, puts up for sale offering directly to consumers or otherwise releases to the market the same products with counterfeit indications or designations.*

*The provisions apply as per Articles 474-bis, 474-ter, second paragraph and 517-bis, second paragraph.*

*The crimes envisaged by the first and second paragraphs are punished as long as the provisions of domestic laws have been observed, along with European Community Regulations and international agreements on the protection of geographic indications and designations of origin of agricultural food products.”*

**Unlawful competition with threats or violence. (Art. 513 bis of the Italian Criminal Code)**

*“Anyone who, in going about a commercial, industrial or in any case production activity, carries out acts of competition using violence or threats shall be punished by imprisonment from two to six years.*

*The penalty is increased if the acts of competition regard a financial asset in full or in part and in any way the State or other public entities”.*

**The crimes at risk introduced by letter f-bis of Art. 25 bis of the Decree (supplementing the Crimes of Forgery), are:**

**Counterfeiting, alteration or use of logos of intellectual works or industrial products (Art. 473 of the Italian Criminal Code)**

*“Anyone who, being able to know of the existence of a title of industrial property, counterfeits or alters national or foreign trademarks or logos of industrial products, or anyone who, without acting in concert in the counterfeiting or alteration, uses such counterfeit or altered trademarks or logos, shall be punished by imprisonment from six months to three years and a fine from Euro 2,500 to Euro 25,000.*

*The penalty of imprisonment from one to four years and a fine from Euro 3,500 to Euro 35,000 shall also apply to anyone who counterfeits or alters national or foreign patents, designs or*

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*industrial models or, without acting in concert in the counterfeiting or alteration, uses such counterfeit or altered patents, designs or models.*

*The crimes envisaged by the first and second paragraphs are punished as long as the provisions of domestic laws have been observed, along with European Community Regulations and international agreements on intellectual or industrial property protection”.*

**Introduction into the State and trade of products bearing false markings (Art. 474 of the Italian Criminal Code)**

*“Outside the cases of action in concert to commit the crimes envisaged by Article 473, anyone introducing into the State territory, in order to gain profit therefrom, industrial products with counterfeit or altered national or foreign trademarks or other logos, shall be punished by imprisonment from one to four years and a fine from Euro 3,500 to Euro 35,000.*

*Outside the cases of action in concert in the counterfeiting, alteration, introduction into State territory, anyone holding for sale, putting up for sale or otherwise releasing to the market, in order to profit therefrom, the products pursuant to the first paragraph, shall be punished with imprisonment of up to two years and a fine of up to Euro 20,000.*

*The crimes envisaged by the first and second paragraphs are punished as long as the provisions of domestic laws have been observed, along with European Community Regulations and international agreements on intellectual or industrial property protection”.*

**L. CRIMES OF THE MUTILATION OF FEMALE GENITALIA AND CRIMES OF RACISM AND XENOPHOBIA**

Art. 3 of Italian Law no. 7 of January 09, 2006 (“Provisions on the prevention and prohibition of the mutilation of female genitalia”) introduced into the Italian Legislative Decree, Art. 25-quater.1 (Mutilation of female genitalia).

The relevant crime is that envisaged by Art. 583-bis of the Italian Criminal Code, which is the predicate offense of the entity in whose structure the crime is committed.

**Art. 583-bis of the Italian Criminal Code** Mutilation of female genitalia.

*“Anyone who, in the absence of therapeutic requirements, mutilates female genitalia, shall be punished by imprisonment from four to twelve years. For the purpose of this Article, mutilation of female genitalia means clitoridectomy, excision and infibulation and any other practice with effects of this same type.*

*Anyone who, in the absence of therapeutic requirements, should hamper sexual function, harm female genitalia in a way that differs from that indicated in the first paragraph, resulting in an illness of body or mind, shall be punished by imprisonment from three to seven years. The penalty is reduced by up to two thirds if the injury is minor.*

*The penalty is increased by a third if the practices pursuant to the first and second paragraph are carried out to the detriment of a child or if committed for profit.*

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*The sentence or plea bargaining on the request of the parties in accordance with Article 444 of the Italian Code of Criminal Procedure for the crime pursuant to this Article entails, if the act is carried out by the parent or guardian, respectively:*

- 1) *forfeiture of the exercise of parental responsibility,*
- 2) *the permanent prohibition from all offices relating to the protection, care and administration of support.*

*The provisions of this Article also apply when the event takes place abroad by an Italian citizen or by a foreign citizen resident in Italy, or to the detriment of an Italian citizen or foreign citizen resident in Italy. In this case, the guilty party is punished at the behest of the Ministry of Justice.”*

Art. 5, paragraph 2 of Italian Law no. 167 of November 20, 2017 (European Law 2017) introduced Art. 25-terdecies (Racism and xenophobia) into the Italian Legislative Decree.

In the text of Art. 25-terdecies, reference is made to the crimes pursuant to Article 3, paragraph 3-bis of the Italian Law of October 13, 1975 (“Ratification and execution of the international agreement on the elimination of all forms of racial discrimination, open to signing in New York on March 07, 1966) to be intended as today referring, following the coming into force of Italian Legislative Decree no. 21/2018 on the code reservation, to Art. 604-bis of the Italian Criminal Code.

**Art. 604-bis** of the Italian Criminal Code, Propaganda and instigation to commit crime for reasons of racial, ethnic and religious discrimination.

1. Unless the act constitutes a more serious offense, punishment applies of:

- a) imprisonment of up to one year and six months or with a fine of up to 6,000 euros, for anyone spreading propaganda of ideas based on racial or ethnic superiority or hate or instigating the committing or committing acts of discrimination based on race, ethnic origin, nationality or religion,
- v) imprisonment from six months to four years, for anyone who, in any case instigates the commitment of or commits violence or acts provoking violence on grounds of race, ethnic origin, nationality or religion.

2. All forms of organization, association, movement of group with the aim of inciting discrimination or violence on grounds of race, ethnic origin, nationality or religion, is strictly prohibited. Anyone taking part in any such organizations, associations, movements or groups, or anyone taking part in their activities, shall be punished, merely for the fact of taking part or being involved in such, with imprisonment from six months to four years. Anyone promoting or directing such organizations, associations, movements or groups shall be punished, for this alone, with imprisonment from one to six years.

3. The penalty of imprisonment from two to six years shall apply if the propaganda or instigation and incitement, committed in such a way as to result in a concrete danger of dissemination, is based entirely or partly on the denial, severe minimization or condoning of the Shoah or crimes of genocide, crimes against humanity and war crimes, as defined by Articles 6, 7 and 8 of the Statute of the International Criminal Court.

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Upon completion of the analysis of the work carried out by the Company, it is considered that all the organizational, procedural and ethical measures adopted by Hitachi Rail STS to ensure the correct conduct of the corporate business are able to minimize even the risk of the committing of the crimes pursuant to Articles 25-quater 1 and 25-terdecies of the Decree.

All the company representatives are, therefore, called to adopt, each insofar as they are competent, conduct in compliance with the following documents:

- this Model,
- the Code of Ethics,
- the roles and mandates as defined by the organizational provisions,
- corporate procedures,
- powers of attorney and delegations,
- any other document that regulates activities coming under the scope of the Model application.

It is also prohibited to act in any way in conflict with the provisions of the law.

More specifically, the following conduct by any company representatives is strictly prohibited:

- such as to constitute the crimes pursuant to Articles 583-bis and 604-bis of the Italian Criminal Code, including through acting in concert,
- such which, although in itself does not constitute a liable offense under the scope of those set out above, could be considered potentially risky,
- in breach of the law, current regulations and corporate procedures or in any case that is not in line with the principles expressed by this Model and the Code of Ethics.

## **M. FRAUD IN SPORTS COMPETITIONS AND THE UNLAWFUL EXERCISE OF GAMING OR BETTING ACTIVITIES**

[Italian Law no. 39 of May 03, 2019](#), setting out the “*Ratification and execution of the Council of Europe Convention on the Manipulation of Sports Competition, drawn up in Magglingen on September 18, 2014*” has extended the liability of entities to include fraud in sports competitions and the unlawful exercise of gaming or betting, introducing into Italian Legislative Decree no. 231/2001 Art. 25 *quaterdecies*, which rules:

*"1. With regards to the perpetration of the crimes contemplated by Articles 1 and 4 of Italian Law no. 401 of December 13, 1989, the following fines are levied on the entity: For crimes, a fine of up to five hundred quotas, for violations, a fine of up to two hundred and sixty quotas.*

*2. In the event of a conviction for one of the crimes referred to in paragraph 1, letter a) of this Article, disqualification as provided for under Art. 9, paragraph 2, is imposed for a duration of no less than one year”.*

More specifically, the crime of sports fraud, already envisaged by Art. 1 of Italian Law no. 401/1989, incriminates “*anyone offering or promising monies or other benefits or gains to any of the participants in a sports competition organized by the recognized federations, in order to obtain a result that differs from that which would have ensued had the competition taken place fairly and correctly, or acts in any other fraudulent manner to this same end*” and “*any participant in a competition who accepts monies or other benefits or gains or accepts the promise thereof*”.

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## N. TAX OFFENSES

Italian Law no. 157 of December 19, 2019 “conversion into law, with amendments, of Italian Decree Law no. 124 of October 26, 2019, setting our urgent tax measures and for essential needs, extended the liability of entities to include tax offenses, introducing into Italian Legislative Decree no. 231/2001 Art. 25 *quinquiesdecies*, which rules:

*With regards to the perpetration of the crimes contemplated by Italian Legislative Decree no. 74 of March 10, 2000, the following fines are levied on the entity:*

- a) *for the crime of fraudulent declaration by means of the use of invoices or other documents for non-existent transactions, envisaged by Article 2, paragraph 1, a fine of up to five hundred quotas,*
- b) *for the crime of fraudulent declaration by means of the use of invoices or other documents for non-existent transactions, , envisaged by Article 2, paragraph 2-bis, a fine of up to four hundred quotas,*
- c) *for the crime of fraudulent declaration by means of other artifice, envisaged by Article 3, a fine of up to five hundred quotas,*
- d) *for the crime of the issue of invoices or other documents for non-existent transactions, envisaged by Article 8, paragraph 1, a fine of up to five hundred quotas,*
- e) *for the crime of the issue of invoices or other documents for non-existent transactions, envisaged by Article 8, paragraph 2-bis, a fine of up to four hundred quotas,*
- f) *for the crime of the concealment or destruction of accounting documents envisaged by Article 10, a fine of up to four hundred quotas,*
- g) *for the crime of fraudulent removal from the payment of taxes, envisaged by Article 11, a fine of up to four hundred quotas.*

*2. If, following the perpetration of the crimes indicated under paragraph 1, the entity has achieved considerable profits, the fine is increased by one third.*

*3. In the cases envisaged by paragraphs 1 and 2, the prohibitory sanctions pursuant to Article 9, paragraph 2, letters c), d) and e), shall apply”.*

### List of tax offenses inserted:

**Art. 2 - Fraudulent declaration by means of the use of invoices or other documents for non-existent transactions** - Punishment applies of imprisonment for four to eight years for anyone who, in order to avoid income tax or VAT, using invoices or other documents for non-existent transactions, indicates in any of the [annual] declarations relative to said tax, fictitious liabilities. The crime is considered committed if use is made of invoices or other documents for non-existent transactions when said invoices or documents are registered in the mandatory accounts, or are kept in order to prove said costs to the financial administration.

**Art. 3 - Fraudulent declaration by other artifice** - Outside the cases envisaged by Article 2, it is a punishable offense to create objectively or subjectively simulated transactions with the purpose of evading income tax or value added tax by making use of false documents or other fraudulent means to obstruct inspections and induce the fiscal administration to error, by indicating elements of income of an amount lower than that effectively received or fictitious elements of cost or credit in any disclosure related to the aforementioned taxes if, jointly: a) the tax evaded is greater, in reference to each individual tax item, than thirty thousand euros, b) the overall amount of the

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elements of income subtracted from taxation, even by means of fictitious elements of cost, is greater than five percent of the overall amount of the elements of income indicated in the disclosures, or, in any case, greater than one million, five hundred thousand euros, specifically if the overall amount of credit and fictitious withholding subtracted from taxation, is greater than five percent of the sum of the tax itself or in any case greater than thirty thousand euros. The offense is considered committed when false documents are used and said documents are registered in the mandatory accounts, or are kept in order to prove said costs to the Fiscal Administration. For the purposes of the application of paragraph 1, the mere violation of the obligation to issue invoice and register elements of income in the accounts, or the simple indication of elements of income less than those effectively received do not constitute fraudulent means,

**Art. 4 - false declaration** - Outside the cases contemplated by Articles 2 and 3, punishment of imprisonment from two years to four years and six months will apply to anyone who, in order to avoid income tax or VAT, indicates elements of income of an amount lower than that effectively received or non-existent elements of cost if, jointly: a) the tax evaded is greater, in relation to each individual tax item, than one hundred thousand euros, b) the overall amount of the elements subtracted from taxation, even by means of fictitious elements of cost, is greater than ten percent of the overall amount of the declared income or, in any case, greater than two million euros. 1-bis. For the purpose of the application of the provision of paragraph 1, no consideration is given to the incorrect classification, measurement of assets or liabilities that objectively exist, with respect to which the criteria concretely applied has in any case been indicated in the financial statements or other tax relevant documentation for the violation of the criteria of determination of the period of competence, of the irrelevance, non-deductibility of actual liabilities. 1-ter. Outside the cases pursuant to paragraph 1-bis, any valuations that, considered individually, differ by less than 10 percent from the correct figures, shall not give rise to punishment. Amounts included in said percentage are not considered in the verification of the surpassing of the punishable thresholds contemplated by paragraph 1, letters a) and b).

**Art. 5 - Omitted declaration** - Anyone who, in order to evade income tax or value added tax, fails to submit, despite being obliged to do so, one of the declarations relative to said taxes, shall be punished by imprisonment from two to five years, when the tax evaded exceeds, with reference to any of the individual taxes, fifty thousand euros. 1-bis. Anyone who fails to submit, despite being obliged to do so, the declaration of tax substitute, shall be punished by imprisonment from two to five years, when the amount of the withholdings not paid exceeds fifty thousand euros. 2. For the purpose of the provision of paragraphs 1 and 1-bis, disclosures presented within ninety days of the due date or not signed or not drafted on a form in compliance with the required one is not considered as an omission.

**Art. 8 - Issue of invoices or other documents for non-existent transactions** – it is a punishable offense of from four to eight years of imprisonment to issue invoices or other documents for non-existent operations in order to permit third parties to evade income tax or value added tax. For the purpose of applying the provision specified by paragraph 1, the issue of more than one invoice or document for non-existent transactions during a single tax period, is considered a single crime. If the amount specified on the invoices or documents that does not equate with the truth is less than one hundred thousand euros, the crime is punishable by imprisonment from one year and six months to six years.

**Art. 10 - Concealment or destruction of accounting documents** - Save in the event that the deed itself constitutes a more serious offense, it is a punishable offense with imprisonment from

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three to seven years to conceal or destroy, whether partially or completely, any accounting entries or documents which must be conserved for a mandatory period in order to render the reconstruction of the real income or volume of business with the intent of evading income tax or value added tax, or permit such evasion by third parties.

**Art. 10-*quater* - undue offsetting** - Anyone who fails to pay the amounts due, offsetting, in accordance with Article 17 of Italian Legislative Decree no. 241 of July 09, 1997, credits not due, for an annual amount in excess of fifty thousand euros, shall be punished by imprisonment from six months to two years, 2. Anyone who fails to pay the amounts due, offsetting, in accordance with Article 17 of Italian Legislative Decree no. 241 of July 09, 1997, non-existent credits, for an annual amount in excess of fifty thousand euros, shall be punished by imprisonment from one year and six months to six years.

**Art. 11 - Fraudulent subtraction of assets from taxation** - it is a punishable offense with imprisonment from six months to four years, to alienate or commit other fraudulent deeds on own assets or those of others in order to render any forced recovery procedure ineffective with the intent to evade income tax or value added tax, or interest or administrative sanction associated with said taxation, for a mount greater than fifty thousand euros. If the amount of the tax, sanctions and interest exceeds two hundred thousand euros, imprisonment shall apply from one year to six years. A punishment of imprisonment from six months to four years shall apply to anyone who, in order to obtain for themselves or for others a partial payment of taxes and related accessories, indicates in the documentation submitted for the purposes of the tax settlement procedure assets for an amount lower than the actual amount or fictitious liabilities for a total amount higher than fifty thousand euros. If the amount as per the period above exceeds two hundred thousand euros, imprisonment shall apply from one year to six years.

## O. SMUGGLING

### Smuggling in the movement of goods across land boundaries and customs spaces (Art. 282)

A fine of no less than two and no more than ten times the border rights due shall apply to anyone who:

- a) brings foreign goods across the land boundary in breach of the provisions, bans and limits established by Article 16,
- b) unloads or deposits foreign goods in the intermediate space between the border and the nearest customs,
- c) is caught with foreign goods hidden on their person or in their luggage or in the packs or furnishings and fittings or between goods of other types or in any means of transport, to remove them from customs inspection,
- d) takes goods away from customs spaces without having paid the fees due or without having guaranteed due payment thereof, without prejudice to the provisions of Art. 90,
- e) takes outside customs territory, in the conditions envisaged by the previous letters, national or nationalized goods subject to border rights,
- f) holds foreign goods, where the circumstances apply as envisaged in the second paragraph of Article 25 for the crime of smuggling.

### Smuggling in the movement of goods on boundary lakes (Art. 283)

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A fine of no less than two and no more than ten times the border rights due shall apply to the captain who:

- a) introduces across Lake Maggiore or the Lake of Lugano in the basins of Porlezza, foreign goods, without presenting them at any of the national customs near to the border, without prejudice to the exception envisaged in the third paragraph of Article 102,
- b) without having due permission from customs, transporting foreign goods with ships along the segments of the Lake of Lugano in which there are no customs, verges on national shores opposite the foreign shores, or lays anchor or lies to or in any way makes communication with the State customs territory, so that the disembarkation or embarkation of the goods is simple, except in the event of *force majeure*.

The same penalty applies to anyone hiding foreign goods on the ship in order to remove them from customs inspection.

### **Smuggling in the shipping of goods (Art. 284)**

A fine of at least two and no more than ten times the border rights due shall apply to any captain who:

- a) without having due permission from customs, carrying foreign goods on ships, verges on the seashore or lays anchor or lies to in any way near the shore, save for cases of *force majeure*,
- b) carrying foreign goods, moors in places where there are no customs, or unloads or transships the goods in breach of the provisions, bans and limits established by Art. 16, save for cases of *force majeure*,
- c) transports foreign goods without manifesto, with ships with a net tonnage of no more than two hundred tons, in cases where the manifesto is required,
- d) at the time of ship departure, does not have the foreign goods or national goods for export on board, with the return of the rights that should be there as per the manifesto and other customs documents,
- e) carrying foreign goods from one customs to another, with a ship with a net tonnage of no more than fifty tons, without the relevant caution slip,
- f) having embarked foreign goods upon exiting customs territory on a ship of no more than fifty tons, without prejudice to the provisions of Art. 254 for the embarkation of on-board provisions.

The same penalty applies to anyone hiding foreign goods on the ship in order to remove them from customs inspection.

### **Smuggling in the movement of goods by air (Art. 285)**

A fine shall apply of at least two and no more than ten times the border rights due to any aircraft captain who:

- a) transports foreign goods in State territory without being equipped with manifesto, when such is required,
- b) at the time of aircraft departure, is not carrying the foreign goods that should be there in accordance with the manifesto and other customs documents,
- c) removing goods from the aircraft landing place without completing the required customs operations,

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- d) landing outside a customs airport, fails to report, as quickly as possible, the landing to the authorities indicated by Art. 114. In these cases, both the cargo and the aircraft are considered as having been smuggled into customs territory.

The same penalty shall apply to anyone who throws foreign goods out of an aircraft during flight, into foreign goods customs territory, or conceals them in the aircraft with the aim of removing them from customs inspection.

The above penalties apply regardless of any applied for the same events by special laws on flights, insofar as they do not regard customs matters.

### **Smuggling in non-customs zones (Art. 286)**

Punishment of a fine of no less than two and no more than ten times the border rights due shall apply to anyone who, in the non-customs territories indicated in Art. 2, establishes unauthorized depots of foreign goods subject to border rights, or does so in excess of the amount authorized.

### **Smuggling for undue use of goods imported with special customs rates (Art. 287)**

A fine of at least two and no more than ten times the border rights due shall apply to anyone who, partly or entirely, gives foreign goods imported in excess and with a reduction of the rights, a different purpose or use to that for which the excess or reduction was granted, without prejudice to the provisions of Art. 140.

### **Smuggling in customs depots (Art. 288)**

The concession-holder of a private property customs warehouses, who holds foreign goods there for which no declaration of introduction has been made or that have not been recorded in the depot logs, is punished with a fine of at least two and up to ten times the border rights due.

### **Smuggling in cabotage and circulation (Art. 289)**

Punishment shall apply of a fine of at least two and up to ten times the border rights due to anyone who brings foreign goods into the State in lieu of national or nationalized goods delivered in cabotage or circulation.

### **Smuggling in the export of goods admitted for the return of rights (Art. 290)**

Anyone using fraudulent means to obtain the undue return of rights established for the import of raw materials used to manufacture national goods exported, shall be punished by a fine of at least twice the amount of the rights unduly collected or attempted to be collected and no more than ten times this amount.

### **Smuggling in temporary import or export (Art. 291)**

Anyone who, in temporary imports or exports or re-exports or re-imports, in a bid to remove goods from the payment of fees due, who submits said goods to artificial handling or uses other fraudulent means to do so, shall be punished with a fine of at least two and up to ten times the amount of the rights avoided or attempted to be avoided.

### **Smuggling of foreign processed tobacco (Art. 291-bis)**

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Anyone bringing into, selling, transporting, purchasing or possessing in the territory of the State, a quantity of smuggled foreign processed tobacco that exceeds ten conventional kilograms shall be punished by a fine of ten thousand Italian lira per conventional gram of product, as defined by Article 9 of Italian Law no. 76 of March 07, 1985, and by imprisonment from two to five years. The events envisaged by paragraph 1, when concerning a quantity of foreign processed tobacco of up to ten conventional kilograms, shall be punished with a fine of ten thousand Italian lira per conventional gram of product and in any case at least 1 million Italian lira.

**Aggravating circumstances of the crime of smuggling foreign processed tobacco (Art. 291 ter)**

If the events envisaged by Article 291-bis are committed using means of transport that belong to persons extraneous to the crime, the penalty is increased. In the events envisaged by Article 291-bis, the fine shall apply of fifty thousand Italian lira per conventional gram of product and imprisonment from three to seven years, when: a) in committing the crime or in acting in such a way as to assure the price, product, profit or impunity of the crime, the guilty party uses weapons or ensures that they have weapons available to them when perpetrating the crime, b) when committing the crime or immediately thereafter, the perpetrator is found together with two or more persons in such a way as to hinder the police forces, c) the events are connected with another crime against the public trust or public administration, d) in committing the crime, the perpetrator used means of transport that, as compared with the characteristics approved, have been altered or modified in such a way as to hinder the intervention of the police forces or to constitute a danger to the public safety, e) in committing the crime, the perpetrator used partnerships or capital companies or funding in any way established in States that have not ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, drawn up in Strasbourg on November 08, 1990, ratified and made executive in accordance with Italian Law no. 328 of August 09, 1993, and which in any case has not stipulated and ratified legal assistance conventions with Italy, concerning the crime of smuggling. e) in committing the crime, the perpetrator used partnerships or capital companies or funding in any way established in States that have not ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, drawn up in Strasbourg on November 08, 1990, ratified and made executive in accordance with Italian Law no. 328 of August 09, 1993, and which in any case has not stipulated and ratified legal assistance conventions with Italy, concerning the crime of smuggling. The attenuating circumstances envisaged by Article 62-bis of the Italian Criminal Code, where applying concurrently with the aggravating circumstances pursuant to letters a) ad d) of paragraph 2 of this Article, cannot be held as equivalent or prevalent over such and the reduction of the penalty shall apply to the amount of the penalty resulting from the increase brought about by said aggravating circumstances.

**Association with the intent to commit the crime of smuggling foreign processed tobacco (Art. 291 quater)**

When three or more persons associate in order to commit multiple crimes of those envisaged by Article 291-bis, the persons who promote, establish, manage, organize or finance the association are punished, for this alone, with imprisonment from three to eight years. Anyone taking part in the association is punished with imprisonment from one to six years. The penalty is increased if the number of associates is ten or more. If the association is armed or if the circumstances apply pursuant to letters d) or e) of paragraph 2 of Article 291-ter, the penalty of imprisonment from five to fifteen years applies in the cases envisaged by paragraph 1 of this Article, and from four to ten

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years in the cases envisaged by paragraph 2. The association is considered armed when participants have the availability, in order to achieve the purpose of the association, of weapons or explosive materials, even if hidden or held in a depot. The penalties envisaged by Articles 291-bis, 291-ter and this Articles are reduced from one third to half in regard to any defendant who, in dissociating from the others, takes action to prevent the criminal activities from having additional consequences, also concretely helping the police or legal authorities to collect decisive evidence in reconstructing the events and identifying and capturing the perpetrators of the crime or identifying resources relevant to the committing of the crimes.

### **Other cases of smuggling (Art. 292)**

Anyone who, outside the cases envisaged in the Articles above, should remove goods from the payment of border rights due, shall be punished with a fine of at least two and up to ten times said rights.

### **Penalty for smuggling in the event of failure or incomplete assessment of the subject of the crime (Art. 294)**

In cases of smuggling, if, due to the fault of the guilty party, it has not been possible to fully or at all assess the quality, quantity and value of the goods, in lieu of the proportional penalty, a fine shall apply of up to five hundred thousand Italian lira.

In any case, the penalty shall be no less than double the rights due on the quantity of goods that is able to be assessed.

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