
CONTENTS

Chimec S.p.A.

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

SPECIAL SECTION “D”

ORGANISED CRIME OFFENCES

1. – Organised crime offences pursuant to article 24-ter of Legislative Decree 231/2001: general characteristics

1.1. – Participation in a criminal organisation (article 416 of the Criminal Code)

1.2. – Participation in a mafia-type organisation based in Italy or elsewhere (article 416-bis of the Criminal Code)

1.3. – Application of penalties

2. – Risk areas

3. – General rules of conduct and implementation

1. – Organised crime offences pursuant to article 24-ter of Legislative Decree 231/2001: general characteristics

The inclusion – in 2009 – of organised crime offences among the so-called predicate offences, within the meaning of Legislative Decree 231/2001, is not an absolute novelty. On the contrary, article 10 of Law 146/2006 (“*Ratification and implementation of the United National Convention and Protocols against Transnational Organized Crime*”), in fact, had already included several organized crime offences among the predicate offences entailing the administrative responsibility of an entity, albeit only if they were of a transnational nature. Therefore, by extending these offences to the national as well as the transnational level, the legislators have attempted to respond to the need to strengthen the struggle against organised crime in the business world.

In particular, article 2, paragraph 29, of Law 94/2009, by including article 24-ter in the normative text dedicated to predicate offences, adds a series of offences in paragraph 1, the most serious of which are:

- association to reduce to or hold in slavery, to traffic human beings, to trade persons held in slavery (article 416, paragraph 6, of the Criminal Code);
- mafia-type association (article 416-bis of the Criminal Code);
- electoral malpractice based on agreements between politicians and members of mafia-type criminal organisations (article 416-ter of the Criminal Code);
- kidnapping for robbery or extortion (article 630 of the Criminal Code);
- offences committed in circumstances under the influence of mafia-type criminal organisations, or for the purpose of facilitating the activities of the said organisations, offences to which the aggravating circumstances in article 7 of Law 203/1991 apply;
- participation in a criminal organisation, for the purpose of distributing narcotic or psychotropic drugs (article 74 of D.P.R. 309/1990).

Paragraph two of the above mentioned provision mentions the following offences as potential sources of responsibility of the entity:

- participation in a criminal organisation (article 416 of the Criminal Code);
- article 407, paragraph 2, letter a) no. 5 of the Code of Criminal Procedure (“offences relating to the illegal production, introduction into the Country, disposal, possession and holding in a

public place, or in any premises open to the public, of war arms or similar arms, explosives and clandestine arms”).

Based on an initial examination of the activities in connection with which the above mentioned offences could be committed, we have ruled out the applicability to the Company of the offences referred to in articles 416, paragraph 6, 416-ter and 630 of the Criminal Code, 74 of D.P.R. 309/1990, 407, paragraph 2, letter a) no. 5 of the Code of Criminal Procedure.

1.1. – Participation in a criminal organisation (article 416 of the Criminal Code)

This offence occurs “*when three or more people form an organisation for the purpose of committing a number of offences*”.

This offence is a “typical” model of association offences, which requires that the criminal organisation be sufficiently stable and have the purpose of committing an indefinite number of criminal offences.

The “offensive” nature of the conduct arises from and is grounded on the existence of an organisation, based on specific bonds between the members thereof, which in itself is sufficient to endanger public order, albeit potentially. Therefore, it should be specified that the members of the criminal organisation shall always be jointly responsible and accountable for their participation in the organisation, however organised, by virtue of their membership thereof and regardless of whether or not they then go on to commit any of the offences referred to in the Criminal Code, including those already examined in the other Special Sections of this organisation and control Model.

97

Furthermore, if any of the so-called “purpose offences” are then committed, each member of the organisation shall be jointly liable with the perpetrators of the offence, being deemed to have formally conspired¹ with the said perpetrators of the offence, which may also be a “persistent” or continued offence².

The offence in question is commonly known as an offence “necessarily committed by multiple members” of the criminal organisation and, therefore, differs in this respect from conspiracy in the

¹ Article 81, paragraph I, of the Criminal Code provides that formal conspiracy in the commission of an offence “*shall entail the application of the same penalty that applies to the most serious violation, increased by one third, to whosoever, with a single action or omission breaches various provisions of law, or commits multiple violations of the same legal provision*”.

² Article 81 paragraph II, of the Criminal Code provides that persistent or continued offences shall be subject to the same penalties provided in the preceding paragraph, which apply to “*whosoever, by means of a number of actions or omissions, aimed at carrying out the same criminal design, commits multiple violations thereof, in one or a number of occasions, or of various legal provisions*”. It must be specified that the expression “same criminal design” may be defined as the design, from the start, to commit a specific set of offences, even if broadly outlined.

commission of an offence pursuant to article 110 of the Criminal Code: the former requires the offence to be committed within the framework of a stable organisation, which continues to exist even after the commission of the “purpose crimes”, while in the latter case the criminal organisation is purely occasional and is disbanded once the offence planned by the members has been committed.

There is also the possibility of so-called “*concorso esterno*”, or external participation, if the perpetrator provides a conscious, voluntary and concrete contribution, from a cause-effect point of view, in favour of the activities and purposes of the criminal organisation, even though he or she is not a formal member thereof.

This offence is of a permanent nature and, therefore, any conduct in relation hereto shall cease only once the organisation has been disbanded (for example, either based on the members’ decision or as a result of their arrest) or if its membership drops below the limited number required by law.

Subjectively, this is intentional in nature, in relation to which each member, regardless of his or her position within the organisation, is conscious of the permanent bond that exists with the other members and intends to provide an active contribution to the organisation’s activities; it may, therefore, be classed as featuring a “specific intent”.

98

1.2. – Participation in a mafia-type organisation based in Italy or elsewhere (article 416-*bis* of the Criminal Code)

Whosoever belongs to a mafia-type criminal organisation formed by three or more persons shall receive a prison sentence of between 10 and 15 years.

Whosoever promotes, directs or organises such a criminal organisation shall receive, for this reason alone, a prison sentence of between 12 and 18 years.

Association with a mafia-type organisation occurs when the members of this criminal organisation exploit the intimidatory force of the organisation itself, and the related conditions of subjection and misplaced loyalty, as well as fear of cooperating with the authorities – definable with the Italian word *omertà*, which also includes silence and non-interference in the illegal activities of others – to commit crimes, for the purpose of directly or indirectly acquiring control over business operations and activities, concessions, authorisations, public contracts and services or for obtaining an unjust profit or advantage, for oneself or for others, and for the purpose of preventing or hindering the free exercise of one’s right to vote or of securing votes for oneself or others, in connection with the electoral process.

If the members of the organisation are also armed, a prison sentence of between 12 and 20 years shall apply, in the cases referred to in paragraph 1, and between 15 and 26 years in the cases referred to in paragraph 2.

An organisation is considered to be armed when its members have access to arms, weapons and explosives, even if concealed or stored in storage facilities, for achieving the purposes of the organisation.

If the business activities and operations of which the members of a criminal organisation intend to gain or maintain control are wholly or partially financed with the price, products or profit of criminal activities, the penalties referred to above shall be increased by between one third and a half.

It shall be mandatory to seize and confiscate any objects or assets used by persons found guilty of belonging to a criminal organisation, within the meaning herein, to commit the offence, as well as the price, products and profit thereof.

The provisions herein shall also apply to other criminal organisations, such as the *camorra*, *'ndrangheta* (8) and other associations and organisations, however called locally and even if based abroad (9), which, by exploiting the intimidatory strength of membership of such an organisation pursue the same purposes as a mafia-type organisation.

99

The offence herein is related to a particular form of criminal organisation offence, the key features of which are identical to the provisions of article 416 of the Criminal Code

The only difference, except in the case the offence is committed with aggravating circumstances, is the so-called “mafia method”, which the organisation uses to pursue its ends.

This requirement is comprehensively defined in paragraph III of the provision in question, and, generally speaking, should be viewed as a typical *modus operandi* of the mafia-type organisation, a sort of hallmark lacking which the organisation would fall within the meaning of article 416 of the Criminal Code

First of all, such a condition necessarily requires that the organisation – in the performance of its criminal activities – projects itself outwardly, so to speak.

This entails that the so-called “mafia method” cannot be occasional in nature, but must be rooted in the geographical area of reference and suited, by reason of its ongoing and persistent presence, to determining the conditions of *omertà* (see above) and psychological subjection vis-à-vis the injured person(s).

This also entails that, following the implementation of this *modus operandi* by the organisation, the victim can do nothing except act as required by the organisation.

Secondly, the intimidatory strength of the organisation, besides being aimed at the commission of an indefinite series of offences, also aims to take over control of business activities and concessions, or secure public contracts or services, or, finally, to interfere with the free exercise of a person's voting rights, for the purpose of obtaining votes, at elections, for the members of the organisation or others.

Once it has been determined that the "hallmark" of an offence is the so-called "mafia method", it must then be specified that this element, besides differentiating this offence from the general offence referred to in article 416 of the Criminal Code, also qualifies the other forms of organised crime, which, although not definable as the other associations known as the *camorra* or *'ndrangbeta*, are nevertheless grouped together because they make use of the same *modus operandi* to pursue their criminal ends.

Finally, as in the case of article 416 of the Criminal Code, here to an entity may be accused of external participation or membership of the mafia-type criminal organisation.

1.3. – Application of penalties

Pursuant to article 24-ter of the Decree, "*Having regard to the commission of any of the offences referred to in articles 416, paragraph six, 416-bis, 416-ter and 630 of the Criminal Code, if the said offences are committed by exploiting the conditions and circumstances specified in the said article 416-bis, or for the purpose of facilitating the activities of the associations provided for therein, as well as the offences provided for in article 74 of the consolidation act referred to in the Decree of the President of the Republic, no. 309, of 9 October 1990, a penalty of between 400 and 1,000 quotas shall apply.*

100

Having regard to the commission of any of the offences referred to in article 416 of the Criminal Code, except for paragraph six, or in article 407, paragraph 2, letter a), number 5), of the Code of Criminal Procedure, a fine of between 300 and 800 quotas shall apply.

If the entity is found guilty of any of the offences referred to in paragraphs 1 and 2, the disqualification penalty pursuant to article 9, paragraph 2, shall apply for a period of at least 1 year.

If the entity, or a unit thereof, is stably used for the sole or predominant purpose of enabling or facilitating the commission of the offences referred to in paragraphs 1 and 2, it shall be closed down pursuant to article 16, paragraph 3".

2. – Risk areas

Based on the core operations of Chimec, the following risk areas have been identified:

- employee recruitment procedures;
- the management and performance of activities related to the procurement of raw materials, also through intermediaries;
 - the rules and processes for selecting suppliers and hauliers, with respect to contracting for the administration of goods and services;
 - the procedures for identifying the partners with which Chimec decides to have professional relations for its operations;
 - the client management protocols, especially with regard to accreditation processes.

Since organised crime offences may also be used to commit offences covered by the other Special Sections of this Model, the above risk areas must be integrated to include the others specified in relation to each type of offence.

This clarification is essential for the purpose of forming a Model that is as effective as possible and consistent with the provisions set out in the Decree.

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 or attorney or under contracts and other arrangements, of which the SB must be promptly informed.

3. – 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 Recipients³ 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 recruitment procedures and principles for the selection of human resources, partners or other professionals with whom Chimec intends to establish work relations;
- the rules and systems provided for the procurement and administration of raw materials, including the activities relating to transportation, processing and the implementation of security measures for the said substances, and any other duty strictly related or preliminary to the said activities.

102

The Recipients and all external collaborators – duly informed by means of dedicated contractual clauses – are prohibited from adopting any kind of conduct that is conducive to the commission of organised crime offences.

In particular, and in relation to the recruitment procedures for the selection of human resources and any partners and/or suppliers, the Recipients must abide by and apply the following criteria:

- the possession of adequate professional skills and qualifications, with regard to the position or duties;
- equality of treatment;
- the presentation of criminal record certificates, pending charges certificates and certificates of good character, issued no more than three months previously;
- the collection of information on the professional qualifications, competences, skills and prior employment history of the candidate.

³ For the definition of Recipients, reference should be made to the General Section of the Model, Glossary.

Having regard to the management of business relations with the suppliers, hauliers and/or external partners, the following shall apply:

- the creation of traceable cash flows;
- the use of dedicated bank and/or post office accounts for the said activities and/or relations, the details and related management/traceability rules of which should be included in ad hoc contract clauses to be signed by the relevant suppliers and/or partners;
- the requirement, as the only method of payment, of either bank or post office transfers, or any other method capable of ensuring full traceability.

For the purpose of preventing the risk of criminal infiltrations in corporations, specific rules of conduct have been laid down and must be complied with by the members of the Chimec management/supervisory bodies.

In particular, the senior executives, limitedly to their functions, are:

- obliged to refuse any requests that are contrary to the law or the provisions contained in this Model, and must immediately inform the Board of Directors and the Judicial Authorities upon receiving such requests;
- required to inform the competent Authorities and, if the circumstances so require, lodge a complaint or a legal action, if they become aware of any facts or events conducive to infiltration by organised criminal activities, or if subjected to blackmail or threats.

103

The members of the SB shall also abide by the provisions above.

Furthermore, reference is also made to the rules of conduct set out in the other Special Sections of the Model, owing to the fact that criminal organisations may carry out any of the offences covered in the Model.

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.