



ORGANISATIONAL MODEL 231

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Contents

CONTENTS	2
FOREWORD	3
GLOSSARY	4
1. MODEL 231: REQUIREMENTS	5
1.1 REGULATORY FRAMEWORK	5
1.2 CRIMES CURRENTLY INCLUDED IN THE LEGISLATION	5
1.3 LEGAL REQUIREMENTS FOR EXEMPTION	6
2. GOVERNANCE AND MODEL 231 AT CEDACRI	7
2.1 THE GOVERNANCE OF CEDACRI.....	7
2.2 REFERENCES FOR THE SECTOR.....	8
2.3 CEDACRI'S OBJECTIVES FOR ORGANISATIONAL MODEL 231	8
3. MODEL 231 AT CEDACRI	9
3.1 THE 231 PROJECT	9
3.2 ORGANISATIONAL MODEL 231 AT CEDACRI	10
a) Identification of activities exposed to risk.....	10
b) Formulation and implementation of decisions	10
c) Procedures for the management of financial resources	11
d) Duties of information (231 Committee and Auditing)	11
e) Integration of the disciplinary system.....	11
3.3 GOVERNING BODY	12
4. TRAINING AND COMMUNICATION RELATING TO MODEL 231	14
5. REVIEW AND UPDATING OF ORGANISATIONAL MODEL 231	15

Foreword

Italian legislative decree No. 231 of 8 June 2001, published in Official Gazette No. 140 of 19 June 2001, introduced new responsibilities for companies and, indirectly, for their top management. The necessary preventive activity requires new organisational and control measures, on which the main trade organisations (ABI, ANIA, Confindustria) have developed and disseminated guidelines and recommendations for companies.

In relation to the issues introduced by the legislation in question, OASI S.p.A. has formulated a specific organisational model for companies known as “Model 231”, which Cedacri has chosen to adopt.

This document, submitted to the Board of Directors of Cedacri for approval, must be checked and reviewed at the established intervals.

The criteria taken as a basis for designing and producing **Organisational Model 231** are set out below.

Glossary

- **Model 231:** the organisational model pursuant to art. 6 c.1. of Legislative Decree 231/2001 resolved by the Board of Directors of Cedacri on 10 October 2007.
- **Cedacri:** Cedacri Spa
- **ABI Guidelines:** document published and disseminated by ABI for the formulation of observations regarding the suitability of models (see Legislative Decree 231/2001, art.6, c.3), sent to the Ministry of Justice (February 2004 version)
- **Members of top management:** physical persons fulfilling functions of representation, administration or management of Cedacri or any of its organisational units with financial and functional autonomy, and physical persons who attend, nominally or *de facto*, to the management and governance of Cedacri. The above figures include the members of the Board of Directors, the Managing Director (if applicable), the Director General and the Board of Auditors.

1. Model 231: requirements

1.1 Regulatory framework

Italian legislative decree No. 231/2001, which came into force on 4 July 2001, adapted the legislation governing the responsibility of legal persons to several international conventions to which Italy subscribed.

These are the *Brussels convention of 26 July 1995* on the protection of the financial interests of the European Community, the *Brussels convention of 26 May 1997* on combating the corruption of functionaries of the European Community or its Member States, and the *OECD convention of 17 December 1997* on combating the corruption of foreign public officials in economic and international operations.

In particular, legislative decree 231/2001: “*Governance of the administrative responsibility of legal persons, companies and associations, including those without legal personality*” introduced into Italy’s regulatory framework a regime of administrative responsibility comparable to criminal responsibility, for companies which derive benefit or advancement from a series of specific crimes that may be committed by:

- members of top management (see Glossary);
- physical persons subject to the management or supervision of a member of the top management.

This responsibility is added to the previously existing responsibility of the physical person who materially committed the act, thus extending the boundaries of criminal responsibility (personal), which now also encompass companies which benefited from the crimes.

1.2 Crimes currently included in the legislation

On its entry into force, the decree took account of specific crimes relating to public funding (art. 24 and 25) and corruption/extortion, insofar as they constitute a vehicle for the perpetration of such misappropriation.

These types were subsequently extended with a further series of crimes to be prevented and combated, which were added to decree 231/2001 at the time of promulgation of subsequent new legislation.

Section III of the decree lists the crimes for which the administrative responsibility of companies is currently envisaged, and specifies the respective sanctions. At the date of approval of this document, the types of crime include:

- Art. 24: Undue receipt of benefits, deception against the State or a public body or for the purpose of obtaining public disbursements, and IT fraud against the State or a public body.
- Art. 25: Extortion and corruption.

- Art. 25 bis: Crimes relating to the counterfeiting of money, credit cards and revenue stamps.
- Art. 25 ter: Corporate crimes (ex L. 366/2001, art. 11).
- Art. 25 quater: Crimes for the purposes of terrorism or the subversion of democratic order (ex L. 7/2003, art. 3).
- Art. 25 quinquies: Crimes against individual persons (ex. L. 228/2003).
- Art. 25 sexties: Abuse of privileged information and manipulation of the market
- Art. 25 septies: Laundering and use of money, goods and benefits of illicit origin (Law 146 of 20 March 2006).

1.3 Legal requirements for exemption

Companies are exempt from the said “administrative” responsibility if during any criminal proceedings they can prove that:

- a) Before the act was committed, the managing body adopted and effectively implemented appropriate **models** of organisation and management for the purpose of preventing crimes of the type in question;
- b) The task of overseeing the operation and observance of the models and attending to their updating was assigned to a **body** within the entity enjoying autonomous powers of initiative and control;
- c) The persons committed the crime by **fraudulently eluding** the models of organisation and management;
- d) **Supervision** by the governing body was neither omitted nor insufficient.

The **model** of organisation, management and control referred to in the above points is the mechanism to which the legislator entrusts the prevention and combating of crimes, and must meet the following requirements:

1. identifying the activities within the framework of which crimes may be committed;
2. establishing specific protocols aimed at programming the formulation and implementation of corporate decisions in relation to the crimes to be prevented;
3. identifying suitable financial resource management procedures for preventing crimes from being committed;
4. establish duties of information vis-à-vis the body assigned to oversee the operation and observance of the model;
5. introduce an internal disciplinary system of sanctions for non-compliance with the measures indicated in the model.

All the aforementioned requirements and related solutions identified for Cedacri are described in detail in later pages of this document.

2. Governance and Model 231 at Cedacri

2.1 The governance of Cedacri

Cedacri, which is certified to ISO 9001:2000 and ISO 27001:2005, recently completed a major reorganisation of the company's main processes, which led to a new allocation of roles and responsibilities for the entire organisational structure, with a view to implementing the organisation system and respective internal regulatory mechanisms, as a means of both meeting operational requirements and adapting to the regulatory requirements governing the industry.

The main documents underpinning the governance of Cedacri are as follows:

- **Articles of Association:** define the company object and operations, the administrative bodies and their powers, duties and responsibilities (shareholders' meeting, Board of Directors, Board of Auditors, Director General).
- **Staff hierarchy and functions charts:** represent the organisational structures of Cedacri and define the hierarchical links for all company line and staff functions, together with respective roles and responsibilities.
- **Powers of signature:** organically define the powers delegated by the Board of Directors to the various company bodies.
- **System of sanctions:** established by the CCNL (Italian national collective labour contract) governing the application of sanctions against employees in proportion to the gravity of any infractions committed.

The system of governance was reinforced and completed with the initiatives required by Organisational Model 231, which led to the institution of the following:

- **Code of ethics:** a document setting out the fundamental values of Cedacri and consequent ethical behaviours that the company expects of its personnel and stakeholders.
- **Governing body:** set up for the purpose of overseeing compliance with Model 231 and attending to its revision and updating. This body was also assigned the task of proposing to the Board of Directors any relevant sanctions and disseminating and updating the Code of Ethics.

2.2 References for the sector

Legislative decree 231/2001 establishes that models of organisation and management can be adopted, provided that they meet the envisaged requirements, on the basis of codes of conduct prepared by the relevant business associations.

Organisational model 231 adopted by Cedacri is based on the following references:

- Sector regulations (Confindustria), which govern and define the principles and guidelines for sound, prudent management, organisation and control.
- ABI Guidelines issued in December 2002 and updated in February 2004 in relation to the adoption of organisational models covering the administrative responsibility of companies.

2.3 Cedacri's objectives for Organisational Model 231

With the introduction of Model 231, Cedacri has set itself, through a detailed analysis of company operations, the objective of identifying the areas in which the system of internal controls relating to the crimes defined in the legislation under examination need to be strengthened.

Exhaustive identification, for all the functions of Cedacri, of the activities exposed to the risk of crime by means of assisted Self-Assessment is aimed at:

- informing all staff of Cedacri and all stakeholders, and making them aware, that illicit conduct, particularly if it is aimed, even in good faith, at improving company results, may attract criminal sanctions for individuals and equivalent administrative measures for the company (sanctions and interdictions);
- sharing and formalising the need for correct conduct in pursuance of business by all persons who represent Cedacri, in full compliance with the legislation in force;
- introducing specific procedures and measures for the purposes of control, monitoring and the imposition of sanctions, effectively adapted to the needs of combating the crimes in question.

The next chapter describes the specific characteristics of Organisational Model 231.

3. Model 231 at Cedacri

3.1 The 231 project

The requirements of the decree were examined in depth and assimilated into Model 231 in the course of a specific project undertaken with the collaboration of Oasi, a company controlled by the Istituto Centrale delle Banche Popolari Italiane, which specialises in consultancy for the banking industry and has proven experience in assessment and support with regard to regulatory compliance.

The project relating to the updating of Model 231 engaged the functions of Cedacri during the first quarter of 2007 in the updating necessitated by the introduction of new requirements of an organisational nature. The coordination of operational activities was assigned to a work group made up of Oasi and representatives of Cedacri.

The project documentation and respective dossiers are stored and managed by Cedacri (Internal Audit).

3.2 Organisational Model 231 at Cedacri

In relation to the updating of the Model 231 already adopted, the operational steps taken for defining and developing Model 231 are described below:

a) Identification of activities exposed to risk

The mixed work team made a preliminary analysis of the organisational structure of Cedacri, in terms of Management Teams and Operational Divisions.

For the activities not described in the corporate organisation chart, the processes were mapped by interviewing the relevant internal company functions.

In order to make the Structure in question responsible for the results of the survey, the survey was conducted on the basis of a Self-Assessment made using Personalised findings records for all functions of Cedacri.

The preliminary assessments formulated by the work group were submitted for validation by each function, which confirmed (positively or negatively) the combinations of activities and crimes highlighted. Each function also provided further information for the purpose of contextualising and defining potential crimes and their impact as accurately as possible (the existing line controls covering such risks, their effectiveness, references to company's regulatory framework, the economic significance and frequency of the activity, the number of people dedicated to it).

Special attention was paid to activities exposed to risk already reported in the Guidelines issued by Confindustria and ABI.

All information collected in the records was transposed into an appropriate software package known as "Audit 231", which constitutes an IT instrument for analysis, management of results and definition of priorities for organisational and control initiatives.

The current analytical supports provided by the software (which can be further customised) consist of a series of specific analysis reports for the purposes of "231".

b) Formulation and implementation of decisions

The preparation and dissemination of the Code of Ethics has contributed to further developing the governance and control of operational activities, in part by setting out a guide to the conduct that Cedacri expects of its employees.

The regulations and internal operating procedures are set out in order to define the scope of responsibility of employees, support the activity and at the same time protect Cedacri against possible "organisational culpability", which finds expression in failure to regulate processes which are known to be exposed to the risk of crime.

In order to ensure such regulatory coverage, all functions interviewed in the course of self-assessment were asked to indicate the existence of a regulatory document formally requiring the structure to conduct checks.

c) Procedures for the management of financial resources

Decree 231/2001 establishes the need to identify suitable financial resource management procedures for preventing crimes from being committed.

The United States procedures on which the decree is based state more explicitly that companies must not delegate substantial discretionary powers to individuals who may be inclined to become involved in illegal activities.

For the latter purpose, and in light of the guidelines given by trade associations and the governing body, fulfilment of the requirement of honorability imposed by the governance is deemed to be amply sufficient.

With regard to discretionary powers of management of financial resources, the study of the procedures for assigning such powers within CEDACRI found that the system of proxies is characterised by a predominant concentration of such powers within the General Management.

d) Duties of information (231 Committee and Auditing)

Decree 231/2001 requires the establishment of “duties of information” vis-à-vis the body assigned to oversee the operation and observance of the Model.

This requirement was also taken by the Legislator directly from the operational practices of US companies, in which incentives often exist to encourage “whistleblowing”, i.e. reporting internal anomalous conduct directly to the internal control functions, even anonymously.

With specific reference to CEDACRI:

- The Inspectorate, Auditing and Quality Management of CEDACRI charged with carrying out the operational checks relating to Model 231, must have free and full access to all company information and structures for the purpose of fulfilling its mission;
- the governing body must examine any reports, regardless of how they are received, regarding the perpetration or attempted perpetration of the crimes set out in the decree. This responsibility is significant where anomalous conduct is brought to light with particularly severe consequences in terms of the risks to which it could expose the company.

Therefore, on the basis of the above points, all CEDACRI employees are required to report promptly and directly to the governing body any findings relating to the types of crime defined in decree 231/2001, bypassing the traditional hierarchy if deemed necessary (insofar as failure to do so could, in the event of a crime, limit or compromise the accurate passing on of the report).

e) Integration of the disciplinary system

The disciplinary system, which establishes the obligation of sanctioning any illicit conduct

or conduct in breach of company regulations, is a key element in the operation of Model 231.

The “disciplinary system” must therefore appropriately differentiate the parties potentially involved according to their role (e.g. subordinate employees, managers, directors, auditors, para-subordinate employees, self-employed contractors, suppliers, agents). This can only be done by recourse to coordinated initiatives formalised by specific documents (disciplinary code, integration of letters of appointment, etc.).

The main criteria to which Cedacri intends to adhere for the purposes of appropriate integration of the disciplinary system are as follows:

- the need to comply with the general regulatory framework (civil code, workers statute, CCNL, etc.);
- the advisability of not constraining automatic crime/sanction mechanisms too rigidly;
- the need to establish and formalise suitable measures vis-à-vis third parties (stakeholders).

3.3 Governing body

At CEDACRI, the governing body is the entity responsible for overseeing the operation and observance of Model 231 and its updating.

The governing body fulfils a supporting role for the Board of Directors, to which it reports directly with regard to the activities it has carried out and any reports of crimes which it may have received.

The main responsibilities of the governing body are:

- to provide, with the support of the ***Internal Auditing, Security, Quality and Legal Management, the items to be checked with regard to the application of Model 231*** and, in more general terms, to the organisational structure, according to intervals and priorities defined in relation to the degree of risk of the activities and/or within the framework of more general programmes of control;
- to analyse, in conjunction with the competent company structures, the adaptation of the Code of Ethics and Model 231 further to the results of audits, at established intervals and in step with the evolution of external regulatory requirements and the internal organisational structure of the company;
- to examine reports, regardless of how they are received, regarding the perpetration (or attempted perpetration) of the crimes set out in the decree.

With regard to the performance of audits on the application of Model 231, the following applies:

- for audits on organisational structures, the governing body avails itself of the ***Internal Auditing, Security, Quality and Legal Management***,

- with regard to the responsibility of members of the top management, if anomalous conduct attributable to the top management emerges, the governing body shall report directly to the Board of Directors, which will make all the appropriate assessments.

4. Training and communication relating to Model 231

Personnel must be made aware of Model 231 through appropriate communication and training activities.

The documentation used and produced for the purposes of Model 231 is filed in the offices of ***Internal Auditing, Security, Quality and Legal Management***, which ensures that it ***can be immediately located***, in compliance with legislation governing data handling.

The documents produced can be consulted by the personnel concerned in the offices of ***Internal Auditing, Security, Quality and Legal Management*** according to the procedures to be defined by the governing body.

5. Review and updating of Organisational Model 231

Model 231 must be reviewed periodically for the purposes of updating it.

The governing body reports periodically to the Board of Directors on the state of application and any requirements for updating, which must be attended to:

A) promptly in cases of:

- amendments to regulatory requirements (extension of the scope of decree 231/2001);
- organisational changes, acquisitions and/or discontinuation of new company branches, introduction of new products/services;
- occurrence of illicit acts and crimes envisaged in decree 231/2001.

B) AT CAUTIOUSLY DEFINED MINIMUM INTERVALS

