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Chimec S.p.A.

**Organisation, management and control Model
pursuant to Legislative Decree 231/2001**

SPECIAL SECTION “A”

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1. – Offences against the public administration: outline

This Special Section covers offences committed within the framework of relations between the Company and the Public Administration.

Public administration or Public entity means any legal person charged with the responsibility of implementing the public interest or performing duties of a legislative, administrative or judicial nature, in virtue of rules of public law or authoritative acts¹.

Pursuant to article 3 of Legislative Decree 163/2006, this category comprises all public bodies or corporations established to implement specific public interests, financed by the State, by the local government authorities or other public law bodies, or the management of which is subject to control by the latter, or whose management, direction or supervisory body comprises members more than half of whom are designated by the above mentioned entities, and which also has legal personality.

The category also includes the bodies and Institutions belonging to the European Communities.

The legal interest protected by the offences hereunder shall be identified with reference to the principles set out in article 97, paragraph 2, of the Italian Constitution, which provides that “public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration”.

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It is precisely to achieve this aim that the law also sanctions any conduct adopted by private entities which, through solicitation, also of a fraudulent nature, by a public party, is liable to disturb the efficient and regular performance of administrative functions and responsibilities, and, therefore, to produce economic or other damage to the public administration as a whole.

It should also be specified that these offences are so-called “proper”, or specific, offences, which means that, in order to qualify as such they must be committed by a qualified party, a public official or a person authorised to provide a public service, thus differing from so called “common”, or ordinary, offences, which can be committed by anyone.

Therefore, given that many of the offences hereunder presuppose the activities of either “public officials” or “public service officers”, it shall be necessary to briefly define the two roles.

Pursuant to article 357, first paragraph, of the Criminal Code, a “public official” is defined – for criminal law purposes – as a person who is invested with “*a public function, whether legislative, judicial or administrative*”.

¹By way of example only, the reference is to: the State administrations (Presidency of the Council of Ministers, Financial Services and Markets Authority, Bank of Italy, Internal Revenue Service, Gas and Electricity Markets Authority); the European Community and related institutions; Local Health Authorities; Public Pensions Agency; Public Insurance Agency; Local, Provincial, Regional Governments.

The second paragraph goes on to define the concept of “*public administrative function*” as “*a public function regulated under public law and by authoritative acts and characterised by the formation and expression of the will of the public administration or by its implementation, by means of authoritative or certification powers*”.

Given the straightforward identification of the roles and persons concerned, the code does not elaborate further on “*legislative function*” and “*judicial function*”.

According to article 358 of the Criminal Code, “*a public service officer is a person who performs a public service*.”

A public service is an activity regulated in the same manner as a public function, but without the powers typically vested in the latter, and excluding the performance of mere routine duties or purely manual work”.

A service may qualify as a “public” service when it is regulated by public law but does not come with certification, authorisation and decision-making powers (which, instead, are typical of a public function).

Legislators have also specified that a “public service” excludes the performance of “mere routine duties” or “purely manual work”.

Case law has identified the category of public service officers, stressing their instrumental and ancillary nature, compared to public officials proper. In brief, they are persons who effectively contribute to implementing a public service – albeit in a subsidiary and complementary capacity – therefore, for all intents and purposes, performing a public function.

It provides a set of “indicators” defining the public nature of an entity, emblematised by the cases relating to joint stock companies with majority public shareholdings. In particular, it:

- (a) is subject to control by the State, or other public entities, which has the power to determine its policies and appoint and dismiss its directors;
- (b) operates under an agreement and/or concessionary arrangement with the public administration;
- (c) receives funding from the State;
- (d) operates in the public interest.

The offences hereunder, from a purely subjective point of view, are characterised by intent, which, generally speaking, may be defined as awareness or knowledge of wrongdoing.

Finally, this Special Section also includes two offences – article 640, paragraph II, and 640-*bis* of the Criminal Code, relating to fraud to the detriment of the State and aggravated fraud for securing public funds – which do not included among the typical offences against the Public Administration referred to in Book II, Title II, Chapter I of the Criminal Code, and have been included here because the type of fraud envisaged therein nevertheless requires interaction between the perpetrator and the Public Administration.

2. – Offences referred to in article 24 of the Decree

2.1. – Misappropriation to the detriment of the State (article 316-*bis* of the Criminal Code)

This offence sanctions “*whosoever, although not a member of the public administration, having received contributions, subsidies or other funds from the State or other public entity or from the European Communities, for the purpose of executing works or performing activities in the public interest, then fails to use them for these purposes*”.

The conduct constituting the commission of this offence is the misappropriation and use of all or part of any monies received from the PA, the State or the European Community for purposes other than for the execution of works or the performance of activities in the public interest for which they were originally granted.

This is an “instantaneous” offence, the commission of which occurs concomitantly with the misappropriation.

2.2. – Undue receipt of funds to the detriment of the State or the European Union (article 316-*ter* of the Criminal Code)

This provision, unless the fact constitutes the offence of aggravated fraud for the purpose of securing public funds or grants pursuant to article 640-*bis* of the Criminal Code, sanctions “*whosoever, by using or presenting false or untrue declarations or documents, or by omitting any material facts or information, unduly secures, for himself or others, contributions, funds, facilitated loans or other grants of the same type, however, denominated, from the State or other public entities or the European Communities*”.

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If the sums involved are equal to or below 3,999.96 euros a fine of between 5,164 euros and 25,822 euros shall apply. The fine, however, shall not exceed three times the benefit secured.

This offence, therefore, sanctions whosoever uses materially altered documents, false declarations, or omits material information, for the purpose of securing loans or funds from the State (or the European Union).

Unlike the preceding offence, there is no reference to the specific purpose for which the sums received are used.

The sanction here applies solely to the fraudulent and unfair conduct adopted by the perpetrator to secure the funds, which, together with the actual disbursement of the funds by the State or other public Entity, constitutes the commission of the offence.

2.3. – Fraud to the detriment of the State (article 640, paragraph II no. 1 of the Criminal Code)

This provision sanctions “*whosoever, through fraud and deceit, and by misleading any persons, thereby secures an unjust profit for himself or others, to the damage of the party concerned*”, increasing the penalty if the

offence is committed *"to the detriment of the State or other public entity or for the purpose of avoiding military service."*

This offence arises if the perpetrator's conduct, aimed at securing an unjust profit, consists in any alteration of material facts (by fraud and deceit) such as to mislead the State (including public entities and the European Union), which, by disbursing the funds, incurs financial damage.

The offence is established when, as a result of the misleading actions, the perpetrator secures an unjust profit to the detriment of the State.

2.4. – Aggravated fraud for securing public funds (article 640-*bis* of the Criminal Code)

This offence sanctions whosoever performs the fraudulent activities referred to in article 640 of the Criminal Code, for the purpose of securing *"contributions, funds, facilitated loans and other disbursements of the same kind, however denominated, from the State, other public entities or the European Communities."*

This offence should not be confused with article 316-*ter* of the Criminal Code (cf. par. 2.3.), in that the latter provision is applied on a subsidiary basis, i.e. if the offence of fraud pursuant to article 640-*bis* of the Criminal Code cannot be applied.

The difference consists in the elements of "fraud and receipt", which characterise the undue receipt of funds from the State (entailing misrepresentation or the omission of material information), where the conduct is part of a much broader fraudulent framework aimed at intensifying the effects of the deceitful actions, in order to more effectively mislead the injured party.

The offence arises when, as a result of the fraud and deceit, the State or other public entity actually disburses the requested funds.

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2.5. – Computer fraud to the detriment of the State or other Public Entity (article 640-*ter*, paragraph II, of the Criminal Code)

The provision sanctions *"whosoever, by tampering with a computer or data transmission system in any way or by altering the data, information or software stored in or related to a computer or data transmission system, without being entitled or authorised to do so, secures an unjust profit for himself or others, to the damage of the party concerned"*, and provides, in paragraph 2, for an increased penalty, if the aggravating circumstances referred to article 640, paragraph II, no.1, apply (actions committed to the detriment of the State or other Public Entity).

Computer fraud differs from ordinary fraud only in that the fraudulent activities are not carried out directly on the injured party, but on a computer or data transmission system, and related appurtenances.

The offence arises when the perpetrator tampers with an information system, without being entitled to do so, altering the functioning thereof.

2.6. – Penalties applicable to the offences referred to in article 24 of the Decree

Regarding the penalties applicable for the commission of the above mentioned offences, the entity shall be liable to a fine of up to 500 quotas.

Furthermore, if the entity secures a considerable profit or causes very severe damage, it shall be liable to a fine of between 200 and 600 quotas.

Finally, the disqualification penalty pursuant to article 9, paragraph II, letters c), d) and e) of the Decree shall apply².

² Cf. Reference should be made to paragraph 1.3 of the General Section of the Model on disqualification of the Entity as a result of the determination of an unlawful conduct.

3. – Offences referred to in article 25 of the Decree

3.1. – Extortion in office (article 317 of the Criminal Code)

This provision sanctions “*a public official who, abusing of his position or powers, obliges a party to deliver or unlawfully promise money or other benefits to him or a third party*”.

The offence comprises two key elements.

First of all, the public official must exercise so-called *metus publicae potestatis*, i.e. must fear the distorted exercise of his duties or powers, to the detriment of the injured party.

Such a conduct, moreover, must also oblige the victim to deliver or promise to deliver a financial or other benefit.

“Constriction” means a state of absolute coercion for the injured party, who is therefore deprived of any possibility of acting in a manner contrary to the harm feared by the public official by abusing of his powers or duties.

Furthermore, if it is found that any of the parties referred to in article 5 of the Decree have delivered, or promised to deliver, a financial or other benefit as a result of this “constriction” by a public official, the Entity shall be liable to the extent that the Company receives an unlawful benefit or satisfies a specific interest from the conduct of the private party.

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Finally, the offence arises when the financial or other benefit is received or promised; in the latter case, if the promise is followed by performance, the offence arises in connection with the latter event.

3.2. – Corruption for exercising a function (article 318 of the Criminal Code).

This provision³ sanctions a “*public official who, to exercise his functions or powers, illegally receives money or other benefits, for himself or others, or accepts the promise thereof.*”

This offence is grounded on the rationale that, in order to be committed, it requires the participation of a number of persons and, therefore, presupposes a contribution by both the in its commission, with the contribution of both the corruptor and the corrupt public official.

In this case, the offence envisages an action or behaviour within the framework of the official duties of the public official.

The offence arises, alternatively, when the financial or other benefit is delivered or promised. It ensues that, if the promise is followed by the delivery of the financial or other benefit, the offence shall arise in the latter case.

³ Article 318 of the Criminal Code has been amended by Law 190/2012, which has finally repealed the distinction between so-called “antecedent” and “subsequent” types of corruption, limiting the offence to only the episode of corruption regarding the function with which the public official is invested.

3.3. – Corruption to obtain an act contrary to official duties (article 319 of the Criminal Code)

This sanctions “*a public official who, in order to omit or delay, or for having omitted or delayed, an official duty, or for performing or having performed an action contrary to his official duties, receives money or other benefits for himself or others, or accepts the promise thereof*”.

Unlike in the case of the preceding paragraph, this type of corruption requires that the *pactum sceleris* between the public official and the corruptor must concern specific actions to be omitted or delayed, or which are contrary to the duties of the public official, under the rules investing him with his powers, depending on whether the relevant public function is exercised before or after the criminal arrangement⁴.

With regard to the actual commission of the offence, the same considerations provided in the preceding paragraph shall apply, the only difference being that, if the corruption arrangement takes place after the performance of an action by the public official, the offence shall be established only if the promise is followed by the delivery of financial or other benefits.

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3.4. – Aggravated corruption to obtain an act contrary to official duties (article 319-bis of the Criminal Code)

The provision applies an increased penalty, for the general offence of corruption pursuant to article 319, if the *pactum sceleris* concerns the specific purpose of securing “*public employment or salaries or pensions or the awarding of contracts in which the administration of which the public official is a member has an interest, or the payment or reimbursement of taxes*”.

3.5. – Corruption in judicial proceedings (article 319-ter of the Criminal Code)

This offence occurs when the corruption provided for in articles 318 and 319 of the Criminal Code is committed “*in favour of or against a particular party in civil, criminal or administrative proceedings*”.

Paragraph II increases the penalty if the offence leads to an unjust conviction.

Regarding the determination of when the offence arises, reference should be made to paragraph 3.3.

3.6. – Induced bribery (article 319-*quater* of the Criminal Code)

This provision sanctions, unless the fact constitutes a more serious offence, “*a public official, or public service officer, who, by abusing his authority or powers, obliges someone to unduly deliver or promise to deliver money or other benefits to himself or others*”.

Paragraph 1 also sanctions “*whosoever delivers or promises money or other benefits*”.

The offence mentioned here replaces the previous offence of extortion by induction pursuant to article 317 of the Criminal Code, ranking as a separate provision following the introduction of new anti-corruption laws (under Legislative Decree 190/2012).

Regarding the general aspects, reference should be made to the paragraph dedicated to extortion in office pursuant to article 317 (cf. para. 3.1.), however, specifying the meaning of the term “induction” (in the sense of moving to a course of action by influence or persuasion).

This offence is based on the presupposition that the abuse of his authority or powers by a public official is sufficient to “induce” (i.e. convince or persuade) the injured party that he must promise or deliver financial or other benefits.

This unlawful influence, however, is considered less effective, so to speak, than actual “constriction”, because the victim is not entirely coerced and could even decide not to accede to the public official’s request.

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Therefore, the new legislative measures introduced in 2012 also sanction the injured party delivering or promising the financial or other benefits.

Finally, the Entity shall be liable for the offence if it is determined that the lawful conduct by the private party has satisfied an interest of or produced a benefit for the Company.

3.7. – Corruption of public service officers (article 320 of the Criminal Code)

The purpose of this provision is merely to clarify that the corruption offences referred to in articles 318 and 319 of the Criminal Code also apply to public service officers, besides providing a reduced penalty by no more than one third.

3.8. – Penalties for the corruptor (article 321 of the Criminal Code)

The penalties contemplated in articles 318, paragraph I, 319, 319-*bis*, 319-*ter* and 320 of the Criminal Code shall also apply to the corruptor, i.e. to the person who delivers or promises financial or other benefits to a public official or public service officer.

3.9. – Instigation to corruption (article 322 of the Criminal Code)

The provision sanctions "*whosoever offers or promises money or other benefits not due to a public official or a public service officer, for exercising his functions or powers, if the offer or promise is not accepted*".

The provision also sanctions any corruptive offers or promises to omit or delay the performance of official acts by a public official or public service officer, or to perform acts contrary to their duties, and the latter shall be sanctionable if they have solicited the offer or promise.

The conduct sanctioned by the offence consists in the so-called unaccepted corruption proposal, which, for the purposes herein, must be serious, concrete and determined, or capable of generating the concrete possibility of acceptance by the recipient.

Instigation also arises when the offer is undefined and it is left to the recipient to establish its essential points.

3.10. – Misappropriation, extortion, illegal incitement to deliver or promise benefits, corruption and instigation to corruption of members of the bodies of the European Union and officials of the European Communities and foreign states (article 322-bis of the Criminal Code)

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The provisions contemplated in articles 314, 316, from 317 to 320 and 322, paragraphs three and four, apply also to:

1) members of the Commission of the European Communities, of the European Parliament, of the Court of Justice and of the Court of Auditors of the European Communities;

2) officials and servants hired under contract, pursuant to the Regulations of Officials of the European Communities or the provisions applicable to the servants of the European Communities;

3) persons seconded by the Member States or any other public or private entity to the European Communities and engaged in the performance of functions corresponding to those performed by the officials or servants of the European Communities;

4) members and personnel of entities established in pursuance of the Treaties establishing the European Communities;

5) persons who, within the other Member States of the European Union, are invested with functions or activities corresponding to those of public officials and public service officers;

5-bis) judges, public prosecutors, assistant prosecutors, officials and servants of the International Criminal Court, persons seconded by the party States to the Treaty establishing the International Criminal Court invested with functions corresponding to those of the officials or servants of the Court, the members and personnel of entities established pursuant to the Treaty establishing the International Criminal Court.

The provisions of article 319-*quater*, second paragraph, 321 and 322, first and second paragraph, shall apply also if the financial or other benefits are delivered, offered or promised:

1) to the persons indicated in paragraph one of this article;

2) to persons invested with functions or activities corresponding to those of public officials and public service officers in foreign States or international organisations, if the offence is committed for the purpose of securing an unlawful benefit for oneself or others, in international economic transactions, or for the purpose of securing or maintaining economic or financial activities.

The persons indicated in paragraph one are considered equivalent to public officials, if they are invested with corresponding functions, and to public service officers in all other cases.

3.11. – Penalties applied to the offences referred to in article 25 of the Decree

If the Entity is found liable, the following fines shall apply, pursuant to article 25 of the Decree:

1) for the offences referred to in articles 318, 321 and 322, paragraphs I and III of the Criminal Code, a fine of up to 200 quotas shall apply;

2) for the offences pursuant to articles 319, 319-*ter*, paragraph I, 321, 322, paragraphs II and IV of the Criminal Code, a fine of between 200 and 600 quotas shall apply;

3) for the offences pursuant to articles 317, 319, in the case of the aggravating circumstances provided in 319-*bis*, if the entity receives a significant benefit as a result of the offence, 319-*ter*, paragraph II, 319-*quater* and 321 of the Criminal Code a fine of between 300 and 800 quotas shall apply.

Furthermore, the above fines shall also apply if the offences are committed by the persons specified in articles 320 and 322-*bis* of the Criminal Code

If the entity is found guilty for any of the offences in nos. 2 and 3 of this paragraph, the disqualification penalty pursuant to article 9, paragraph II, of the Decree⁵ shall also apply for a duration of at least one year.

⁵Cf. Reference should be made to paragraph 1.3 of the General Section of the Model on disqualification of the Entity as a result of the determination of an unlawful conduct.

4. – Offences referred to in article 25-*decies* of the Decree

Following is an overview of the only type of offence against the administration of justice among those envisaged by the Criminal Code and referred to in article 25-*decies* of the Decree.

4.1. – Inducement not to make statements or to make false statements to the Judicial Authorities (article 377-*bis* of the Criminal Code)

Unless the fact constitutes a more serious offence, the provision sanctions “*whosoever, with violence or threats, or with the offer or promise of money or other benefits, induces a person summoned by the judicial authorities not to make statements, or to make false statements, in connection with any criminal proceedings, when the person has the right to silence*”.

This provision aims to safeguard the proper functioning of the judicial machine against any type of undue interference.

The injured party shall necessarily be a person summoned to make statements before the judicial authorities.

The illegal interference must be result in the making of false statements, or in invoking the right to silence by a suspected or accused person, when he could otherwise provide his own exposition of the facts.

The offence arises when a person summoned before the Judicial Authorities either makes false statements or invokes the right to silence.

4.2. – Penalties applied to the offence referred to in article 25-*decies* of the Decree

If the entity is found guilty, in respect of the offence of inducement not to make statements or to make false statements to the Judicial Authority, a fine of 500 quotas shall apply.

5. – Risk areas

The offences herein are grounded solely on the relations existing between the entity and the PA, including those of a judicial nature.

Therefore, and taking into account Chimec's operations, the following risk areas have been identified:

- relations with the PA; in particular, given by way of example only, participation in the procedures for obtaining permits, certificates, authorisations, concessions and any other measure that is useful for the Company's operations; any relations established for the purpose of accessing administrative acts and obtaining information; any relations associated with audits and inspections by Public Administration bodies, law enforcement agencies and judicial authorities;
- the management of relations with suppliers or carriers holding quality certificates issued by public bodies and/or members of specific official organisations;
- relations with port and customs authorities, in connection with purchases and/or sales abroad of assets and/or services related to the Company's operations;
- procedures relating to the management of, participation in and launching of tendering procedures;
- any judicial procedures pending before Italian or foreign Judicial Authorities.

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The areas specified above are relevant also if the relevant activities are carried out, in whole or in part, by individuals or corporations in the name and on behalf of Chimec, also based on proxies or powers of attorney or under contracts and other arrangements, of which the SB must be promptly informed.

6. – General rules of conduct and implementation

The purpose of this Special Section is to provide a set of rules of conduct aimed at preventing the commission of corporate offences, giving rise to the penalty system set out in the Decree in the event the entity is found liable.

The rules of conduct apply to all the Recipients⁶ of the Model and, in particular to all those who operate in the risk areas defined above, including any persons who are not part of the Company.

The Board of Directors of Chimec, together with the SB, shall be responsible for the circulation and implementation of the said systems.

The Recipients are expected to know and abide by the rules set out herein, as well as the:

- Code of Conduct;
- disciplinary system;
- the internal procedures adopted by Chimec for hiring and training its staff;
- the internal procedures adopted by Chimec for managing relations and notifications with the PA;
- the internal procedures adopted by Chimec for managing relations with its suppliers.

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The Recipients and all external collaborators – duly informed by means of dedicated contractual clauses – are prohibited from:

- adopting any conduct capable of directly or indirectly leading to the commission of the offences referred to in articles 24, 25 and 25-*decies* of the Decree;
- adopting positions in clear conflict of interest with the PA, in relation to the above mentioned offences;
- obstructing the course of justice, by means of violence or threats.

In particular, it is absolutely forbidden to:

- accepting and/or delivering financial or other benefits – whether voluntarily or as a result of solicitation – from and/or to public officials or public service officers;
- delivering and/or receiving gifts or granting benefit of any kind – whether voluntarily or as a result of solicitation – to public officials or public service officers such as to influence their impartiality or independence of judgement, or to induce them to provide specific benefits to Chimec;
- promising to employ people not on the basis of merit, competence and professional skills, but in the form of favours and patronage;

⁶ For the definition of Recipients, reference should be made to the General Section of the Model, Glossary.

- granting emoluments or services to persons outside the Company (e.g., consultants, auditors or other professionals) which are unjustified and unrelated to any engagements on behalf of the Company, and paying emoluments for services never provided;
- presenting materially altered or untruthful declarations to national or EU bodies, for the purpose of securing contributions or facilitated loans;
- misappropriating any funds received from the State, from other public entities or from the European Community, for purposes other than those for which they were granted.

To foster the implementation of the conduct above, the Recipients:

- must ensure that all relations with the PA are transparent;
- in the event of inspections by the PA (e.g., law enforcement bodies), file copies of all the relevant documents and records issued by the PA (e.g., inspection and search orders and related statements and reports), as well as all the documents and records relating to the procedures;
- with regard to the engagement of external professionals, the relative contracts must be drafted in writing, must contain a clear and accurate description of the service(s) to be provided and the related remuneration. Before engaging the professional, the agreements must be approved by the competent Company officer and the related engagement documents duly filed;
- external professionals must inform Chimec and the SB about the existence of any criticalities found in the performance and execution of the activities contracted out, especially if they come across any form of conduct or behaviour that could lead to breaches to the Model in general, or the commission of the offences herein;
- no payment shall be made in cash or in kind but solely by means of transparent and easily traceable methods, except for small expenses;
- the statements to be made to the PA, or other Community bodies, also for the purpose of obtaining grants and funds, must contain true information, which shall be duly checked;
- the Company officers invested with the duty to control payments, or check the use of any contributions granted, shall perform their duties accurately and effectively and immediately report any irregularities to the SB;
- regarding the management of any criminal proceedings pending before Italian or foreign Judicial Authorities, each Recipient is prohibited from acting with violence or threats, or delivering or promising financial or other benefits to ensure that the accused or suspected person does not make statements or makes false statements or exercises the right to silence, instead of providing his own exposition of the facts.

Finally, the Board of Directors may provide for other measures aimed at protecting the identified risk areas, in addition to the obligations and requirements mentioned above.

7. – Evidence Sheets

It shall be necessary to provide proof of the operations carried out in connection with the above mentioned risk areas.

Activities at risk must be reported to the SB by the competent officers (or their delegates) by means of an “Evidence Sheet”, which must be periodically updated and containing:

- i)* the activities carried out with members of the Public Administration;
- ii)* the place and date of the activities;
- iii)* the corporate officer(s) responsible for managing the activities;
- iv)* the members of the Public Administration body managing the activities;
- v)* observations by the Corporate Officer on the risk of commission of offences against the Public Administration;
- vi)* declaration by the Internal Officer – for himself / herself and any internal subordinates delegated to carry out activities entailing the establishment of relations with the Public Administration – evidencing his / her awareness of the formalities that need to be carried out and the obligations to be complied with in the performance of the operations and the he / she has not committed the offences referred to in the Decree.

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Regarding the operations in question, the SB may prepare further controls, concerning which written records must be provided.