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Chimec S.p.A.

Organisation, Management and Control Model pursuant to Legislative Decree 231/2001

SPECIAL SECTION "C"

OFFENCES OF RECEIVING STOLEN GOODS, MONEY LAUNDERING AND THE USE OF MONEY, GOODS OR BENEFITS OF UNLAWFUL ORIGIN AND SELF-MONEY LAUNDERING

(ARTICLE 25-*OCTIES* OF LEGISLATIVE DECREE 231/2001)

Approved by the Board of Directors of CHIMEC S.p.A. on October 25th 2016
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1. – Offences of receiving stolen goods, money laundering, use of money, goods or benefits of unlawful origin, and self-money laundering: general characteristics

This Special Section covers the offences referred to in article 25-*octies* of the Decree relating to offences against property, which, in order to be established, require the prior commission of a so-called "predicate" offence, to which – however – the perpetrator of any of the above mentioned offences, committed subsequently, must not be a party.

These are offences that affect a multiplicity of legal interests of various kinds: property (i.e. the property of the injured party), but also the justice administration (in relation to its specific duty of prosecuting any type of offence, including predicate offences) and the economic system as a whole (in relation to the regular and transparent performance of business activities in a free competition environment).

The link between the offences herein and the predicate offence is strengthened by the circumstance whereby the perpetrator is aware of the criminal origin of the goods, regardless of whether or not he or she is also cognizant of the specific legal qualification of the predicate offence and when and how the offence was committed.

The application of the penalties for the above mentioned offences does not require the prior determination of the previously committed offence, in the form of a final judgement, provided that the criminal origin of the goods emerges.

2. – Offences referred to in article 25-*octies* of Legislative Decree 231/2001

2.1. – Receiving stolen goods (article 648 of the Criminal Code)

Except in the case of conspiracy, whosoever – for the purpose of securing a profit, for himself or others – purchases, receives or conceals money or other goods originating from any offence, or otherwise intervenes in purchase, receiving or concealing thereof, shall receive a prison sentence of between 2 and 8 years and a fine of between 516 and 10,329 euros. The penalty shall be increased when the offence involves money or goods originate from the serious offence of aggravated robbery pursuant to article 628, third paragraph, or aggravated extortion, pursuant to article 629, second paragraph, or aggravated theft, pursuant to article 625, first paragraph, no. 7-bis).

The penalty is reduced to a maximum prison term of 6 years and a maximum fine of 516 euros, if the circumstances are particularly slight.

The above provisions apply also when the perpetrator of the offence who provides the money or goods, cannot be charged or if there are no conditions for prosecution, with respect to that offence.

It is required that the perpetrator must receive a profit, in any form, tendentially of a financial nature, for himself or others, from the commission of the offence.

The goods received may be of any kind, whether money or other goods, movable or immovable (i.e. including real property).

2.2. – Money laundering (article 648-*bis* of the Criminal Code)

Except in the case of conspiracy, whosoever replaces or transfers money, goods or other benefits originating from the commission of an offence committed without criminal intent, or carries out other operations – in relation thereto – aimed at hindering the identification and determination of their criminal origin, shall receive a prison sentence of between 4 and 12 years, and a fine of between 5,000 and 25,000 euros.

The penalty shall be increased if the offence is committed in relation to the performance of professional activities.

The penalty shall be reduced if the money, goods or other benefits originate from the commission of an offence for which the maximum prison sentence is five years.

The last paragraph of article 648 applies.

All the above mentioned offences feature a common requirement, because they must be committed in such a manner as to hinder the identification and determination of the criminal origin of the money or objects; proof of the suitability of the conduct to achieving the purpose, since we are dealing here with so-called "offences of mere conduct" and not "results offences", is sufficient to integrate the offence in question, without having to determine the actual dissimulation.

2.3. – Utilisation of money, goods or benefits of unlawful origin (article 648-*ter* of the Criminal Code)

Whosoever, except in the case of conspiracy and the cases provided in articles 648 and 648-bis, utilises for business or financial activities any money, goods or other benefits originating from the commission of an offence, shall receive a prison sentence of between 4 and 12 years, and a fine of between 5,000 and 25,000 euros.

The penalty shall be increased if the offence is committed in relation to the performance of professional activities.

The penalty shall be reduced if the circumstances referred to in paragraph 2 of article 648 apply.

The last paragraph of article 648 applies.

There is a special connection between this offence and the offence of money laundering, in virtue of which the offence pursuant to article 648-*ter* is applied in a subsidiary capacity (to that of money laundering) and, above all, it differs in relation to the perpetrator's will to achieve the purpose of concealing the criminal origin by re-utilising the illegal proceeds in the performance of a legal activity.

This type of offence is the last stage of a so-called "criminal cycle" and consists in the use of illegal proceeds exclusively for general business or financial activities (and, therefore, not for specific business activities), i.e. for the production and circulation of goods and services or the circulation of money or securities, provided that the "intellectual" aspect does not prevail.

2.4. – Self-money laundering (article 648-*ter*1 of the Criminal Code)

Article 648-*ter*1, introduced by article 3, paragraph 3, of Law 186/2014, recites as follows: "*a prison sentence of between 2 and 8 years, and a fine of between 5,000 and 25,000 shall apply to whosoever, having committed or being an accessory in the commission, of a non-criminal offence, utilises, replaces, transfers, in economic, financial, entrepreneurial or speculative activities, the money, goods or other benefits originating from the commission of the offence, in such a manner as to effectively hinder or conceal the determination of criminal origin thereof.*

A prison sentence of between 1 and 4 years, and a fine of between 2,500 and 12,500 euros shall apply if the money, goods or other benefits originate from the commission of a non-criminal offence liable to a prison sentence of no more than 5 years.

In any case, the penalties referred to in the first paragraph shall apply if the money, goods and other benefits originate from an offence committed under the circumstances or for the purposes set out in article 7 of Decree Law 152/1991, amended and converted into Law 203/1991, as subsequently amended.

Except in the cases set out above, no penalty shall apply if the money, goods or other benefits are used or enjoyed for personal purposes.

The penalty is increased when the offences are committed in connection with banking or financial or other professional activities.

The penalty is reduced by up to half if the perpetrator effectively strives to limit the effects of the consequences or ensure evidence as to the offence and the determination of the money, goods and other benefits originating from the offence.

The last paragraph of article 648 shall apply".

In this case, "*utilisation*" means the reinjection of the criminal proceeds into the business circuit, while the terms "*transfer*" and "*replacement*" allude to forms of conduct that entail changes in the ownership of the goods or a non-personal use thereof.

The offence concerns any money, goods or other benefits originating from non-criminal offences.

Here too, as in the cases of money laundering or reutilisation, the provisions in the last paragraph of article 648 of the Criminal Code shall apply: the conduct is liable to a penalty also when "*the perpetrator of the offence giving rise to the money or goods cannot be charged or is not liable or if there are no conditions for prosecution*".

2.5. – Application of penalties for offences referred to in article 25-*octies* of the Decree

In relation to the offences referred to in articles 648, 648-*bis* , 648-*ter* and 648-*ter.1* of the Criminal Code, a fine of between 200 and 800 quotas shall apply. If the money, goods or other benefits originate from the commission of an offence for which a maximum prison sentence of no more than 5 years is envisaged, a fine of between 400 and 1000 quotas shall apply.

If the entity is found guilty of any of the offences herein, the disqualification penalty referred to in article 9, paragraph 2, shall apply, for no more than 2 years.

3. – Risk areas.

Taking into account the core operations of Chimec, the following risk areas have been identified:

- incoming/outgoing cash flows and the determined amount;
- relations with suppliers or other partners, both domestic and international;
- contractual relations with parties other than those specified above, in Italy or elsewhere;
- transactions with related parties;
- relations between the Company and representative Agencies dealing with direct imports;
- activities relating to the purchase of raw materials for the Chimec production processes or used by it at the premises of any clients (so-called "technical assistance");
- new client accreditation procedures, with a special focus on the preparation of offers and the management of the order.

The above areas are significant also if carried out, in full or in part, by individuals or corporations acting in the name or on behalf of Chimec, as proxies or attorneys, or for signing specific contracts, of which notice should promptly be given to the SB.

Reference should be made to the offence of self-money laundering (see article 648–*ter.1* of the Criminal Code), which – introduced by Law 186/2014 – applies to whosoever, having committed or aided the commission of an offence with malicious intent, then uses, replaces, transfers to economic, financial, business or speculative activities the money, goods or other benefits originating from the offence, in such a manner as to hinder the identification of their criminal origin.

The offence of self-money laundering has been included among the so-called "predicate" offences, with regard to the liability of the entity, pursuant to article 25-*octies* del Legislative Decree 231/2001, the clear intent of the legislators being to neutralise the economic developments of the offence committed upstream by the perpetrator, to prevent the money laundering or reutilisation of goods of illegal origin from being carried out through or under the cover of a legal person.

The uncertain interpretation of the provision, and the lack of any case law decisions on the matter, makes it difficult to identify the limits of applicability of this new offence.

The main problem concerns the lack of identification of the so-called "basic offences" originating the self-money laundering conduct (article 648-*ter.1*, in fact, refers generically to "offences committed with malicious intent", or criminal offences), which therefore reflects on the difficulty to accurately define the administrative responsibility of the entity involved.

After the entry into force of the new offence, in fact, a key question was whether the responsibility of the entity should be limited to the cases in which the basic offence of self-money laundering is included among the predicate offences referred to in Legislative Decree 231/2001, or if, on the contrary, other offences than those contemplated in Legislative Decree 231/2001 may also be considered.

Two observations may be made in this respect.

Firstly, the former – restrictive – interpretation would appear to be more consistent with the principle of legality and legal certainty on which the administrative responsibility of the entity is grounded, as laid down in article 2 of the Decree, where it is stated that "*the entity cannot be held responsible for offence if its administrative responsibility, in relation to the offence, and the related penalties, are not expressly provided by a law that took effect before the offence was committed*". The intention of the legislators, in fact, by adopting Legislative Decree 231/2001, was to establish the administrative responsibility of an entity with regard to a specific list of offences, to be supplemented through the addition of successively enacted legislative measures.

Secondly, however, if the broader interpretation were to be preferred, whereby the entity should be held liable for self-money laundering regardless of the basic offence committed (and, therefore, not necessarily contemplated in the list of predicate offences contained in Legislative Decree 231/2001), it would then be necessary to update the Organisational Model to include all the criminal offences envisaged by the current legal system, with inevitable effects on the ineffectiveness of the Model itself. The larger the number of offences the commission of which the Model seeks to prevent, the less effective, overall, the Model might prove to be, as stressed in the Confindustria Circular no. 19867.

A similar problem regards the so-called "*reati associativi*" [*Translator's note*: loosely translatable as "association offences or criminal conspiracy" – which are also defined, in Italian law, as "*reati mezzo*", i.e. offences committed in setting up the "means", or vehicle, such as a criminal organisation, for then committing other offences, which are called "*reati fine* or *scopo*", being the purpose or end for which the "means", i.e. the criminal association, was originally set up] (which "association offences" are included in the list of 231 offences by article 24-*ter*), also due to their rather "flexible" structure, i.e. suited to broadening the scope to include other criminal offences (the so-called "*reati scopo*", see above).

Regarding this rather fine point, the Italian *Corte di Cassazione* has intervened to limit the applicability of article 24-*ter* by denying the possibility of indirectly "attracting", so to speak, to the responsibility under Legislative Decree 231/2001, the so-called "purpose offences" (*reati scopo*) of the

"association offence" (*reato associative*); otherwise, in fact, "*the criminal law provision in article 416 of the Criminal Code would be transformed – in contrast to the principle of legal certainty of the penalty system contemplated by Legislative Decree 231/2001 – into a rather 'flexible' provision, potentially suited to including any type of offence, within the scope of the so-called "predicate" offences, such as to unjustifiably dilate the potential responsibility of a collective entity, whose management bodies, moreover, would therefore be obliged to adopt – on absolutely unreliable foundations and with a total lack of objective reference criteria – the organisation and management models provided by article 6 of the said legislative decree, without any certainty as to their effectiveness, in relation to the envisaged purposes of prevention*" (decision issued by the criminal division VI of the *Corte di Cassazione*, on 20 December 2013, no. 3635).

Awaiting the help of case law in clarifying the limits of application of the offence, and in the light of the above mentioned Confindustria Circular no. 19867, we have deemed it reasonable here to prepare an Organisational Model that provides for effective "downstream" safeguards – compared to the areas at risk of the commission of the self-money laundering offence – and, therefore, aimed at preventing the use of any illegal proceeds originating from the commission of criminal offences in the Company's operational or financial activities (even if the relevant offences are not included among the so-called "predicate" offences, involving the responsibility of the entity), avoidance of which shall be sanctioned by the Company.

These ad hoc safeguards shall be added to the precautionary measures already adopted for preventing the commission of the "source offence", if the basic offence is also envisaged as a predicate offence, with respect to the responsibility of the entity.

4. – 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 the above mentioned 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 Recipients[1] 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;
- procedures adopted by Chimec for analysing and verifying relations with external parties;
- approval measures adopted by the Company in relation to the selection of suppliers and external carriers, as well as engagements agreements and the agreed tasks;
- procedures for tracing and checking cash flows;
- protocols for client identification and order processing.

All the Recipients, including the external professionals – duly trained subject to specific contract clauses – are prohibited from:

- adopting any conduct that could lead to the commission of the above mentioned offences;
- adopting any conduct capable of directly or indirectly fostering the commission of the above mentioned offences;
- adopting any behaviour in breach of the law and of the corporate procedures put into place by Chimec, abiding by the principles of fairness, transparency and collaboration in relation to the activities associated with the professional and business relations with external parties (e.g., suppliers, clients or partners);
- using non-transparent or non-traceable procedures (such as, for example, anonymous instruments) for transferring money;
- failing to constantly monitor, in relation to any activities entailing spending or the disbursement of large sums of money, whosoever is responsible for performing his or her duties in relation to the said procedures, the incoming and outgoing cash flows. The same obligation also applies

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

to the person responsible for administrative/financial management and control, who shall also be required to ratify and verify the regularity of the activities;

- establishing business relations with individuals or corporations the origins and fields of operation of which are unknown (such as, for example, the identity of the members, the details of the professional, his or her professional reliability), or who are suspected of belonging to criminal organisations or of performing illegal activities in general;
- failing to make sure that the Suppliers, Clients and Partners are not based or resident in, or otherwise linked to, countries considered as uncooperative by the Financial Action Task Force on money laundering (FATF); if the relevant parties are linked to such countries in any way, each related decision shall be authorised by the CEO, having consulted with the SB;
- failing to make specific and periodical controls on the relations entered into with parties unrelated to the Company (Suppliers, Clients or Partners), if they have established their registered office in countries considered as uncooperative by the Financial Action Task Force on money laundering (FATF), or in the presence of company screens and fiduciary structures, in respect of any extraordinary operations;
- accepting sums of money or bearer securities (cheques, money orders, deposit certificates, etc.) for total amounts in excess of € 1,000, except through qualified and authorised intermediaries, such as banks, electronic money institutions and Poste Italiane S.p.A.

Finally, the Board of Directors of Chimec may also implement further measures for enhancing the protection of any areas at risk, as identified, and for supplementing the above mentioned fulfilments.

5. – Duties of the SB

The SB shall:

- propose the updating and/or amendment of the rules applied to the above mentioned risk areas and, generally speaking, identify any further conduct to adopt in the said sectors. The instructions must be made in writing and stored in dedicated paper or electronic archives;
- keep a copy of the documents produced in relation to the control procedures;
- periodically assess the effectiveness of the rules, especially with regard to the compliance thereof by the Recipients;
- propose and implement the appropriate measures required to tackle any criticalities detected;
- be informed of the procedures put into place by Chimec, in relation to the monitoring of Suppliers, Clients or Partners, with which the Company has established relations;
- ensure and manage, on an ongoing basis, the reporting activities to the Board of Directors and the personnel involved in the risk areas;
- be informed in the event of the transfer of large sums of money;
- be provided with all the documents relating to the identification of the Suppliers, Clients or Partners, and be kept constantly informed with regard to the procedures relating to the relevant activities;
- follow up on any reports received from the officers working in the risk areas, or from the monitoring bodies, and carry out the related assessments;
- ensure the application of the current disciplinary system to any unlawful events detected.

Chimec shall guarantee that its governance bodies – possibly with the support of the internal control personnel – shall assist and support the SB through continuous and punctual information flows.

The SB also has the authority to access the corporate documents – through its proxies or otherwise – if necessary for the performance of its duties.