

**ORGANISATION, MANAGEMENT AND CONTROL MODEL  
PURSUANT TO LEGISLATIVE DECREE NO. 231 OF 8 JUNE 2001**

**GENERAL PART**



**ALITALIA – COMPAGNIA AEREA ITALIANA S.p.A.**

## Summary

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A summary of sensitive activities and special parts is enclosed at the end of this document.

## Definitions

- “Sensitive Activities”: Company activities characterised by a risk of being subjected to the perpetration of offences pursuant to Legislative Decree 231/2001;
- “Consultants”: individuals acting in the name of and/or on behalf of the Company, following a specific mandate, a consultancy or cooperation agreement;
- “Recipients”: any individual operating to achieve the Company’s aims and objectives. Components of Corporate Bodies, the Supervisory Board, employees, collaborators, external consultants, Partners are included as Recipients;
- “Employees”: individuals working for the Company under the supervision of others;
- “Executives”: individuals working for the Company vested with a “top management” hierarchical position;
- “Group”: Alitalia - Compagnia Aerea Italiana S.p.A., Air One S.p.A., Alitalia CityLiner S.p.A, CAI FIRST S.p.A., CAI SECOND S.p.A., and other subsidiaries whose head offices are based in Ireland;
- “Confindustria Guidelines”: a general organisation and management model framework, drawn up by Confindustria and approved by the Ministry of Justice, following guideline verification pursuant to art. 6, paragraph 3 of Legislative Decree no. 231/2001 and of Ministerial Decree no. 201 of 26 June 2003;
- “Model”: the Company’s Organisation, Management and Control Model pursuant to Legislative Decree 231/2001;
- “Corporate Bodies”: members of the Board of Directors, of the Steering Committee and of the Auditing Board of the Company;
- “Supervisory Board”: an internal Company Supervisory Body introduced by Legislative Decree no. 231/2001;
- “P.A.”: Public Administration, including individuals operating as public officials or in charge of a public service;
- “Partner”: contractual Company partners, such as suppliers, legal and non legal entities, individuals with whom the Company establishes any kind of contractually regulated cooperation (entities with whom the Company is temporarily doing business with, joint ventures, consortiums etc.), characterised by a relation in which sensitive activities (activities at risk) are shared;
- “Offences”: details of offences are specified in Legislative Decree 231/2001 and following integrations;
- “Company”: Alitalia - Compagnia Aerea Italiana S.p.A. (hereinafter also Alitalia S.p.A. or Alitalia).

## 1. DESCRIPTION OF THE REGULATORY FRAMEWORK

### 1.1 Introduction

Legislative Decree no. 231 (hereinafter, “Leg. Dec. 231/2001 or “The Decree”) issued on 8 June 2001, in compliance with the delegation of power to the Government pursuant to article 11 of Law no. 300 of 29<sup>th</sup> September 2000, introduced the regulatory framework governing the disciplines according to which “a legal entity can be held liable following the perpetration of administrative offences”. The Decree applies to legal entities, companies and associations, including bodies devoid of legal personality<sup>1</sup>.

The Decree primarily stems from international and European conventions which have been ratified by Italy and which extend collective legal entities’ liability for a number of offences: companies, in fact, can be held liable for a number of perpetrated or attempted offences by individuals at the highest levels of corporate representation (hereinafter “top management” or “executives”), also in the interest of, or to their own advantage, and by persons subjected to the management or supervision of one of the persons at the highest level of corporate representation (article 5, paragraph 1 of Leg. Dec. 23 of 1/2001)<sup>2</sup>.

Thus, Leg. Dec. 231/2001 brings into Italian legislation a new form of liability, since pecuniary and disqualification sanctions can now be directly and independently inflicted upon the company, in relation to offences directly inflicted upon individuals who are functionally associated to the company, pursuant to art. 5 of the Decree<sup>3</sup>.

Administrative company liability is independent from individual penal responsibility. Administrative liability does not replace but is additional to the penal liability of the person who perpetrated the offence.

However, a company is not held liable if, before the offence was perpetrated, a suitable Organisation, Management and Control Model had been adopted and effectively implemented to prevent the

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<sup>1</sup> An economic public company and a private company acting as an agent in the provision of public services must comply with the applicative context. The State, a territorial public company, a non-economic public company and companies executing constitutional functions are excluded.

<sup>2</sup> Art. 5, paragraph 1 of Leg. Dec. 231/2001 states: “Company liability – the company is responsible for offences perpetrated in their interest, or to their advantage: a) by individuals with representative, administrative or managing responsibilities or by an internal unit vested with autonomous powers of initiative and control, and with requisites of independence, and by individuals with management and supervisory powers, also de facto; b) by persons subjected to the management or supervision of individuals indicated in a)”.

<sup>3</sup> Art. 8 of Leg. Dec. 231/2001 states: company liability is independent– 1. The company is also liable when: a) the author of the offence has not been identified or is not imputable; b) the offence is no longer punishable for a reason other than an amnesty. 2. Unless differently stated by the law, the company is not prosecuted if an amnesty has been granted for an offence in relation to which it is responsible for and the individual in question has declined the application of an amnesty. 3. The company can decline to apply for an amnesty”.

occurrence of the offence in question; this model can be adopted on the basis of a code of practice drawn up by category representative organisations (such as Confindustria) and submitted to the Ministry of Justice.

In any case, company liability is excluded if executives and/or persons subject to their supervision have acted exclusively in the interest or to the advantage of a third party<sup>4</sup>.

## 1.2 Nature of liability

As far as administrative liability of companies is concerned, pursuant to Leg. Dec. 231/2001, the Decree illustrative report states that a “*tertium genus merges the essential elements of the penal and administrative systems, in an attempt to introduce preventive measures whilst conforming to the fundamental principles of providing guarantees*”.

In fact, specific “administrative” liability of companies, in accordance with Leg. Dec. 231/2001 has been widened and it corresponds in many ways to the principles of “*penal*” liability<sup>5</sup> – as per art. 27, paragraph 1, of the Constitution which states that “*penal liability is individual*”.

## 1.3 Criteria for attributing liability

The application of Decree prescriptions follows the perpetration of an offence.

A number of objective and subjective criteria for attributing liability (these shall be considered in a broad way, since they relate to *companies*) are established by the Decree.

### *Objective criteria for attributing liability*

The first fundamental and essential objective element that must be considered is that an administrative offence – or illegal conduct – is committed “*in the interest or to the advantage of the company*”.

Therefore, the company can be held responsible when the offence has been committed in the *interest* of the company, i.e. to the *advantage* of the company, even irrespective of the perpetration of the offence. Fundamentally, the *intention* – even not exclusive – for which the offence was perpetrated, represents the assessed instance.

Instead, the effective *positive result* obtained by the company perpetrating the offence, notwithstanding the intention of person perpetrating the offence itself, measures the benefits.

The company is not held responsible if the offence was perpetrated by an individual “*in the interest or to the advantage of a third party*”. This confirms that, if on the one hand, exclusivity of the pursued interest

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<sup>4</sup> Art. 5, paragraph 2 of Leg. Dec. 231/2001: *Liability of the company – the company is not responsible if individuals referred to in paragraph 1 have acted exclusively in their own interest or in the interest of a third party*”.

<sup>5</sup> In this regard, some of the most significant articles are – articles 2, 3 and 34 of Leg. Dec. 231/2001, whereby the first one reinforces the legal provision, typically found in penal law; the second one states that the company’s liability is independent from enquiries concerning the offence perpetrated by an individual; the third one states that liability, resulting from the perpetration of a penal behaviour, shall be assessed in penal proceedings and is, therefore, guaranteed by the penal code. Furthermore, the afflictive element of sanctions inflicted upon a company should also be considered.

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establishes that the company cannot be held responsible, on the other hand the company can be held responsible in case mutual benefits are shared between the company and the individual or if they can both be held partially responsible.

The second objective element for attributing liability concerns the material commission of an offence by an individual. As previously indicated, in fact, the company is only responsible for an offence perpetrated in its interest or advantage by one or more “qualified” individuals, grouped by the Decree in the following categories:

- a) “by individuals with representative, administrative or managing responsibilities or an internal unit vested with autonomous powers of initiative and control, and with requisites of independence” or by individuals “with management and supervisory powers”, also *de facto*, such as the legal representative, the councillor, the managing director, the area director or the subsidiary director, and by individuals who manage and supervise the company, *also de facto*<sup>6</sup> (ie. “top management” or “executives”); art. 5, paragraph 1, lett. a), of Leg. Dec. 231/2001);
- b) “by individuals managed or supervised by a company executive (ie. individuals supervised by the top management; art. 5, paragraph 1, lett. b) of Leg. Dec. 231/2001). These persons *execute* on behalf of the company, decisions taken by top management, under the management and supervision of company executives. This category includes individuals acting in the name of, for, and in the interest of the company, such as employees and, for example, co-operators, external staff and consultants.

If an offence is jointly perpetrated by several persons (contributory negligence prescribed for by art. 110 of the Penal code; in practice, the same applies when an administrative offence is committed), it is not necessary for the “qualified” individual to perpetrate, even partially, the offence, as indicated by law. The conscious and effective contribution in the commission of the offence is in itself a necessary and sufficient condition.

### *Subjective criteria for attributing liability*

The company is directly responsible for perpetrating an offence, as prescribed for by the Decree. Subjective responsibility is defined in relation to the outline of the company’s offence.

The company is held responsible when suitable management and supervisory steps were not adopted or were insufficient to prevent the perpetration of the offences in question. The company is *responsible* and, therefore, the possibility of reprimand is subject to the assessment of whether incorrect management policies were implemented by the company or lacked structural organisation, so that the commission of offences was not prevented.

A company is not held liable if, before the offence was perpetrated, a suitable Organisation, Management and Control Model had been adopted and effectively implemented to prevent the perpetration of the

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<sup>6</sup> Such as the *de facto* director (currently art. 2639 Civil Code) or the sovereign partner.

offences in question.

#### 1.4 Organisation, management and control Models for the exclusion of liability

The Company is not held responsible by Decree prescription if, before the offence was perpetrated, “an Organisation, Management and Control Model had been adopted and effectively implemented to prevent the commission of the offences in question” (the Model), suitable for preventing offences similar to the one that was perpetrated.

The model exempts the company from liability if the presumed offence was committed by a company executive or by an individual managed or supervised by the latter.

##### *Unlawful act by a company executive*

The concept of “presumption of liability” is prescribed for by the Leg. Dec. for offences perpetrated by company executives, since the company is not held responsible only if it can demonstrate that<sup>7</sup>:

- a) *“a suitable Organisation, Management and Control Model had been adopted and effectively implemented by top management to prevent the realization of the offences in question”*;
- b) The supervisory responsibility related to the Model’s functioning, observation and update was assigned to a “an internal board vested with autonomous powers of initiative and control, and with requisites of independence”;
- c) “individuals perpetrated the offence by fraudulently avoiding to implement the organisation and management model”;
- d) “sufficient and adequate controls were carried out by a supervisory board vested with autonomous powers of initiative and control, and with requisites of independence”.

The aforementioned conditions must be satisfied *fully and jointly* for the company not to be held responsible.

Consequently, the company will not be held liable for the offence brought before by the company executive if it can demonstrate to have complied with the aforementioned and interlinked conditions, thus proving that the offence did not result from effective “organisational responsibility”<sup>8</sup>.

##### *Offences perpetrated by individuals managed or supervised by a company executive*

For offences committed by individuals managed or supervised by the top management, the company is

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<sup>7</sup> Art. 6 of the Decree.

<sup>8</sup> In this regard, the Decree illustrative report states that: “in order to establish if a company is liable it shall therefore be necessary to verify if the offence can be assessed objectively (specific conditions related to this occurrence are specified in aforementioned article 5); moreover, the offence must also represent the company’s course of action or, at least, result from organisational responsibility”. Furthermore, “the first element is the presumption (theoretically founded) that, when an offence is committed by a top manager, the “subjective” condition regarding company liability (that is, the company’s “organisational responsibility”) is satisfied, since the most senior executives express and carry out the company’s management policies; if this does not occur, the company shall be responsible for proving not to be involved, which can only take place if a number of interlinked conditions are demonstrated”.

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held responsible *only* if “*lack of managerial or supervisory controls enabled the perpetration of the offence*”.

In other words, the company’s liability depends on the lack of legally prescribed managerial and supervisory duties carried out by company executives or other individuals who had been delegated to perform such duties<sup>9</sup>.

In any case, breach of managerial or supervisory duties is excluded if “*a suitable Organisation, Management and Control Model had been adopted and effectively implemented by top management to prevent the realization of the offences in question*”.

When an offence is perpetrated by a person managed or supervised by a company executive, onus of proof is inverted. As provided for by art. 7, the prosecutor shall prove that a suitable Organisation, Management and Control Model was adopted in preventing such offences.

Specifications regarding the organisation and management model are provided for by Leg. Dec 231/2001. In relation to the extension of delegated powers and to the risk of offences being perpetrated, as prescribed for by art.6, paragraph 2, the models shall:

- Identify activities where offences may be carried out;
- Produce specific protocols aimed at planning, training and adopting company decisions in relation to the prevention of offences;
- Identify financial resources suitable for preventing the commission of offences;
- Ensure that the supervisory board provides full information on model efficiency and observance;
- Introduce a disciplinary system that is suitable for sanctioning failure to respect the measures indicated in the model.

Furthermore, requisites for the effective implementation of organisation models are outlined in art. 7, paragraph 4 of Leg. Dec. 231/2001 are indicated as follows:

- periodic verification and modification, if necessary, of the model, should significant violations of the regulations have taken place or business activities have changed;
- a disciplinary system suitable for sanctioning any failure in complying with measures indicated in the model.

Pertaining health and safety issues, the company may be held liable for certain offences; in this regard, Leg. Dec. n. 81 of 9 April 2008 contains the Single Text on health and safety and states, in art. 30 (*management and organisation models*), that, for a company to be exempt from administrative liability, a suitable organisation and management model must be adopted and effectively observed. The company must demonstrate that a system has been established in order to comply with all legal obligations connected with:

- a) compliance with legal technical-structural *standards* regarding equipment, plants, workplaces, chemical, physical and biological agents;
- b) evaluation of risk activities and provision of preventive safety measures;
- c) management of organisation activities, such as emergencies, first aid, bidding procedures,

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<sup>9</sup> Art. 7, paragraph 1 of the Decree.

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- regular meetings and consultation of workers' representatives regarding safety issues;
- d) control of health related activities;
- e) workers' training and information activities;
- f) supervisory activities regarding compliance with regulations and general guidelines by workers in connection with the implementation of safety measures at work ;
- g) acquisition of documentation and certificates required by law;
- h) regular supervisory activities concerning the observance and effectiveness of procedures.

The organisation and management model, provided for by the aforesaid Leg. Dec no. 81/2008, shall also:

- establish a suitable registration system in which compliance with the abovementioned activities can be registered;
- in any case, depending on the type, size and business activities carried out by the company, an integrated system shall be created to ensure compliance with technical requirements, so as to establish a suitable risk evaluation, a verification and management structure and to create an appropriate disciplinary system for any instances of non-compliance with the measures as stated in the model;
- establish a suitable system to verify compliance with requirements prescribed for by the model and long term suitability of adopted measures. The organisation model must be re-examined and modified, when necessary, should significant violations of the regulations concerning work safety and hygiene have taken place, or should scientific and technological developments have brought organisational and activity changes.

When initially applied, a company organisation model is presumed to be compliant with the aforementioned paragraphs in the relevant parts, should these be set out under the health and safety at work management system (SGSL) UNI-INAIL guidelines of 28<sup>th</sup> September 2001 or *British Standard OHSAS 18001:2007*. With comparable purposes, further organisation and management models can be highlighted by the permanent consultative health and safety Commission.

### 1.5 Categories of offences and illicit acts

Pursuant to Leg. Dec. 231/2001, the company is responsible only for offences specified in Leg. Dec. 231/2001, if perpetrated by “qualified” individuals indicated in art. 5, paragraph 1 of the aforementioned Decree or with reference to specific related legal provisions, such as art. 10 of Law n. 146/2006.

For clarity purposes, categories shall be grouped as follows:

- **Offences committed in the course of relations with the Public Administration.** This comprises the first group offences originally identified by Leg. Dec. no. 231/20001 (articles 24 and 25)<sup>10</sup>;

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<sup>10</sup> Concerning the following offences: embezzlement in detriment of the State or the European Union (articles 316-bis of the penal code), misappropriation of contributions provided for by the State (art. 316-ter of the penal code), fraud in detriment of the State or another public entity (art. 640 paragraph 2, n. 1 penal code), aggravated fraud for misappropriation of public contributions (art. 640-bis of the penal code), computer fraud in detriment of the State or another public entity (art. 640-ter of the penal code), concussion (art. 317 penal code), corruption regarding official actions and actions contrary to official duties (articles 318, 319 and 319-bis of the penal code), corruption regarding legal actions (art. 319-ter of the penal code), corruption of individuals carrying out public service activities (art. 320 of the Penal code), sanctions for the corruptor (art. 321 of the penal code), instigation to corruption (art. 322 of the penal code),

- **Offences against public confidence**, such as counterfeiting legal tender, public credit notes and revenue stamps, provided for in art. 25-*bis* of the Decree, introduced by art. 6 of Leg. Dec. no. 350/2001, as converted into Law by art. 1 of Law no. 409 of 23 November 2001, which called on “*urgent provisions in view of the coming into force of Euro*”<sup>11</sup>;
- **Corporate offences**. Art 25-*ter* was converted by art. 3 of Law no. 61 of 11 April 2001 into Leg. Dec. 231/2001, which in the context of a corporate law reform, it provides that company administrative liability is extended to specific corporate offences<sup>12</sup>;
- **Offences with a terrorist intent or the intent to subvert the democratic order** (as specified in art. 25-*quater* of Leg. Dec. 231/2001, introduced by art. 3 of Law no. 7 of 14 January 2003). It applies to “*offences with a terrorist intent or the intent to subvert democratic order, as prescribed for by the penal code and special laws*”. Additional offences in violation of “*art. 2 of the international Convention for the repression of the financing of terrorism drawn up in New York on 9 December 1999*”<sup>13</sup> are also included;

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concession, corruption and instigation to corruption by members of European Community bodies and European Community officers and foreign states. (art. 322-*bis* of the penal code).

<sup>11</sup> It concerns offences associated with legal tender counterfeiting, alteration, spending and introduction into the State of counterfeit legal tender, in concert with others (art. 453 penal code), forgery of legal tender (art. 454 penal code), spending and introduction into the State of counterfeit legal tender, not in concert with others (art. 455 penal code), distribution of counterfeit legal tender received in good faith (art. 457 penal code), revenue stamps forgery, introduction into the State, purchase, possession or circulation of counterfeit revenue stamps (art. 459 penal code), forgery of watermark paper used for the production of public credit notes or revenue stamps (art. 460 penal code), fabrication or possession of filigrees or equipment to be used for legal tender counterfeiting, revenue stamps or watermark paper (art. 461 penal code), use of counterfeit or altered revenue stamps (art. 464 penal code). Law no. 99 of 23 July 2009 sets out the “requirements for company development and internationalization, including energy issues” converts art. 15 paragraph 7 into art. 25-*bis* and establishes new sanctioning guidelines in relation to the counterfeiting and alteration of marks or distinctive signs (art.473 penal code), including the introduction into the State of products with forged signs (art.474 penal code).

<sup>12</sup> Concerning offences in relation to false corporate communications (art. 2621 of the civil code as converted by art. 30, paragraph 1 of Law no. 262 of 28 December 2005) and false corporate communications in detriment of shareholders or the creditors (art. 2622 of the civil code, as converted by Law no. 262, art.30, paragraph 2 of 28 Decembers 2005), false statements in the reports or communications of the independent auditor (art. 2624 of the civil code; art. no. 35 of Law n. 262/2005, refers to art. 175 of Leg. Dec. no. 58 of 24 February 1998, and following modifications, in part V, section I, paragraph III, art. 174-*bis* and 174-*ter*), impediment to control activities (art. 2625, paragraph 2 of the civil code), fictitious formation of capital (art. 2632 of the civil code), improper reimbursement of contributions paid into the company (art. 2626 of the civil code), illegal distribution of profits and reserves (art. 2627 of the civil code), unlawful transactions on the shares or on the quotas of the company or its controlling company (art. 2628 of the civil code), transactions in prejudice of creditors (art. 2629 of the civil code), omitted communication of conflict of interest (art. 2629-*bis* of the civil code, introduced by Law no. 262, art. 31 paragraph 1, of 2005, with integration of let. r) of art. 25-*ter* of Leg. Dec. 231/2001), illegitimate allocation of social assets by liquidators (art. 2633 of the civil code), unlawful pressure over the shareholders’ meetings (art. 2636 of the civil code), market rigging (art. 2637 of the civil code), obstructing public authorities in carrying out vigilance functions (art. 2638 of the civil code).

<sup>13</sup> The international Convention for the repression of the financing of terrorism drawn up in New York on 9 December 1999 punishes any person supplying or collecting funds, illegally and fraudulently, knowing that such funds shall be used, even partially, to perpetrate: (i) actions directed at causing the death - or seriously injuring - civilians, when the action is finalized to intimidating a population, or to exert power over a government or an international organization; (ii) offences pursuant to conventions regarding: flights and air navigation security, nuclear material safeguard, protection of diplomatic personnel, repression of attacks through the use of explosive material. Legislative requirements in connection with “offences for the purposes of terrorism or subversion of the democratic order, envisaged by the penal code and

- **Abuse of market position**, prescribed for by art. 25-*sexies* of Leg. Dec.<sup>14</sup>;
- **Offences against the person**, prescribed for by art. 25-*quinquies* of Leg. Dec., introduced by art. 5 of Law no. 228 of 11 August 2003, such as the exploitation of prostitution, child pornography, trafficking in human beings and the reduction to slavery and the maintenance of persons in slavery<sup>15</sup>;
- **Cross-border offences**. In art. 10 of Law no. 146 of 16 March 2006 administrative responsibility for companies is connected with offences prescribed for by the same law in relation to cross-border offences<sup>16</sup>;
- **Offences against life and personal safety**. In art. 25-*quater.1* of Leg Dec., as specified in Law no. 7 of 9 January 2006, companies administrative responsibility is extended to feminine genitals maiming;
- **Unintentional manslaughter and unintentional serious or very serious injuries committed in breach of applicable regulations on health and safety at work**. Art. 25-*septies*, makes reference to company liability in relation to crimes prescribed for by articles no. 589 and 590, paragraph 3 of the penal code (involuntary manslaughter and unintentional serious or very serious injuries), perpetrated in breach of applicable regulations on health and safety at work<sup>17</sup>;

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special laws” are described in a general way, as precise regulations referring to these offences are not specified. In any case, the main offences referring to this are: art. 270-bis of the penal code (organisations with a terrorist intent, also at international level, or intent to subvert democratic order) which punishes any person promoting, setting up, organising, directing or financing organisations perpetrating violent actions for the purposes of terrorism or subversion of the democratic order. Art. 270-ter of the penal code (assistance to associated members) punishes any person providing food, shelter or support by offering transportation and communication equipment to any individual taking part in an organisation with a terrorist or subversive intent.

<sup>14</sup> Art. 25-*sexies*, introduced by art. 9 of Law no. 62 of 18 April 2005 (“European Community Law of 2004”), makes reference to illegal conduct concerned with abuse of inside information (art. 184 TUF) and manipulating markets (art. 185 TUF). Pursuant to Art. 187- *quinquies* of the TUF. The company may also be inflicted an administrative for offences connected with abuse of inside information (art. 187-bis TUF) and manipulating markets (art. 187-ter TUF), if perpetrated by company executives and individuals managed or supervised by them, in their interest of for their advantage.

<sup>15</sup> Sanctioned offences are: reduction to slavery and maintenance of persons in slavery (art. 600 of the penal code), people trade (art. 601 of the penal code), purchase and alienation of slaves (art. 602 of the penal code), offences connected with juvenile prostitution and exploitation (art. 600- bis of the penal code), child pornography (art. the 600-ter of the penal code), possession of pornographic material produced by means of juvenile sexual exploitation (art. 600- quater of the penal code), tourist activities aimed at the exploitation of juvenile prostitution (art. 600- *quinquies* of the penal code).

<sup>16</sup> Offences prescribed for by aforementioned art. 10 of Law no. 146/2006 (organised crime, organised crime of the mafia-type, penal organisation for the purpose of smuggling foreign processed tobacco, organised crime aimed at the illicit trafficking of narcotic drugs and psychotropic substances, trafficking in immigrants, any instances of soliciting someone to refrain from making declarations or to misrepresent facts before a judicial authority, personal aiding and abetting) are considered cross-border offences when the offence is perpetrated in more than one State, or if perpetrated in one State, substantial preparation and planning was perpetrated by a penal organisation operating in a number of States. In this case, additional regulations have not been outlined in Leg. Dec. 231/2001. Responsibility is outlined in art. 10. An independent condition establishes which specific administrative sanctions are applicable to the aforementioned offences. The last paragraph of the condition recalls that: “requirements set out in Leg. Dec. of 8 June 2001 are applicable to administrative offences prescribed for by the present article”.

<sup>17</sup> The aforesaid article has been introduced by art. 9 of Law n. 123 of 3 August 2007, later converted by art. 300 (modifications of Leg. Dec. no. 231 of 8 June 2001) of Leg. Dec. n.81 of 9 April 2008 in application of art. 1 of Law no.

- **Offences associated with receiving, laundering and using legal tender, properties or utilities of illicit origin.** Art. 25-*octies*<sup>18</sup> of Leg. Dec. provides that companies' liability is extended to offences prescribed for by articles 648, 648-bis e 648-ter of the penal code;
- **Computer abuses and illicit processing of data.** Art. 24-bis of the Leg. Dec makes reference to new administrative offences in connection with certain types of computer abuses and illicit processing of data<sup>19</sup>;
- **Offences against industry and trade,** as prescribed for by art. 25-*bis* n. 1 of Leg. Dec.<sup>20</sup>;
- **Organised crime offences,** as prescribed for by art. 25-*bis* of Leg. Dec<sup>21</sup>;

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123 of 3 August 2007 in relation to health and safety at work, published in the Official Gazette no. 101 - S.O. n. 108/ GU of 30 April 2008.

<sup>18</sup> Art. 63, paragraph 3, of Leg. Dec. no. 231 of 21 November 2007, published in the Official Gazette no. 290 of 14 December 2007, in application of Directive 2005/60/CE of 26 October 2005, outlines safeguard measures against the use of financial procedures for offences associated with laundering legal tender of illicit origin and financing of terrorism. Furthermore, applicative Directive no. 2006/70/CE, has introduced the new article in Leg. Dec. n. 231 of 8 June 2001, which provides for administrative responsibility of companies also in the event of offences associated with receiving, laundering and using legal tender, properties or utilities of illicit origin.

<sup>19</sup> Art. 24-bis has been added to Leg. Dec. no. 231/2001 by art. 7 of Law no. 48 of 18 March 2008. The aforementioned article ratifies and executes regulations prescribed for by the Council of Europe Convention held in Budapest on 23 November 2001 on computer offences and revises all legal provisions, published in the Official Gazette n. 80 of 4 April 2008 - S.O. no. 79. Offences for which companies have administrative responsibility are prescribed for by articles 491-bis (false computer data), 615-ter (illegal access to computer or telematic systems), 615-*quater* (illegal possession and circulation of access codes for computer or telematic systems), 615-*quinquies* (circulation of equipment, devices or programmes aimed at damaging or interrupting a computer or telematic system), 617-*quater* (illegal interception, impediment or interruption of computer or telematic communications), 617-*quinquies* (installation of equipment designed to intercept, impede or interrupt computer or telematic communications), 635-bis (damaging computer records, data or programmes), 635-ter (damaging computer records, data and programmes used by the State or another public body or aimed at providing a public service), 635-*quater* (damaging computer or telematic systems), 635-*quinquies* (damaging computer or telematic systems of public utility) and 640-*quinquies* (computer fraud perpetrated by an operator responsible for certifying electronic signatures).

<sup>20</sup> Art.25-bis n.1 was included into art.15, paragraph 7 of Law no. 99 of 23 July 2009. Offences for which the law establishes company administrative liability are: disturbance in connection with freedom of industry and trade (art. 513 penal code), commercial fraud (art. 515 penal code), sale and misbranding of adulterated alimentary products (art. 516 penal code), sale of industrial products by misrepresentation (art. 517 penal code), manufacture and sale of goods by counterfeiting of trademarks and patent infringement (art. 517- ter penal code); counterfeiting protected designations of origin and protected geographical denominations of food products (art. 517- *quater* penal code), unlawful competition through threat or violence (art. 513-bis penal code), national industry fraud (art. 514 penal code).

<sup>21</sup> Art. 25- ter has been introduced by Law no. 94, art. 2, co. 29 of 15 July 2009. The law provides for administrative liability of companies for the following offences: organised crime (art. 416 penal code, except for paragraph 6); organised crime aimed at the reduction or maintenance of people on a slavery condition, the slave trade, offences concerning the purchase and alienation of slaves, breach of regulations concerning clandestine immigration, prescribed for by art. 12 of Leg. Dec. no. 286/1998 (art. 416, paragraph 6 penal code); mafia-type association (art. 416- bis penal code); electoral exchanges for political-mafia purposes (art. 416-ter penal code); kidnapping for racketeering purposes (art. 630 of the penal code); penal organisation aimed at illicit traffic of narcotic drugs and psychotropic substances (art. 74 of Presidential Decree no. 309, October 1990); illegal manufacturing, introduction into the State, sale, disposal, possession of armament, or part of it, for military use, explosives, illegal weapons and more common firearms and light weapons (art. 407, paragraph. 2, letter a), no. 5), of the penal proceedings code) in a public place or in a place opened to the general public.

- **Intellectual property offences**, as prescribed for by art. 25-*novies* of Leg. Dec.<sup>22</sup>;
- **Offences connected with any instances of soliciting someone to refrain from making declarations or to misrepresent facts before a judicial authority** (art. 377-*bis* penal code), as prescribed for by art. 25-*novies* of Leg. Dec.<sup>23</sup>

The aforementioned categories are likely to increase further in the near future, due to the legal tendency to extend the Decree's operative range, as well as to complying with European and international requirements<sup>24</sup>.

## 1.6 Sanctions

Sanctions inflicted upon a company, prescribed for by articles 9-23 of Leg. Dec. 231/2001, in relation

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<sup>22</sup> Art. 25-*novies* has been introduced by Law no.99 of 23 July 2009: the law provides for administrative liability of companies for the following offences: infringing intellectual property rights and to make the upload of the material, or of part of it, available to the general public through any kind telematic connection (art. 171, l.633/1941 paragraph 1 lett a) - bis); offences referring to the aforementioned point perpetrated on third party material that was not destined to be published and which offends a person's honour or reputation (art. 171, Law 633/1941 paragraph 3); unlawful duplication of computer programmes for personal profit; importation, distribution, sale or possession for commercial reasons, entrepreneurial purposes or leasing of non SIAE copyrighted material; attempt to remove or elude computer protective devices by setting up specific equipment (art. 171- bis Law 633/1941 paragraph 1); reproduction, transfer onto a different support, distribution, communication, presentation or public demonstration of database contents; extraction or reuse of the database; distribution, sale or leasing of databases (art. 171- bis Law 633/1941 paragraph 2); fraudulent partial or complete duplication, reproduction, transmission or circulation in any way in public with any procedure, of intellectual property intended for television viewing, cinema, sale or rental, tapes or analog support or any other type of phonogram or videogram rights of musical, cinematographic or audiovisual works or sequences of motion pictures; literary, dramatic, scientific or didactic, musical or drama-musical, multimedia works, even if inserted in collective works or composite or databases; reproduction, duplication, transmission or fraudulent transmission, sale or trade, disposal of any kind or unlawful importation of more than fifty copies or samples of copyrighted work and related copyright (art. 171 ter Law. 633/1941); non-compliance with SIAE requirements regarding the provision of information for supports not subject to rights or false declaration (art. 171-septies of Law 633/1941); fraudulent production, sale, importation, promotion, installation, modification, public and private use of equipment or part of equipment for decoding audiovisual programmes of restricted access out via ether, satellite, cable, in analogical or digital form (art. 171-octies Law no. 633/1941).

<sup>23</sup> Art. 25-*novies* has been added to art.4 of Law no. 116/09.

<sup>24</sup> Regulations prescribed for by Law no. 34 of 25 February 2008 which require Italy to comply with EU regulations (European Law 2007) are published in the Official Gazette no. 56 on 6 March 2008, S.O. n. 54. The Law stipulates that the application of a number of framework resolutions is delegated to the Government, sets out guideline principles and criteria concerning companies' liability, and modifies Leg. Dec. 231/2001. In particular, the Government is required by art. 29 of the Law (guideline principles and criteria concerning framework resolution 2003/568/GAI prescribed for by the Council on 22 July 2003 concerning the fight against corruption in the private sector) to introduce a new class of offences into the penal code. Making exception for current prescriptions by art no. 2635 of the civil code, company executives, general managers, liquidators and auditors should be held responsible for offences which distort competition in connection with the acquisition of commercial goods or services, by executing operations or lack of them, in violation of their duty which requires them to be constructive towards themselves or others. Furthermore, the aforementioned offences should be included in art. 2- ter of Leg. Dec. no. 231/2001, prescribing adequate administrative and disqualification sanctions to individuals who have benefited from the perpetration of offences. Moreover, art. 5 (individual liability) of framework resolution 2008/841/GAI prescribed for by the Council on 24 October 2008, concerning the fight against the organised crime, published in the EU Official Gazette no. 300/43 of 11 November 2008, provides that Member States adopt necessary measures so that individuals can be held liable for offences, as specified in art. 2 (association to a penal organisation) perpetrated by persons subject to their management or supervision and from which they benefited, indicated in paragraph 1, as the supervised person was enabled to perpetrate the offence due to lack of monitoring by the supervisor.

to administrative offences or attempted offences, are specified as follows:

- Pecuniary sanction and ad interim relief as a precautionary measure;
- Disqualification (also applicable as a precautionary measure) for a period ranging from three months to two years (in particular, pursuant to art. 14, paragraph 1 of Leg. Dec. 231/2001, “*disqualification sanctions are applied to the specific business activity which the offence perpetrated by the company refers to*”). These, in turn, can be identified as:
  - Disqualification from the exercise of its business activities;
  - Suspension or revocation of authorizations, licenses or concessions relating to the offences committed;
  - Disqualification from contracting with the Public Administration, except for requesting a public service;
  - Exclusion from grants, loans, contributions or subsidies and possible revocation of any that might already been granted;
  - Ban of advertising of goods and services;
  - Forfeiture (and cautionary seizure as a precautionary measure);
  - Publication of the sentence (in case of published disqualification sanction).

The application of the fine is established by the penal judge through a system based on “shares”, which shall be not less than a hundred and not more than a thousand. The amount of a share is not less than 258.88 euros and not more than 1,549.37 euros. In establishing the fine, the judge also establishes: the number of shares, based on the offence, the company liability, the activity carried out in order to eliminate or reduce the consequences of the offence and to prevent the commission of further offences; the value of the individual share, based on the financial and economic situation of the company.

The company is responsible with its assets or common fund for the payment of pecuniary sanctions (art. 27, paragraph 1 of the Leg. Dec.)<sup>25</sup>.

Disqualification sanctions are applied to those offences for which they are expressly provided for, when at least one of the following conditions exist:

- a) the company has gained significant benefit from the offence and the offence was perpetrated by company executives or by individuals managed or supervised by them. In this case, the commission of the offence was determined or facilitated by dire organisation deficiency;
- b) in case of repeated instances of the offence being committed<sup>26</sup>.

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<sup>25</sup> The concept of assets refers to companies and legal entities, whilst the concept of “common fund” refers to bodies devoid of legal personality.

<sup>26</sup> Art. 13, paragraph 1, letters a) and b) Leg. Dec. 231/2001. In this regard, art 20 of Leg. Dec. also states that “*repetition occurs when the company that has already been definitively found guilty of an offence commits another within five years of the definitive sentence*”. By reference to the aforesaid regulations, De Marzo in, op. cit., 1315: “Alternatively, with reference to requisites set out in let. A) [art. 13, editor’s note], lett. b) considers repeated instances of the offence being committed as a prerequisite for the application of disqualification sanctions, pursuant to specific legal requirements. Pursuant to art. 20, repeated instances occur when the company that had already been definitely found guilty of an offence at least on one occasion, commits another within five years of the definitive sentence. In this case, perpetration of offences in spite of a definitive sentence, constitutes proof of a tolerant conduct or attitude towards the commission of such

Disqualification sanctions apply to: offences against the public administration, offences against public confidence, offences for the purposes of terrorism and subversion of the democratic order, personal offences, feminine genitals maiming, cross-border offences, health and safety offences, offences associated with receiving, laundering and using legal tender, properties or utilities of illicit origin, computer abuses and illicit processing of data, offences against industry and trade, intellectual property offences.

The judge determines the type and duration of the disqualification sanction on the basis of the gravity of the specific case and in order to prevent the commission of similar offences. If necessary, the judge may apply them in conjunction with one-another (art. 14, paragraphs 1 and 3, Leg. Dec. 231/2001). Disqualification sanctions with reference to disqualification from carrying out business activities, prohibition of contracting with the public administration and ban of advertising of goods or services may be, in the most serious situations, definitive<sup>27</sup>.

The judge may arrange for the company's activities to continue (rather than apply the disqualification sanction) under a court appointed administrator by applying the sanctions for a period equal to the duration of the disqualification applied, pursuant to art. 15 of the Decree<sup>28</sup>.

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offences, regardless of the profit obtained and the analysis of organisation models adopted. In any case, the relevant aspect resulting is the understanding that ordinary pecuniary administrative sanctions (and possibly disqualification, should conditions called on in art. 13, paragraph 1, letters a) or b) apply) did not act as an effective deterrent with reference to the commission of a fundamentally illegal action.

<sup>27</sup> In this regard, art. 16 of Leg. Dec. 231/2001 states that: “1. Disqualification from carrying out a business activity may be applied definitively if the company has obtained a large profit from the offence and has already been found guilty at least three times in the last seven years, and sentenced to temporary disqualification from carrying out the activity. 2. The judge may sentence the company to a definitive disqualification from contracting with the public administration or advertising of goods or services if the company has already been sentenced to the same sanctions at least three times in the last seven years. 3. If a company or one of its organisational units is permanently used uniquely or prevalently for perpetrating or contributing to perpetrate such offences, disqualification from carrying out the business activity is always definitive and the provisions set out in article 17 are no longer applicable”.

<sup>28</sup> Art. 15 Leg. Dec. 231/2001: “Court appointed administrator – If conditions are present for a disqualification sanctions to be applied, resulting the interruption of the company's business activities, the judge will arrange for such activities to continue under a court appointed administrator when applying the sanctions for a period equal to the duration of the disqualification applied, on condition that one of the subsequent conditions is identified: a) the company provides a public service or a service of public necessity which, if interrupted, could cause grave harm to the general public; b) grave repercussions on employment could follow from the interruption of the company's business activities, considering the size of the business and the economic situation in the area where it operates. In the sentence providing for the disqualification of the business activity, responsibilities and powers of the court appointed administrator are specified by the judge, with attention being paid to the specific activities where the offence was perpetrated. With reference to the responsibilities and powers indicated by the judge, the court appointed administrator is responsible for implementing a suitable organisation and control model for preventing further similar offences from being perpetrated. The court appointed administrator cannot activate extraordinary administration operations without previously being authorised by the judge. Any profit deriving from the continuation of business activities is confiscated. Should the disqualification sanction be definitive, continuation of business activities by the court appointed administrator cannot be authorised.”

## 1.7 Attempted offences

If an attempt is made to commit one of the present offences pursuant to Leg. Dec. 231/2001, pecuniary (in terms of value) and disqualification (in terms of duration) sanctions are reduced by between a third and a half.

Sanctions are not inflicted if the company voluntarily stops the offence from being perpetrated (art. 26 Leg. Dec. 231/2001). In this case, sanctions are not inflicted if any connection between the company and the individuals acting in its name and on its behalf has ceased.

## 1.8 Modifications to companies

Articles 28-33 of Leg. Dec. 231/2001 regulate the company's economic liability according to changes connected with modification procedures, mergers, divisions and disposal of a company<sup>29</sup>.

In case of modification (in compliance with the provisions of the modification itself, which imply a simple modification, rather than the winding up of the original company), the company is held liable for offences committed before the date of the modification (art. 28 of Leg. Dec. 231/2001).

In case of merger, liability for offences committed by the company which had perpetrated the offences is transferred to the company that emerges from the merger (also for incorporation).

Art. 30 of Leg. Dec. 231/2001 sets out that, in case of partial division of a company, the divided company is responsible for any offences committed before the date of the division. Companies benefiting from total or partial division are responsible for the payment of any pecuniary sanction which had been inflicted to the divided company for offences committed before the date of the division, limited to the effective value of the net equity transferred to the individual company. This limit does not apply to companies receiving, even partially, the business activity where the offence was committed.

Disqualification sanctions related to offences committed before the date of the division are applicable to the receiving companies or the companies to which the business activity where the offence was committed was even partially, transferred to.

Art. 31 of Leg. Dec. 231/2001 sets out common provisions in case of mergers or divisions, in relation to the calculation of sanctions if these were inflicted before the end of the court case. The judge shall calculate the pecuniary sanction proportionally, pursuant to provisions established by art. 11, paragraph 2 of Leg. Dec. 231/2001<sup>30</sup>, by taking into account the financial condition and the assets of the company which was originally

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<sup>29</sup> Two contrasting requirements have been taken into account by the legislator: on the one hand, that of preventing such operations to represent a means for companies to easily elude their administrative liability; on the other hand, that of ensuring that genuine reorganisation intents, not attempting to elude liability, are not penalised. The illustrative Report of the Decree states: *“the general criteria applied is to regulate pecuniary sanctions in compliance with provisions provided for by the civil code, in relation to the general situation of the original company, whilst continuing to connect disqualification sanctions inflicted upon the specific business activity where the offence was perpetrated.”*

<sup>30</sup> Art. 11 of Leg. Dec. 231/2001 states: *“Proportioning criteria for pecuniary sanctions - 1. In assessing the entity of the pecuniary sanction to be inflicted, the judge establishes the number of shares by taking into account the gravity of the case, the extent of the company's liability and actions carried out to eliminate or reduce the consequences of the offence and prevent the perpetration of further offences. 2. The value of the share is based according to the economic situation and assets of the company in order to ensure application of the sanction (...).”*

responsible for the offence and not those which should be attributed to the company resulting from the merger or the division.

In case of disqualification sanction, the company resulting from the merger or division may ask the judge for the transformation of the disqualification sanction into a pecuniary sanction, as long as: (i) the organisational liability which permitted the commission of the offence has been eliminated and (ii) the offence has been reimbursed and any profits obtained have been made presented (for the confiscation) by the company. Art. 32 of Leg. Dec. 231/2001 provides that the judge may take into consideration sanctions already inflicted to companies taking part in the merger or division in order to assess repetition, pursuant to art. 20 of Leg. Dec. 231/2001, in relation to offences committed after the date of the merger or division by the company resulting from the merger or benefitting from the division<sup>31</sup>. In connection with the disposal of a company or company transfer, provisions set out by art. 33 of Leg. Dec. 231/2001 apply<sup>32</sup>: in case of disposal of a company where an offence had been perpetrated, the purchaser is responsible for the payment of the pecuniary sanction, within the following limits:

- (i) benefits resulting from the preventive estimate of the seller are not included;
- (ii) payment is set within the limits of the value of the company and of pecuniary sanctions resulting from the compulsory account books or resulting from administrative offences which the purchaser was, in any case, aware of.

On the contrary, the seller is not liable for disqualification sanctions inflicted upon the purchaser.

## 1.9 Offences committed on foreign soil

The company may be held liable in Italy for offences committed on foreign soil (art. 4 of Leg. Dec. 231/2001)<sup>33</sup>.

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<sup>31</sup> Art. 32 d.lgs. n. 231/2001: “Relevance of mergers or divisions in case of repetition - 1. In case a company is liable following a merger or benefitting from a division for offences committed after the date of the merger or division, the judge may consider that a repetition has taken place, in accordance with article 20, if companies involved in the merger or the division had been convicted for offences committed before that date. 2. In this context, the judge will consider the nature of the offence and of the activity, along with the characteristics of the merger or division. 3. With regards to companies benefitting from divisions, an instance of repetition can only be deemed to have taken place, in accordance with points 1 and 2, if the specific business area of the original company, or part of it, where the offence was perpetrated and for which this company had been convicted, was transferred to the new companies”. The Decree illustrative report n. 231/2001 clarifies: “in this case repetition is not automatically operated but shall be discretionally evaluated by the judge, in relation to effective circumstances. Companies benefitting from divisions, reiteration can be considered only if the company received a specific business area of the original company, or part of it, where the offence was originally perpetrated”.

<sup>32</sup> Art. 33 del d.lgs. n. 231/2001: “Disposal of a company. - 1. In case of disposal of a company where an offence had been perpetrated, the purchaser is responsible for the payment of the pecuniary sanction, not including the benefits resulting from the examination estimate of the seller and within the limits of the company value. 2. The purchaser’s obligations are limited to the pecuniary sanctions resulting from the compulsory account books or resulting from administrative offences which the purchaser was, in any case, aware of. 3. Provisions outlined in this article are also applied in case of company transfer”. In relation to this point, the illustrative report of Decree n. 231/2001 indicates: “It is considered that such operations may be liable to lend themselves for eluding responsibility: however, the opposed requirements of protecting the legal prescriptions appear to be more significant; being faced with hypotheses of qualified title succession which leave unaltered the identity and responsibility for the provider or of the conferrer.”

<sup>33</sup> The Decree illustrative report n. 231/2001 points out that a frequent penal action should be sanctioned, in order to avoid liability from being easily eluded. Pursuant to art. 4 of Leg. Dec. 231/2001: “1. In case of and under the provisions prescribed for by articles 7, 8 and 9 of the penal code, companies whose head office is located in Italy are also liable for offences committed

Principles regulating the company's liability for offences committed on foreign soil are as follows:

- (i) the offence must be perpetrated by an individual functionally associated to the company, pursuant to art. 5, paragraph 1, of Leg. Dec. 231/2001;
- (ii) the company's head office must be located in Italy;
- (iii) the company is only liable for provisions set out in articles 7, 8, 9, 10 of the penal code (in case of legal provision providing that a sanction is inflicted upon the guilty person at the request of the Ministry of Justice, the company shall be prosecuted only if the request from the Ministry of Justice is also involving the company itself)<sup>34</sup>. Furthermore, according to the principle of legality of art. 2 of Leg. Dec. 231/2001, the company can be held liable only for offences which have been provided for in a specific law;
- (iv) should the provisions of articles 7, 8, 9, 10 of the penal code apply, the company is not to be additionally prosecuted by the country where the offence was originally perpetrated.

### 1.10 Investigation proceedings

Liability for administrative offences is observed during penal proceedings. In this regard, art. 36 of Leg. Dec. 231/2001 states: "*an administrative offence committed by a company is assessed by a judge who is also responsible for assessing the penal charges related to the same*

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*on foreign soil, as long as they are not also being prosecuted by the country where the offence has been perpetrated. 2. In case of legal provision providing that a sanction is inflicted upon the guilty person at the request for the Ministry of Justice, the company shall be prosecuted only if the request from the Ministry of Justice is also involving the company itself.*"

<sup>34</sup> Art. 7 of the penal code: "Crimes committed on foreign soil - Any citizen or foreigner who commits any of the following crimes on foreign soil is punishable under the Italian law: 1) offences against the Italian State; 2) counterfeiting of the State seal and of use of a forged seal; 3) counterfeiting legal tender, revenue stamps or public credit notes in use within that State; 4) crimes committed by public officers, who misuse their authority or violate their duties; 5) any other offence for which special legal prescriptions or international conventions establish the application of Italian Penal Law. Art. 8 of the penal code: "Political crimes committed on foreign soil - Any citizen or foreigner who commits a political offence excluded from those indicated in number 1 of the previous article, is pursuable under Italian law, following a request by the Minister of Justice. Should the offence require the filing of a complaint by the offended party, the complaint must also be included, alongside the request by the Ministry of Justice. Pursuant to Penal Law, any crime that offends the political interest of the State, i.e. the citizen's political right, is considered a political crime. A common offence, which is all or partially determined by political reasons, is also considered a political crime. Art. 9 of the penal code: "Common offence of the citizen in a foreign country - The citizen, who, excluding the cases specified in the two previous articles, commits an offence on foreign soil for which the Italian law prescribes life imprisonment, or a minimum of three years confinement, is punishable according to this law, providing the offender is found on State territory. If the offence imposes a less restrictive sentence, the offender is prosecuted at the request for the Ministry of Justice, i.e. by legal proceedings or a formal complaint filed by the offended party. With regards to the aforementioned prescriptions, if the offence is perpetrated against the European Community, on foreign soil or against a foreigner, the offender is punished at the request for the Ministry of Justice, provided extradition has not been granted by the State where the offender has committed the crime". Art. 10 of the penal code: "Common crime of the foreigner abroad - The foreigner who, excluding the cases specified in articles 7 and 8, commits an offence on foreign soil against the State or a citizen, for which the Italian law prescribes life imprisonment, or a minimum of one year confinement, will be punishable according to that law, provided he is found on Italian territory, and a request is filed by the Ministry of Justice, i.e. legal proceedings or a formal complaint filed by the offended party. If the offence is perpetrated against the European Community, on foreign soil or against a foreigner, the offender is punishable according to Italian Law, following request by the Ministry of Justice, providing that: 1) the offender is found on State territory; 2) the offence prescribes life imprisonment, or a minimum of a three year confinement; 3) extradition has not been granted by the State where the offender has committed the crime, or by the State where the citizen belongs".

*offence. The investigation proceedings for an administrative offence perpetrated by a company are based on the competence of the courts and the connected trial provisions connected with the penal charges that the administrative offences depend on”.*

Another provision, concerning practical and economical aspects of court procedures are connected with the compulsory joining of proceedings. The proceedings for administrative offences committed by a company shall be joined, as much as possible, to the penal proceedings against the person who committed the crime on which the administrative offence depends (art. 38 of Leg. Dec. 231/2001). On the other hand, art. 38, paragraph 2, of Leg. Dec. 231/2001, defines the situations for which administrative and penal proceedings are tried separately<sup>35</sup>. The company takes part in the trial together with its legal representative, unless the legal representative is charged with the crime on which the administrative offence depends (art. 39, paragraphs 1 and 4, of Leg. Dec. 231/2001). Should the legal representative not take part, the company is represented by a defence lawyer.

### **1.11 Codes of practice drawn up by the company’s representative associations**

Art. 6, paragraph 3, of Leg. Dec. 231/2001 states: *“The organisation and management model can be adopted, ensuring the conditions indicated in point 2, on the basis of a code of practice drawn up by the representative associations of each individual company. The code shall be communicated to the Ministry of Justice which, within 30 days and together with other relevant Ministries, can express its opinion on the suitability of the model for preventing offences”.*

On 7 March 2002 Confindustria published a number of *“introductory guidelines relating to the Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001”*, followed by integrations on 3 October 2002. A specific appendix concerning the so-called corporate offences (introduced in Leg. Dec. 231/2001 by Leg. Dec. 61/2002) was updated on 24 May 2004 and finally submitted to the Ministry of Justice on 18 February 2008. Modifications aimed at providing some indications on which steps had to be undertaken in order to prevent the commission of new offences in connection with the abuse of market position, feminine genitals maiming, cross-border organised crime, health and safety at work and recycling of legal tender (last updated 31 March 2008). On 2 April 2008 the Ministry of Justice communicated the results of the examination of the new version drawn up by *“Confindustria guidelines for the preparation of an Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001”* (hereinafter, *“Confindustria Guidelines”*). Among other things, Confindustria Guidelines provide a number of practical procedures to support the definition of areas at risk (sector/activity where offences can be perpetrated), a control system framework (the so-called planning, training and application protocol of the company’s decisions), along with the contents of the Organisation,

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<sup>35</sup> Art. 38, paragraph 2 of Leg. Dec. 231/2001: *“Administrative offences committed by a company are tried separately only if: a) proceedings have been suspended in accordance with article 71 of the penal code [suspension of proceedings because the author of the offence is deprived of capacity, editor’s note]; b) the proceedings are defined by an accelerated procedure, judgment pursuant to article 444 of the penal code has been applied, or a guilty verdict has been reached [application of the judgment on request, editor’s note]; c) it is necessary in order to comply with provisions established during the trial.”* Art. 37 of Leg. Dec. 231/2001, is also mentioned: *“An administrative offence perpetrated by a company cannot be investigated upon when penal proceedings can no longer be started or continued due to lack of pursuable conditions”* (pursuant to section III, Book V of the penal proceedings code: filing a complaint, legal proceedings, proceedings request or authorisation to proceed, specifically referred to in articles no. 336, 341, 342, 343 of the penal proceedings code).

Management and Control Model itself.

In particular, Confindustria Guidelines recommend member companies to use *risk assessment* and *risk management* procedures, as well as identify a number of applicable measures to be used in the model:

- risks and protocols identification;
- application of a number of general steps, such as a Code of Conduct with reference to offences pursuant to Leg. Dec. 231/2001 and a disciplinary system;
- definition of suitable criteria for the selection of a supervisory board and specific requisites, responsibilities, power and duty to provide information.

For each activity area, the present Company Model is mainly based on Confindustria Guidelines, as well as the Codes of Conduct and *best practice* procedures of the main representative associations. In this regard, further details can be found in paragraph 3 of the present document. Any differences from Confindustria Guidelines derive from the necessity to adapt organisation and management measures to specific business activities carried out by the company and the context in which it operates.

### **1.12 Evaluation of suitability**

Issues concerning proceedings activities carried out by the penal judge in connection with the company's administrative liability are twofold: on the one hand, the evaluation of the perpetration of an offence within the scope of the Decree, on the other hand the "evaluation of suitability" of the organisation model adopted by the company itself.

The judge establishes if the organisational model drawn up for preventing the commission of crimes pursuant to Leg. Dec. 231/2001 is hypothetically suitable, on the basis of the "successive projection" criteria.

The suitability evaluation shall be established according to an *ex ante* criteria. This means that the judge places himself, ideally, within the company context at the time of the commission of the offence in order to evaluate the suitability of the adopted model.

In other words, for the organisation model to be considered "suitable for preventing offences" it must be deemed appropriate to eliminate, or at least, minimize as much as possible, the commission of the offence, before the actual perpetration of the offence itself.

## 2 .THE GOVERNANCE MODEL AND ALITALIA ORGANISATIONAL STRUCTURE

### 2.1 Alitalia Group

The Company was incorporated by act on 12 March 1999 and named Heat Treatments Solbiate S.r.l., with corporate object related to heat treatments, the mechanisation of processes and iron and steel trade. Further to the Shareholders' Meeting held on 29 July 2004, the trading name was changed to Resco Uno S.r.l. and trading of yearn became the corporate object.

On 26 of August 2008, the Shareholders' Meeting deliberated to re-denominate the Company C.A.I. Compagnia Aerea Italiana S.r.l. and to modify the corporate object to the current one, which provides air transport services, with the consequent ceasing of yearn trading activities.

On 28<sup>th</sup> August 2008, the Shareholders' resolution transformed the S.r.l. company in S.p.A., with a recapitalization of up to 1,1 billion euros. Further to the deliberation of the Shareholders Meeting on 30 December 2008, with effect as of 12 January 2009 at 23.00 hrs, the Company changed its trading name to Alitalia – Compagnia Aerea Italiana S.p.A., or Alitalia S.p.A.

Consequently, Alitalia – Compagnia Aerea Italiana S.p.A., whose air carrier operating activities started on 13 January 2009 as a result of the acquisition of the Company assets placed under extraordinary administration and the participation of Air One S.p.A. in the capital stock, which took place on 31 December 2008.

On the same date, 13 January 2009, operational activities of two other controlled companies, CAI FIRST S.p.A. and CAI SECOND S.p.A. initiated; these were also involved in the same process of acquiring instrumental assets for their operations as air carriers.

On 25 March 2009, following the entry of Air France-KLM S.A into share ownership, capital stock amounted to 668,355,344.00 euros and the existing statute, further to the Shareholders' Meeting held on 19 January 2009, entered into force.

On 16 November 2009, a corporate merger by incorporation was executed and subsequent incorporation of European Avia Service S.p.A. (a company providing handling activities) in Air One S.p.A. (who held the entire participation) and the contextual partial spin-off of part of Air One S.p.A. in Alitalia, with assets formed by (i) operational/technical/commercial administration and management activities, (ii) tasks arising from the aforesaid merger of handling activities and (iii) relevant business concerning operations related to A320 and A330 aircraft groups.

Such initiative – included within the progressive integration process of carriers and handling activities - is functional for Alitalia's Industrial Plan, as well as being instrumental for the execution of fleet renewal programmes in order to achieve the strategic corporate goals of competitiveness, the provision of services, customer satisfaction, managerial and operating efficiency of the entire productive chain.

With regard to the aforementioned and complex processes related to the Group's organization, the

## GENERAL PART

centralisation of functions and activities into other subsidiary companies was carried out in 2009 in order to attain efficient synergy, rationalize the Group's operations and carry out business activities in a more effective and efficient manner.

At present, the corporate structure of the Group is formed by: Alitalia – Compagnia Aerea Italiana S.p.A. and four other carriers: Air One S.p.A., Alitalia CityLiner S.p.A. (formerly Air One Cityliner S.p.A.), CAI FIRST S.p.A. and CAI SECOND S.p.A., all companies entirely owned by Alitalia.

Furthermore, Alitalia entirely owns Challey Ltd, an Irish based company, operating in aircraft investments, leasing and sale of aircraft, engines and connected equipment. Challey Ltd, in its part, is the parent company which controls directly and/or indirectly fourteen other subsidiary companies based in Ireland, providing similar services to those of their parent company.

### **2.2 Alitalia - Compagnia Aerea Italiana S.p.A.**

Alitalia - Compagnia Aerea Italiana S.p.A. (hereinafter also Alitalia S.p.A. or the Company) has based its head offices in Fiumicino.

The primary aim of the company is to provide, directly and/or through subsidiary companies and/or consortiums, routes and airline connections for the transportation of passengers and cargo in Italy, between Italy and third countries and in foreign states.

In order to achieve its corporate goal, the Company may carry out, directly or indirectly, in Italy and third countries, any kind of necessary industrial, commercial, financial, banking, property or real estate operation, provided it is connected with its corporate aim.

The Company may also purchase shares of Companies whose industrial, commercial and/or financial activities appear to be similar, compatible, or connected with the corporate aim.

In connection with the corporate aim, the Company may carry out the following activities:

- Purchase and sale of shares;
- Technical, administrative and financial coordination of the Companies in which the Company detains shares and finances;
- Financial, and industrial strategy intermediation, consultancy and assistance, as well as matters related to the purchase and disposal of shares;
- Purchase, sale, exchange and the management of public and private securities;

with the express exclusion of exercising public equity participation, granting loans in any form, providing payment and brokerage services in foreign exchange, as well as fiduciary activities, public savings collection, and any other activity which is specifically provided for by law.

The Company may also carry out, directly or indirectly, in Italy or in third countries, aircraft upkeep and maintenance operations, leasing and assistance to third parties, “ground-handling” operations, didactical and training activities in the airway system, all round services and operations in general.

In order to achieve the corporate aim, the Company may require financing by shareholders, in compliance with rules prescribed for by current legislation.

### 2.3 Alitalia S.p.A. governance system

The governance system of Alitalia S.p.A. and Alitalia subsidiaries is a traditional one: the Assembly of Shareholders, with the powers vested by law; the Administration Board, in charge of the Company's management; the Supervisory Board, formed by the Auditing Board, whilst auditing tasks are carried out by an external auditing firm.

#### Share capital and assets (as of 30 June 2011)

| Shareholder  | Shares                        | Quota    |
|--|-------------------------------|----------|
| Acqua Marcia Finanziaria S.p.A.  | n. 11,838,402 ordinary shares | 1.7713%  |
| Air France - KLM S.A.  | n. 167,088,836 class B shares | 25%      |
| Atlantia S.p.A.  | n. 59,175,680 ordinary shares | 8.8539 % |
| Aura Holding SpA   | n. 8,875,740 ordinary shares  | 1.3280%  |
| Equinocse S.A.R.L.   | n. 25,447,299 ordinary shares | 3.8075%  |
| Finanziaria di Partecipazioni e Investimenti S.p.A.  | n. 11,838,402 ordinary shares | 1.7713%  |
| FIRE S.p.A.  | n. 71,009,999 ordinary shares | 10.6246% |
| Fondiarìa – SAI S.p.A.   | n. 29,589,882 ordinary shares | 4.4273%  |
| G. & C. Holding S.r.l.   | n. 20,710,059 ordinary shares | 3.0987%  |
| GFMC S.r.L.  | n. 11,834,320 ordinary shares | 1.7707%  |
| I2 Capital Portfolio S.p.A.  | n. 5,917,160 ordinary shares  | 0.8853%  |
| IMMSI S.p.A.   | n. 47,341,361 ordinary shares | 7.0833%  |
| Intesa Sanpaolo S.p.A.   | n. 59,187,644 ordinary shares | 8.8557%  |
| Loris Fontana & C. S.a.p.A.  | n. 5,917,160 ordinary shares  | 0.8853%  |
| Macca S.r.l.   | n. 9.472.083 ordinary shares  | 1,4172%  |
| Marcegaglia S.p.A.   | n. 5,921,243 ordinary shares  | 0.8859%  |
| Ottobre 2008 S.r.l.  | n. 7.705.846 ordinary shares  | 1,1530%  |
| Pirelli & C. S.p.A.  | n. 11,838,402 ordinary shares | 1.7713%  |
| Solido Holding S.p.A.  | n. 17,752,050 ordinary shares | 2.6561%  |
| Toto S.p.A.  | n. 35,514,220 ordinary shares | 5.3137%  |
| T.H. S.A.  | n. 35,502,959 ordinary shares | 5.3120%  |
| Vitrociset S.p.A.  | n. 8,876,597 ordinary shares  | 1.3281%  |
| <p>Share capital is equal to 668,355,344 euros, fully paid in, represented by:</p> <ul style="list-style-type: none"> <li>- n. 501,266,508 ordinary shares</li> <li>- n. 167,088,836 class B shares</li> </ul> <p>Overall nominal value of each share (ordinary or class B) is equal to 1,00 euro.</p> |                               |          |

### ***Shareholders meetings***

Shareholders meetings can be ordinary or extraordinary are established by law and may take place in a place which is different from the head office, provided they are held in Italy.

### ***Board of Directors***

A Board of Directors formed by 19 shareholders is in charge of the Company.

The Board of Directors is vested with extended powers relating to ordinary and extraordinary administration of the Company. The Board can therefore execute any act in connection with any instructions it may deem necessary for the pursuit of the corporate aim, except for those which are specifically assigned to Shareholders, as prescribed for by current law. The Board of Directors is also responsible for making decisions concerning art. 2365, last paragraph, of the civil code.

The following powers have been conferred to the Chairman of the Board of Directors, in addition to powers vested in him by law and the Company's Articles of Association:

- Any signatory and legal representation powers, in dealing with third parties, also in court proceedings, including signatory powers over the Company's bank accounts and deposit accounts;
- The responsibility, alongside the Managing Director, of managing relations with regulatory, legal, association and technological bodies with regard to corporate business management;
- Supervision and coordination of relations with the press and the media;
- Supervision and coordination of internal auditing control functions and Company auditing;
- Management and coordination of corporate secretariat and of the General Counsel office;
- Putting forward proposals, alongside the Managing Director, concerning the possible appointment of one or more General Managers by the Board of Directors.

The following powers have been conferred to the Managing Director:

- The responsibility, in concert with the Chairman of the Board of Directors, of approving or modifying the triennial corporate business plan ("industrial plan") or the annual budget ("the budget");
- Putting forward proposals, with the Chairman's agreement, concerning the appointment of one or more General Managers by the Board of Directors ;
- Putting forward proposals to the Board of Directors concerning the organisational structure of the Company and of subsidiary companies, including the application of prescriptions pursuant to Lgs. Dec. 231/2001;
- Putting forward proposals to the Board of Directors, after conferring with the Chairman, of the names of individuals to be appointed to run corporate positions of the subsidiary companies;
- Appointment and revocation, after conferring with the Chairman, of one or more Deputy General Managers, directors and attorneys for individual deeds or categories of deeds, with designation of individual responsibilities, including representation responsibilities, and salaries;
- Appointment and revocation, with the Chairman's agreement, of the Chief Financial Officer and of the so-called "top executives" of the corporate structure;

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- Setting up and winding up secondary Company branches, in Italy and abroad;
- Purchases or deeds of goods, other investments, contracts or operations for a value not exceeding 50,000,000.00 (fifty million) euros, or equivalent in a different currency, for each individual transaction or series of interconnected transactions;
- Transfer of capital or other deeds (totally or partially, of any kind and in any way, including and without any limitations lending and granting of pledges, securities, ties, life tenancies or other third-party rights) of shares owned by the Company which may result in the loss of majority stake in that company, pursuant to art. 2359, paragraph 1, n. 1 or 2 of the civil code, of a subsidiary company or any other operation which does not result in the loss of control of aforesaid subsidiary company, provided its value (enterprise value) does not exceed 50,000,000.00 (fifty million) euros, or its equivalent in another currency, for each individual transaction or a number of interconnected transactions;
- Other purchases, acquisitions of any kind and in any way (for instance, following the capital increase or incorporation of a company), of equity stakes and profit-allocation in other companies, entities or other bodies (i) whose value (enterprise value) does not exceed 50,000,000.00 (fifty million) euros or its equivalent in another currency, for each individual transaction or a number of interconnected transactions or (ii) with an overall value (enterprise value) which does not exceed 50,000,000.00 (fifty million) euros per year or its equivalent in another currency, and which is not included in the aforementioned point;
- Purchases, acquisitions of any kind and in any way, transfer, leasing, lending and granting of pledges, securities, ties, life tenancies or other third-party rights or deeds) (i) whose value (enterprise value) does not exceed 50,000,000.00 (fifty million) euros or its equivalent in another currency, for each individual transaction or a number of interconnected transactions or (ii) with an overall value (enterprise value) which does not exceed 50,000,000.00 (fifty million) euros per year or its equivalent in another currency;
- Granting or release of ties, pledges, material and personal guarantees, other types of guarantees or similar rights over corporeal or incorporeal property (other than ties, pledges, guarantees or similar rights specified in other explicatory points), also in favour of third parties, (i) whose value does not exceed 25,000,000.00 (twenty-five million) euros or its equivalent in another currency, for each individual transaction or a number of interconnected transactions or (ii) with an overall value (enterprise value) which does not exceed 50,000,000.00 (fifty million) euros per year or its equivalent in another currency;
- Granting, borrowing and anticipated reimbursement of finance, financial debts borrowing and other financial operations of any kind (other than operations which involve the use of liquidity through negotiations on monetary markets and related financial instruments as insurance cover for exchange rate variations, interest rates or commodity prices) (i) whose value does not exceed 50,000,000.00 (fifty million) euros or its equivalent in another currency, for each individual transaction or a number of interconnected transactions;
- Any type and any kind of investments (such as, following capital increase or incorporation of new companies) in other companies, business ventures or other legal entities for a value not exceeding 50,000,000.00 (fifty million) euros;
- Granting or release of ties, pledges, material and personal guarantees, other guarantees or similar rights over corporeal and incorporeal property, also in favour of third-parties for a value exceeding 50,000,000.00 (fifty million) euros for each individual transaction or a number of interconnected transactions or with an overall yearly value which exceeds 50,000,000.00 (fifty million) euros;

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- Granting, borrowing and anticipated reimbursement of financing, financial debt borrowing and other financial operations of any kind for a value exceeding 50,000,000.00 (fifty million) euros, for each individual transaction or a number of interconnected transactions;
- Decisions concerning court proceedings for a value exceeding 25,000,000.00 (twenty-five million) euros;
- As well as any other power, provided it is not of specific competence of the Board of Directors, following powers vested in him by law and Company Articles of Association and notwithstanding powers, competences and responsibilities which are the sole responsibility for the Managing Director and of the Chairman vested in them by Shareholders' meetings resolutions;
- Decisions concerning legal proceedings for a value not exceeding 25,000,000.00 (twenty-five million) euros or equivalent in a different currency;
- All powers, within the limits of the Company's industrial plan and budget, concerning the start, termination and management of work relationships, including industrial relations with trade unions and coordination of industrial relations of the Company and of subsidiary companies;
- The responsibility, after conferring with the Chairman, of managing relations with regulatory, legal, association and technological bodies with regard to corporate business management;
- Within the limits conferred to him, signatory and representation powers, including signatory powers over the Company's bank accounts and deposit accounts;

As a way to further integrate the aforementioned powers, the Managing Director has also been vested with the power:

- to carry out financial operations, also with reference to the fluctuation of fuel prices for up to a maximum of 250 million for each individual operation and comprised within a temporary range not exceeding 24 months;
- to carry out financial operations, also with reference to the fluctuation of currency exchange rates for up to a maximum of 250 million for each individual operation and comprised within a temporary range not exceeding 24 months.

### *Steering Committee*

The Steering Committee is formed by 9 Administrators.

The Steering Committee has been vested with the following powers by the Board of Directors:

- Approval or modification of the Company's triennial industrial plan (corporate business plan) or annual budget;
- Defining the Company's strategy in the relevant competitive scenario and with regards to the Partners and public Authorities;
- Establishing the Company's strategic plans concerning network management, including the approval of summer and winter programmes, as well as mid-term plans and budgets;
- Defining cooperation partnerships and alliances with other airlines and/or strategic air partners;
- Defining the main objectives or industrial plan for cargo, maintenance and handling

activities;

- Defining strategic plans concerning human resources management;
- Defining the corporate organisational structure and of subsidiary companies, including implementation of regulations pursuant to Leg. Dec. 231/2001;
- Appointment of suitable individuals to assign to the most senior corporate positions in subsidiary companies;
- Purchases or deeds of goods of any kind, corporeal or incorporeal property, personal property or real estate, including capital, equity stakes, companies or else, and more in general any kind of investment or expenditure for a value not exceeding euro 50,000,000.00 (fifty million) for each individual operation or number of operations concerning the same transaction;
- transfer of capital, equity stakes or other securities into a subsidiary company and which may result in the loss of majority stake in that company;
- Any type and any kind of investments (such as, following capital increase or incorporation of new companies) in other companies, business ventures or other legal entities for a value not exceeding 50,000,000.00 (fifty million) euros;
- Granting and release of ties, pledges, material and personal guarantees, other guarantees and similar rights over corporeal and incorporeal property, also in favour of third-parties for a value exceeding 25,000,000.00 (twenty-five million) euros for each individual transaction or a number of interconnected transactions, or for an overall value exceeding 50,000,000.00 (fifty million) euros per year;
- Granting, borrowing and anticipated reimbursement of finance, financial debts borrowing and other financial operations of any kind for a value exceeding 50,000,000.00 (fifty million) euros for each individual transaction or a number of interconnected transactions;
- Decisions concerning court proceedings for a value exceeding 25,000,000.00 (twenty-five million) euros;
- As well as any other power, provided not of specific competence of the Board of Directors, following powers vested in him by law and Company Articles of Association and notwithstanding powers, competences and responsibilities which are the sole responsibility for the Managing Director and of the Chairman vested in them by Shareholders' meetings resolutions.

### ***Auditing Board***

The Auditing Board is formed by five Regular Auditors and three Acting Auditors.

### ***External Auditing Firm***

The Company's audit is carried out by a registered external auditing firm.

## **2.4 Alitalia - Compagnia Aerea Italiana S.p.A. governance measures**

A number of corporate organisation measures have been undertaken in order to ensure the correct functioning of the Company. Such measures can be summarized as follows:

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**Articles of Association:** in compliance with current legal requirements, they establish different types of rules specifically intended for corporate management, in order to guarantee the smooth running of management activities.

**Order of Service:** it defines specific management responsibility areas and the organisational structure of the company.

**Organisational communications:** they are set to specify in greater detail specific responsibility areas and departments within a perimeter, which had been previously set out in the Order of Service.

**Organisational prescriptions:** documentation through which a number of guidelines are communicated concerning responsibility levels, Group plans and policies which do not presume the description of a procedural flow.

**Procedural legal system:** it includes the entire set of regulations, concerning responsibilities, activity procedures and phases of different corporate processes.

**Delegation of powers system:** it defines responsibilities held by specific individuals operating within the Company. In particular, powers have been delegated by the Chairman and the Managing Director, in light of powers exercised in the ordinary management of the Company, to individuals operating in a given activity and within their acquired level of responsibility. Such individuals are to carry out a number of activities specified within certain limits and ensuring that all requirements specified in the current legislation can promptly and successfully be implemented.

**Further responsibilities as specified by legal prescriptions:** they contain further specific responsibility areas. In particular, the Accountable Manager has been appointed and Employers have been identified by the Company pursuant to Legislative Decree no. 81 of 9 April 2008, concerning health and safety at work. Furthermore, the Company has appointed individuals to be in charge of the treatment of personal data pursuant to Leg. Dec. 196 of 30 June 2003, concerning the protection and safeguard of personal data.

**Code of Conduct:** it contains the Company's ethical and professional code of Conduct, to which all individuals operating for the fulfilment of the Company's objectives must abide by.

### 2.5 Internal control system

The internal control system contains a number of rules, procedures and organisational structures aimed at monitoring compliance with corporate strategies and the fulfilment of the following goals:

- i) efficient and successful corporate processes and operations (administrative, productive, distributional, etc.)
- ii) quality and reliability of economic and financial information;
- iii) respect of legal provisions and of company rules and procedures;
- iv) safeguard of the values of corporate activities, of corporate assets and loss control.

The primary corporate bodies responsible for controlling, monitoring and supervising are indicated as follows:

- Board of Directors;
- Steering Committee;
- Auditing Board;
- Supervisory Board pursuant to Leg. Dec. 231/2001;
- Internal Audit.

## 2.6 Organisational company structure

The organisational company headed by the Chairman and the Managing Director is fundamental to ensure the effective implementation of the Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001. To this end, a number of essential organisational structures related competent departments and related main responsibilities connected are identified:

The following departments report directly to the Chairman:

- **Communication and External Relations Department**, split into the following organisational units:
  - *External and Institutional Relations*, responsible for ensuring relations with institutional national and international stakeholders, promoting corporate positioning and the Company's legitimate representation, ensuring project development and communication regarding the Company's social responsibility, organising Company representation events or selecting institutional and cultural events to sponsor;
  - *Media Relations*, responsible for managing and developing relations with the national, international press and with the media in general, ensuring that information concerning Group policies and operations are correctly communicated ; supervising the Company's press review, the corporate web site contents, the video library and photo archives;

The following departments report directly to the Managing Director:

- **The Managing Director Staff**, is directly in charge of *The People Care Project*, responsible for (i) promoting the professional development of Company personnel and improving the overall corporate climate within the Company, carrying out, for this purpose, initiatives to receive suggestions and requirements from the Company staff, voiced through different instruments to which anyone can contribute in, such as panels, focus groups and climate surveys; (ii) disseminating Company values, improving employees' knowledge of the Company and its business, as well as their affiliation and sense of belonging;
- **Relations with Local Communities and Public Administration Offices**, responsible for managing and developing relations with central and local administration offices, appraising socio-economical and environmental characteristics and potentialities for an improved and efficient network development and protection of interests;
- **Operational Processes Implementation Facilitator**, responsible for ensuring the improvement and optimization of operational processes through the implementation

- of appropriate governance methods;
- **Human Resources Department**, split into the following organisational units:
    - *Personnel*, responsible for (i) defining management and personnel policies, the appropriate allocation of staff working for the Company according to their skills and competences; (ii) providing the effective implementation of development and support programmes concerning management issues and relations with trade union representatives;
    - *Organisation and Personnel Development*, responsible for defining organisational and personnel development policies, ensuring organisational planning and the continuous adjustment of organisational structures and roles, human resources performance monitoring, the establishment of a staff incentive system, personnel recruitment and training, the administration and management of Company executives;
    - *Industrial Relations, Administration and Labour Cost*, responsible for ensuring, in compliance with Company objectives and strategic directions, the development of industrial relations policies and their implementation, the definition of labour costs and the monitoring of workforce count, supervision and monitoring of personnel administration process effectiveness as well as the implementation and development of the personnel health and safety system activities and surveillance;
  - **Administration, Finance Control and Strategies Department**, split into the following organisational units:
    - *AZ – AF/KL Partnership and Transatlantic JV*, responsible for participating in and managing working groups for the AZ – AF/KL Partnership and the Transatlantic JV, pursuing the economic and strategic objectives related to such strategic alliances;
    - *Strategic Planning*, responsible for ensuring the monitoring and understanding of the scenario in order to define strategic positioning and ensure coordination of the industrial plan development process, defining long term action plans relevant to Company strategy;
    - *Administration*, responsible for ensuring that corporate administration, accountancy and revenue accounting processes, preparation of Company and Group financial statements are correctly organised and managed in compliance with applicable civil and fiscal regulations;
    - *Finance*, responsible for (i) managing activities aimed at increasing corporate assets, by planning and managing financial commitments and resources in the short, mid and long-term; ensuring correct analysis and risks evaluation on interest and exchange rates and the selection of financial tools for fuel hedging; (ii) ensuring the planning, management and development of extraordinary projects, as well as studies and the development of Group extraordinary finance operations (mergers, acquisitions, winding ups, divisions, spin offs, incorporations, etc.);
    - *Planning and Control*, responsible for (i) developing and coordinating Group budgeting and reporting processes by ensuring the implementation of a management control model capable of supporting company executives in decision-making processes and redefinition of objectives; (ii) implementing multi-year economic planning projects, in coordination with *Strategic Planning*;
    - *Insurance e Risk Management*, responsible for protecting the Group’s assets and operating results by providing a correct analysis of ensured or insurable risks, an efficient balance between control and risk financing systems and suitable planning and management of activities;
  - **Purchasing and Services Department**, split into the following organisational units:

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- *Fleet Acquisition*, responsible for ensuring acquisition activities, through the purchasing and/or leasing of aircraft, engines and flight simulators, carefully monitoring the technological evolution of the relevant industrial sector as well as managing the sale of related surplus items;
- *Fuel Purchasing*, responsible for purchasing jet fuel and gasoline according to specific requirements selecting ways and methods aimed at obtaining the best purchasing conditions;
- *General Purchases*, responsible for purchasing general goods and services, marketing and communication services, cargo, ICT services, accommodation and transport services for crew personnel and passengers, in case of disrupted operations, as specified by the department which requested the service;
- *Facility Management*, responsible for (i) providing and maintaining facilities (buildings and services supporting company activities) predetermined service levels, satisfying company quality and cost standards, through an analysis of needs, the monitoring of results in compliance with SLAs agreed with internal clients; (ii) ensuring the management and development of buildings and equipment for civilian, industrial and operational uses in all Company branches and at Fiumicino Hub, purchasing and managing maintenance services, respecting environmental issues and the environment by providing technical assistance to specific supervisory and monitoring authorities, in compliance with environmental legal prescriptions;
- *General Services*, responsible for ensuring the management of general services for all Company branches and Fiumicino Hub, monitoring the level of service with reference to contractual prescriptions of external suppliers and agreements with internal clients;
- *On-board Service Contracts Management*, responsible for ensuring the governance of contracts with on-board services external providers, evaluating with the competent Company departments, results and possible modifications to agreed standards and verifying the adequacy of contracts/orders for on-board services managed directly by Alitalia;
- *Purchasing Processes Development*, responsible for (i) improving the results of the purchasing process (internal clients, buyers, providers) by effectively monitoring the process and supporting buyers in selecting innovative ICT solutions; (ii) ensuring providers' qualification (for product categories relevant to the Department), by developing a validation system that identifies technical, production, quality, economical and managerial aspects of the prospective provider as well as its market placement;
- **Legal, Corporate and Auditing Department**<sup>36</sup>, split into the following organisational units:
  - *Antitrust, Regulatory and Privacy Activities*, responsible for (i) managing relations with the relevant administrative authorities, monitoring compliance with legal requirements on aeronautical, antitrust competition, consumerism law, by providing information and coordinating compliance with transaction procedures; handling, when relevant, the Group's disputes; (ii) provide legal support on Privacy issues to personnel operating in the treatment of personal data, managing relations with the institutions and sorting out instances related to this matter; (iii) handle the Group's legal disputes for matters within the scope of the Office
  - *International and Bilateral Relations*, responsible for contributing to the implementation

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<sup>36</sup> Having regard to the activities connected with internal oversight, auditing and Corporate Structures, the Legal, Corporate and Auditing Director reports to the Chairman.

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- of the industrial plan by coordinating the acquisition of traffic rights, the participation in working groups established within associations and industry international bodies (AEA, IATA, etc.), interacting with air transport Authorities in coordination with other competent Company departments;
- *Contracts*, responsible for monitoring Italian, international and European legal and jurisprudence developments regarding contractual matters; providing legal assistance and support to all departments during negotiation procedures, drafting national and international labour agreements of relevance for the Group, except issues relating to air transport and corporate law;
  - *Disputes*, responsible for taking care of company and corporate interests by managing civil, penal and work disputes; monitoring, evaluating and interpreting civil, penal and employment law, also coordinating its correct implementation by all Group subsidiaries;
  - *Corporate*, responsible for setting up all necessary measures and deeds for the functioning of the Board of Directors and other corporate bodies of all subsidiary Companies, managing relations with shareholders, as well as relations with the external auditing company, within the limits conferred to this unit. This unit is also in charge of coordinating company initiatives and supervising corporate law, ensuring compliance with related provisions and providing assistance in corporate disputes;
  - *Auditing*, responsible for verifying and establishing the adequacy of the Company internal monitoring system and ensuring compliance with policies, guidelines and procedures by company departments, also ensuring the necessary support to the implementation of the Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001;
  - **Marketing, Revenue, Management and Network Department**, split into the following organisational units:
    - *Network*, responsible for defining a network plan (six season plan) and the fleet development plan, alongside the industrial plan, the related economic, financial objectives, alliances and network partnerships; providing an optimal use of the network, of the fleet, the development and definition of operational programmes for the season following the current one;
    - *Alliances and Agreements*, responsible for coordinating the *SkyTeam* Alliance membership and preparing, negotiating, formalizing alliances/strategic agreement proposals in view of safeguarding and increasing company profit margins;
    - *Marketing*, responsible for ensuring marketing planning and development, guaranteeing the brand strategy, planning ground and on-board services throughout the different phases of the customer journey, ensuring operative marketing activities in terms of communication, advertising, partnership and joint marketing;
    - *Revenue Management*, responsible for (i) ensuring, within the limits set by the industrial and marketing plans provisions, the optimization of customer revenues by planning, defining and managing pricing leverage, space access and operational revenue management (schedule change and management of passengers' reservations in case of disrupted operations), as well as the management of activities aimed at ensuring revenue integrity;
    - *Ancillary Revenues*, responsible for (i) planning and developing new ancillary services/products, managing their implementation in cooperation with other Company departments; (ii) ensuring planning of cabin layout and in-flight entertainment;
  - **Sales, Distribution and Customer Care Department**, split into the following organisational units:

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- *Sales in Italy*, responsible for ensuring that sales activities in the Italian market are carried in an integrated way in order to achieve the economic objectives and maximizing profits, as well as commercial and operational costs;
- *EMEA Sales*, split into the following organisational units:
  - Sales in France, The Netherlands and Belgium;
  - Sales in Great Britain;
  - Sales in Spain;
  - Sales in Germany, Switzerland and Austria;
  - Sales in Hungary, Poland and Czech Republic;
  - Sales in Greece, Serbia, Albania and Malta;
  - Sales in Romania e Bulgaria;
  - Sales in Israel;
  - Sales in Russia and Ukraine;
  - Sales in Ghana and Nigeria;
  - Sales in Tunisia, Algeria, Libya and Morocco;
  - Sales in Egypt, Lebanon, Iran, Jordan and Syria;
  - Sales in Turkey;
- *Sales in North America*, to which the Canada Office reports;
- *Sales in South America*, split into the following units:
  - Sales in Argentina;
  - Sales in Venezuela;
- *Sales in Asia*.

*EMEA Sales, Sales in North America, Sales in South America and Sales in Asia*, are responsible for ensuring the integrated management of sales activities in their regional market of competence, aiming to reach assigned economic objectives by maximising revenues and managing commercial and operational costs efficiently. In this framework, *Country Managers* are responsible for maximising revenues and managing commercial and operational costs efficiently in their specific geographical area and *Sales Managers* in their specific Country;
- *Sales Planning and Monitoring*, responsible for coordinating the sales planning process, in line with the corporate strategic project and commercial budget objectives, ensuring the deployment of objectives, KPI monitoring, managing the Group sales project within the *SkyTeam* alliance;
- *Corporate Customers*, responsible for (i) defining type, levels and proportion of sales in relation to the Corporate market, by defining relevant policies to be implemented in Italian and foreign markets; (ii) improving offers made to corporate customers in terms of pricing and custom-made service offers, alongside the competent *Marketing, Revenue, Management and Network, Alitalia Operations* and *Ground Operations* Departments; monitoring call centre activities assigned to this segment; (iii) this department also manages and provides services to special clients (papal flights, flights for government officials, etc.) and coordinates other segments of Corporate and SME Customers within the *Sales in Italy* Department;
- *Customer Care*, responsible for defining customer care policies and communicating them to Company members, managing customer relations through the call centre; ensuring that policies, type and quality of sales are achieved; focusing on customer after-sale satisfaction in order to minimize negative feedback;
- *E-Business*, responsible for defining specific internet sales policies, ensuring that type

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- and levels of sales are achieved by managing and supervising direct sales activities carried out through the web on the Italian and foreign markets, as well as monitoring the functional aspects related to the usability of the Alitalia web sites;
- *Distribution*, responsible for defining indirect sales distribution policies, managing and ensuring the efficiency of sales systems, as well as managing processes regarding the implementation of sales distribution activities during the planning, negotiating, delivery and performance monitoring phases;
  - *Cargo*, responsible for providing cargo services ensuring maximisation of economic results and supervising the correct deployment of cargo traffic operations in compliance with quality standards;
  - **Alitalia Operations Department (Accountable Manager)**, split into the following organisational units:
    - *Purchases and Operational Control*, responsible for (i) supporting the Alitalia Operations Department in carrying out economic and operational analyses of all the operational departments, identifying possible improvement opportunities and defining relevant actions to reduce costs; (ii) defining purchasing policies and cost reduction improvement actions for “Operations” purchases, in cooperation with competent organisational units within the Operations Department; (iii) support *Handling Purchases* to define make or buy policies as well as actions for cost reduction, savings and efficiency;
    - *Security (Security Manager)* responsible for defining security policies of the Group, ensuring compliance with local, national and international legislation concerning air industry security and managing relations with national and international organisations ;operating in the air transport security field;
    - *Fuel Management*, responsible for planning, implementation and management of an efficient fuel management model, defining guidelines, planning and control of costs, KPI and support processes monitoring, also acting as an integrator of fuel purchase and management processes;
    - *Quality System (Quality Manager Flight, Ground & Crew Training, CAMO Part M, Part 145, Training Manager Part 147)*, responsible for (i) implementing the quality system of Alitalia operations in compliance with national and international legislation, providing studies on the relevant legislation, update of Quality manuals, Quality Assurance Programme management by coordinating and carrying out audits, instrumental inspections and investigations, providing punctual information to the Accountable Manager and to all the relevant internal and external departments (ii) ensuring the development and preservation of competency for technical and maintenance personnel by defining and implementing a suitable training programme in compliance with regulatory requirements;
    - *Flight Safety (Safety Manager)*, responsible for defining and managing the Accident Prevention and Flight Safety Programme (AP&FSP) of the Alitalia Group, as well as the structuring and progressive implementation of the Safety Management System (SMS) according to the evolving regulatory scenario, verifying the Programme’s effectiveness by coordinating and developing appropriate analyses and studies, supervising its application through audits and inspections, accurately reporting to the Accountable Manager;
    - *Flight Operations (Post Holder Flight Operations)*, responsible for managing and supervising all flight operations by managing operations connected to Alitalia crew personnel prescribed for by legal and company standards, establishing performance and cost levels which had previously been agreed during the planning phase through the definition of overall type, quality and professional requirements;
    - *Flight Training Centre (Post Holder Crew Training and Technical Manager STD)*, responsible

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- for (i) ensuring the planning and implementation of training processes for Flight Crew, in compliance with national and international regulations, in order to make available and/or seek the necessary flying competencies, their upkeep and update also through the development of the appropriate technology and methods; (ii) ensuring the development of training services sales to third parties, within the frame of market conditions, existing contracts, profitability and accountability;
- *Engineering and Maintenance (Post Holder CAMO and Maintenance Manager)* responsible for (i) complying with the service levels agreed with *Operational and Crew Planning* and *Network* minimizing maintenance costs and guaranteeing the Alitalia fleet technical efficiency and airworthiness in compliance with safety standards and the efficient and effective performance of the maintenance activities on aircraft of the Alitalia Group fleet and that of external customers; an effective governance of services by maintenance providers; the compliance with service levels of intra-Group contracts; (ii) ensuring the development and implementation of a flexible and reactive production system, ensuring the correct utilisation and enhancement of resources according to standards defined by the competent Company functions, keeping system quality, employees' and customers' satisfaction and reduction of costs in the highest consideration;
  - *Operational and Crew personnel Planning*, responsible for ensuring the integrated and optimized planning of operational resources, a network sustainability evaluation with regard to costs and levels of services, flight programmes management during the season up to one week before operations;
  - *Operations Control Centre*, responsible for managing flight programmes during the operational week with the aim to provide maximum punctuality levels, a regular and convenient service whilst complying with all technical, contractual and legal requirements;
  - **Ground and Information Systems Department**, split into the following organisational units:
    - *Information and Telecommunication Systems*, responsible for defining, in agreement with Company objectives, mid and long-term ICT development goals, in line with scenario studies, the positioning, technological and economical development of the ICT market; furthermore, it operates in order to guarantee the development, effective functioning and maintenance of ICT systems, of its support architectures and infrastructures, providing service and support to corporate functions according to service plans (levels of service and related costs), agreed with specific Departments;
    - *Ground Operations (Post Holder Ground Operations)*, responsible for (i) ensuring quality and safety of ground handling activity processes in all the network stations, ensuring the pursuance of Company objectives through operational processes optimization, the efficient and correct use of human resources, monitoring suppliers' services, sale of ground operations services to other Airlines; (ii) ensuring, as Post Holder, the compliance of ground operations with the OPS1 quality system and legal regulations. With regard to all responsibilities connected with the functions of Post Holder, *Ground Operations* reports directly to the Alitalia Accountable Manager;
    - *Handling Purchases*, responsible for (i) purchasing activities as well as the development and managing of competitive and reliable provisions' networks, relating to airport facilities, passenger handling services and ticket offices in all the network stations; (ii) ensuring the governance of regulatory trends regarding airport fees, passenger taxes and airport

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centralized services;

- *Processes and Ground Systems*, responsible for (i) ensuring operational processes re-engineering to effectively and efficiently support Ground Operations, (ii) assisting the “Ground and Information Systems” Department in identifying the appropriate ICT systems to support station operational activities, ensuring that all processes and internal operation needs are adequately supported also ensuring the improvement of customer service.

### 3. THE ORGANISATION, MANAGEMENT AND CONTROL MODEL

#### 3.1 Overview

The decision to adopt an Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001, was made in order to exempt the Company from liability with regards to offences prescribed for by Leg. Dec. 231/2001. But first and foremost, it represents the Company's commitment towards its personnel, clients, suppliers, financing companies, institutions, general public, the environment etc.

Furthermore, the adoption and the effective implementation of a suitable Model does not simply exempt the Company from liability, but it also helps improve the overall internal control management system. The Company aims to consolidate a full corporate approach inspired by the principles of transparency, ethicalness, fairness and observance of regulations; Alitalia's image also benefits from it and as passengers and third parties involved with the Company reinforce their sense of trust towards Alitalia.

In fact, the adoption of an additional business control system, together with the establishment and implementation of a code of conduct, increases Company standards even more and contributes to regulate the behaviour and decisions of anyone working on a daily basis in the interests of Alitalia.

The following aspects have therefore been taken into account when defining the Model:

- Confindustria Guidelines, as well as the main representative associations' Codes of Conduct and *best practice* procedures for different business areas;
- The organisational structure of the Company and of the Group;
- Developments of legislation and of the judicial doctrine;
- Italian and foreign applicative usage of Leg. Dec. 231/2001.

#### 3.2 Aim of the Model

With the Alitalia Model, the Company ultimately intends to establish and circulate a corporate culture inspired by:

- lawfulness, transparency, ethicalness, fairness and observance of regulations while bearing in mind that, consistently with its adopted rigorous principles, no illicit behaviour will be allowed, albeit committed in the interest or to the advantage of the Company;
- monitoring that needs to govern all decision-making and operational phases of the corporate activity, with the full awareness of risks arising from the possible perpetration of offences.

The main objectives of the Model are combined within a coherent system of principles, organisation, management and control procedures, bearing in mind the aforementioned considerations, which have been complied with and adopted.

The main objectives of the Model are indicated as follows:

- to raise the awareness of anyone collaborating, for any reason and on any account, with Alitalia

(employees, advisors, suppliers, etc.), and, to that end, to request them to adopt a fair and transparent behaviour in the fulfilment of activities performed in the interest of the Company, in line with ethical values subscribed to by the Company in pursuance of its corporate objects, in order to prevent perpetration of the offences contemplated by the Decree;

- to inform the foregoing persons of the likelihood of incurring into disciplinary sanctions and/or contractual remedies, and to be inflicted penal and administrative sanctions in case of breach of instructions received from the Company;
- to institute and/or strengthen forms of monitoring, so that the Company can prevent, or act promptly and prevent the perpetration of offences by executives/managers and persons subject to the management and/or supervision of the latter persons;
- to enable the Company, through the suitable monitoring of areas of activities exposed to risk, to promptly intervene in order to prevent or remedy the perpetration of offences and to sanction behaviours in breach of the Model;
- to ensure the Company’s integrity by fulfilling the requirements expressly prescribed for by art. 6 of the Decree;
- to improve effectiveness and transparency in the management of corporate activities;
- to cause the potential perpetrator of an offence to be fully aware that the commission of an offence breaches not merely legal requirements, but also ethical principles which the Company has subscribed to as well as to the Company’s interest, even when it might appear that the Company could benefit from it, and is therefore punished.

### **3.3 Alitalia - Compagnia Aerea Italiana S.p.A - definition of the Organisation, Management and Control Model project pursuant to Leg. Dec. 231/2001**

The method adopted in the definition of the Model (hereinafter, also the Project), with regard to the organisation, operational structure, step definition, assignment of responsibilities for different business areas, was elaborated in order to ensure quality and efficient results.

The main operational steps of the Project have been developed in conjunction with the assistance of a Company specialised in:

- Identification of risk processes and activities where offences pursuant to Leg. Dec. 231/2001 may be perpetrated;
- Identification of *key officers* and processes and sensitive activities analysis ;
- *Gap analysis*;
- Model definition.

Area Managers / Organisation Boards were involved in each phase of the process so that joint results could be shared throughout the entire process.

Specific operation phases are described in the following paragraphs.

#### *3.3.1 Processes and activities which may lead to offences pursuant to Leg. Dec. 231/2001*

Art. 6, paragraph 2, lett. a) of Leg. Dec. 231/2001 establishes that an Organisation, Management and Control Model should identify processes and activities where offences pursuant to the Decree, may be perpetrated. In other words, those activities and business processes usually referred to as “sensitive” (hereinafter, “sensitive activities” and “sensitive processes”). The current operational

phase, therefore, aims to define in greater detail the specificities of each business area in order to preliminarily identify processes and sensitive activities. For sensitive activities to be identified, it had originally been necessary to describe the company organisational structure.

On the basis of the analysis of the Company's line of business, as well as organisational statements, an initial identification of processes/sensitive activities and a preliminary identification of organisational areas responsible for such processes/activities have been implemented.

In particular, the following activities have been carried out in order to identify sensitive processes/activities:

- Compilation of organisational company structure documents, (such as organisation charts, main organisational procedures, delegation of responsibilities, procedures etc.);
- Analysis of collected documents from which a Company's business model could be elaborated;
- Analysis of previous case studies, ie. situations which may have been relevant for the airline industry in connection with penal, civil or administrative proceedings connected with legislation provided for by Leg. Dec. 231/2001;
- Identification of business activity areas and related job responsibilities;
- Preliminary identification of sensitive processes/activities as per Leg. Dec. 231/2001;
- Preliminary identification of Areas/Organisation Boards responsible for identified sensitive processes.

### *3.3.2 Selection of key officers and analysis of sensitive activity processes*

The aim of this operational phase was to identify resources who were very knowledgeable about processes/sensitive activities and monitoring mechanisms currently in use, thus completing and broadening the initial analysis of processes/sensitive activities, Organisation Boards and involved personnel (hereinafter "*key officer*").

This assessment was carried out by analysing company documents, including delegation of powers, and detailed technical meetings with identified organisational boards.

Top managers have been identified as the company's *key officers*; they are qualified individuals capable of providing suitably detailed information on individual business activities and on activities carried out by each Organisational Unit, so that control systems currently in use can be better understood.

The evaluation was carried out through a number of "interviews" with key officers. These individual meetings also helped defining management processes and monitoring measures for each sensitive activity, with particular attention paid to compliance issues and preventive existing control systems.

A number of activities carried out during the current operation phase are described below. At the end of this activity, a preliminary "processes/sensitive activities map" was identified, providing a guideline for the following analysis and elaboration activities:

- Compilation of information by analysing documents and organising meetings with the Project's internal relevant managers;
- Identification of additional managers capable of providing useful information concerning the understanding and analysis of sensitive activities and functioning of the control system ;
- Preparation of a map which joins processes/sensitive activities to the relevant *key officers*; structured "*interviews*" with *key officers*, and with their personnel, in order to collect the

- necessary information from which identified processes/sensitive activities can be understood;
- Identification of basic processes and activities carried out;
  - Identification of Organisational Boards / internal and external individuals involved;
  - Identification of specific job tasks and responsibilities;
  - Identification of existing monitoring systems;
  - Allocation of “interview” results with *key officers*;
  - Classification of a map of processes/sensitive activities in a relevant report containing all information collected and any identified critical problems connected with the oversight of sensitive processes.

Consequently, an analytical map of activities was drawn up at the end of this phase; in light of the specific contents included, these activities could possibly be subjected to the perpetration of offences pursuant to Leg. Dec. 231/2001.

The controls system described in the Model is also based on the following supervisory principles:

- Existence of formal procedures;
- Tracking and *ex-post* monitoring of transactions through suitable documental evidence in hard or soft copies;
- Existence of formal delegations in coherence with specific assignment of business responsibilities.

### 3.3.3 Gap analysis

The aim of this operational phase is to i) identify organisational requisites suitable for establishing an organisation model for preventing offences pursuant to Leg. Dec. 231/2001 e ii) identifying any possible improvements to the current organisation and management model.

A comparative analysis (so-called “*gap analysis*”) is carried out between the existing organisation and control system (“*as is*”) and a hypothetical reference model to be used based on the provisions of Leg. Dec. 231/2001 (“*to be*”). This way the existing model order can be observed and acknowledged more efficiently; areas at risk can be taken into consideration during the aforementioned *risk assessment* activity and conformity of the model itself to provisions of Leg. Dec. 231/2001 can be assessed.

### 3.3.4 Model definition

The aim of the next operational phase was to define the Company’s Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001, bearing in mind Confindustria Guidelines on the subject, which was then adapted to specific corporate requirements.

The definition of this phase was supported by results obtained in the previous phases.

## 3.4 Structure of the Model

The Model is comprised of two main parts:

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- (i) *The General Part* which includes a description of the reference regulatory framework and Alitalia's governance and organisational structure adopted for preventing the commission of offences;
- (ii) *Special Parts*, compiled by grouping the offences described in the General Part with a relative description.
  - Types of offences prescribed by the Decree which have been considered by the Company as necessary due to the characteristics of the activity executed;
  - Processes/sensitive activities, compared to the types of offences prescribed by the previous point, which are present in the corporate context and in the control *standards* related to it.

### 3.5 Connection between the Model and the Code of Conduct

In order to integrate the different control systems provided for in aforementioned Leg. Dec. 231/2001, a Code of Conduct has been drawn up by the Company, in order to emphasize the primary goal aimed at satisfying, in the best possible way, requirements and expectations of the Group's stakeholders (such as shareholders, employees, clients, consultants, suppliers).

Among other things, the Code of Conducts aims to facilitate and promote high professional standards and to avoid instances in which the codes of conduct do not comply with the company's interest or legal prescriptions, or which may be in contrast from the values that the Company and the Group aim to maintain and promote.

The Code of Conduct is addressed to corporate bodies, any employee at any hierarchical level and to anyone interacting with the Group, on a full-time or part-time basis.

Therefore, the Code of Conduct must be considered as the fundamental basis of the Model. When the two are combined, they represent the overall regulatory structure aimed at transmitting a code of conduct based on ethical behaviour and transparency. They are deeply rooted in the system; the codes of conduct contained in the document integrate one another, despite the fact that their goals are different:

- the Code of Conduct is independent and can be applied in a general way by the Company in order to express the principles concerning the Company's ethics, which must be observed by everyone;
- on the other hand, the Model answers specific prescriptions provided for by the Decree, finalized at preventing the occurrence of particular types of offence (for actions which, despite appearing to be beneficial for the company, they can actually result in the company's administrative liability pursuant to regulations set out in the Decree).

### 3.6 Company serious offences

The implementation of the Model as a means to motivate individuals working for the Company and to help them establish a code of conduct based on lawfulness and ethicalness also has a positive effect in the prevention of the perpetration of any kind of crime or offence prescribed for by the legislation.

Considering the general company context, business activities carried out by the company and areas potentially subjected to the perpetration of offences, a list of offences to be included in the Special Parts section of the Model, have been specifically compiled as follows:

- Offences committed in relation to the Public Administration;
- Offences against public confidence;
- Corporate offences;
- Offences with a terrorist intent or the intent to subvert democratic order;
- Personal offences;
- Cross-border offences;
- Unintentional manslaughter and unintentional serious or very serious injuries committed in breach of the applicable regulations on health and safety at work;
- Offences associated with receiving, laundering and using money, properties or utilities of illicit origin;
- Computer abuses and illicit processing of data;
- Offences against industry and trade;
- Organised crime offences;
- Intellectual property offences.
- Any instances of soliciting someone to refrain from making declarations or to misrepresent facts before a judicial authority;

In this regard, it is hereby specified that a special part concerning offences for abuse of market position (art. 25- sexies of the Decree) has not been drawn up due to the fact that Alitalia is not a listed Company nor it has the financial capabilities for taking part in negotiations within an Italian multilateral negotiation system.

Similarly, a special part concerning offences for feminine genital mailing (art. 25- quarter 1 of the Decree) has not been drawn up because there is no such risk of offence within the corporate context.

### **3.7 Drawing up, implementing and updating the Model**

#### *3.7.1 Competence*

The Steering Committee Board is responsible for drawing up, implementing and keeping the Model updated.

Furthermore, the Steering Committee, has considered it necessary to delegate the Supervisory Board with the task of assessing directly, whenever it may be deemed necessary, modifications of descriptions contained within the Model, in order to ensure prompt and efficient updates of the Model, without affecting operational coordination of processes, compliance with the Model's provisions and their dispatch.

Please note that the expression “descriptive aspects” refers to elements and information deriving by resolutions of the Board of Director and the Steering Committee, or may result from deeds of the Company (such as delegation of powers, orders of service, organisational modifications and corporate procedures).

Furthermore, it is hereby pointed out that operational procedures adopted in light of the present Model and their updates are established by competent corporate departments. The Supervisory Body is promptly and constantly updated on the implementation of aforementioned procedures.

### *3.7.2 Inspections and controls over the Model's functioning*

The Supervisory Board, pursuant to the powers assigned by art. 6, paragraph 1, lett. b) and art. 7, paragraph 4, lett. a) of the Decree and in accordance with the Regulation, is in charge of managing, developing and constantly updating the Model.

As a result, the Supervisory Board draws up and forwards observations and proposals, concerning the organisation and the monitoring system, to the relevant company departments, or in particular circumstances, to the Steering Committee.

For this purpose, the Supervisory Board must promptly inform the Steering Committee and the Auditing Board of any instances, circumstances or organisational deficiencies which have been highlighted during the fulfilment of supervisory activities resulting in the necessity to update or modify the Model, as well as reporting at least on a six-monthly basis, any other necessary changes.

For the same purpose, the Supervisory Board draws up and promptly reports its annual programme for the Steering Committee and for the Auditing Board, save for the right of Board members to perform unplanned controls and verifications.

The Steering Committee reports to the Board of Directors, at the earliest meeting, of any information received by the Supervisory Board.

### *3.7.3. Updates and modifications*

The Model shall be updated or modified any time it may be deemed necessary or appropriate or, in any case, after a number of circumstances, such as:

- Non-compliance or evasion of Model's prescriptions, should further preventive possibilities be identified for the prevention of offences pursuant to Leg. Dec. 231/2001;
- Relevant changes to the Company's organisation and/or policies for achieving corporate activities;
- Legislative changes which may affect the Company (such as, the introduction of new types of offences in the Decree);
- Evidence of inadequacies following inspective activities;

In any case, the Model shall be submitted to a regular reviewing procedure to be established by the Steering Committee on a triennial basis.

## **3.8 Application of the Model's principles by subsidiary companies**

The Company defines the Code of Conduct and corporate policies, in connection with organisation, management and control models pursuant to Leg. Dec. 231/2001.

To this end, the current Model is transmitted to subsidiary companies, in any appropriate way, as a framework to be used by other companies when drawing up their own model.

Until then, subsidiary companies must prevent the occurrence of any offence by adopting suitable organisational and internal verification measures.

## 4. THE SUPERVISORY BOARD PURSUANT TO LEG. DEC. 231/2001

### 4.1 Alitalia - Compagnia Aerea Italiana S.p.A. - Supervisory Board

Pursuant to art. 6, paragraph 1, lett. a) and b) of Leg. Dec. 231/2001, if the offence has been committed by an individual indicated in article 5 of Leg. Dec. 231/2001, the Company is not prosecuted if it has, among other things, adopted and efficiently put into effect an organisation and management model and assigned the responsibility for supervising the functioning and observation of the model and its update<sup>37</sup> to an internal company unit with independent powers of initiative and control.

In this context, during the preparatory phase which preceded the drafting of the Model, the Steering Committee appointed the Company's Supervisory Board on 29 July 2009. On the same date, the Regulation, to which the Steering Committee had expressed no opposition, was also approved. In that moment, the Supervisory Board monitored the works and the draft copy of the present Model before it was finally approved by the Steering Committee.

### 4.2 Requisites

The Company requires the Supervisory Board to be provided with fundamental requisites for its appointment, so as to carry out its activities whilst ensuring an autonomous and independent behaviour, professionalism and continuity.

#### *Subjective requisites for nomination*

Individual members of the Supervisory Board shall be deemed ineligible in the case of occurrence of one of the following:

- a) Circumstances provided for in art. 2382 of the civil code;
- b) Any circumstance which may seriously compromise the member's independence and autonomy;
- c) Commitment for trial for one of the offences outlined in Leg. Dec. 231/2001;
- d) Commitment for trial for any non intentional offence or any other offence which may result in disqualification, definitive or temporary, from holding public office or executive positions within companies.

Should any of the aforementioned circumstances arise, Supervisory Board members must promptly inform the Steering Committee; in this case, the mandate of the member in question shall automatically and immediately be revoked.

Consequently, formal revocation of the Supervisory Board member shall be promptly given by the Steering Committee which shall then appoint a new member without delay.

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<sup>37</sup> In this regard, the illustrative report of Legislative Decree n.231/2001 states that: “The company (...) shall furthermore monitor the effective implementation of the models, and therefore their compliance: to this end, to ensure the best possible effectiveness of the system, it agrees for the Company to make use of an internal structure (to avoid any unlawful manoeuvres by external bodies that may jeopardize the legitimacy of the Company's work, thus making it liable) possessing autonomous powers and specifically set out to complete these tasks (...); the Control Body needs to be constantly informed to ensure its operational capacity”

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Should revocation result from instances which may seriously compromise autonomy and independence requisites, the Steering Committee shall formally communicate the instance, after conferring with the Auditing Board.

### *Autonomy and independence*

The Company's Supervisory Board carries out its duties in full independence and autonomy from other corporate boards; it is also vested with autonomous financial powers, based on an available annual budget granted by the Steering Committee further to request by the Supervisory Board itself.

The Supervisory Board shall dispose of its financial resources, as provided for in the budget, autonomously and without requiring permission, for which it shall provide justification of expenses incurred in the annual report.

The Supervisory Board is entrusted with the amplest powers in order to carry out effectively assigned controlling and supervisory duties<sup>38</sup>.

In the fulfilment of their duties, Supervisory Board members shall not find themselves, even potentially, in any kind of possible conflict of interest, for any whatsoever personal, family or professional reason. In this case, they must inform the other members of the Supervisory Board immediately and shall not attend their deliberations in this regard.

Since Supervisory Board members are internal members of the company, the level of independence of the Supervisory Board shall be evaluated globally, as total autonomy from the company itself cannot be accomplished.

### *Professionalism*

The Supervisory Board as a whole must have the following professional competences:

- Knowledge of the organisational structure and of corporate principles;
- Sufficient legal knowledge enabling to identify the occurrence of any possible offence.

When necessary, external consultants' services may be requested by the Supervisory Board, whilst carrying out relevant technical operations in the fulfilment of controlling and inspecting activities.

In this case, external consultants shall always report to the Supervisory Board and inform them of results which have emerged during the execution of their activities<sup>39</sup>.

### *Continuity*

Continuous operations must be guaranteed by the Supervisory Board during the fulfilment of its duties,

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<sup>38</sup> In this regard, paragraph 4.7 must be used for reference.

<sup>39</sup> “This set up ensures that the principal of responsibility that the Law confers to the Company's internal unit is maintained and matched by the greater professionalism of its external consultants, ultimately resulting in greater effectiveness”. The same holds true when considering the prospect of creating a custom-made Supervisory Board (or, alternatively assigning the role of Supervisory Board to the Committee for internal controls or for internal auditing), *Confindustria Guidelines, cit. 44*

also through the provision of regularly planned inspecting and monitoring activities, the drawing up of minutes after every meeting and the conveyance of regular flows of information by other Company departments falling within its purview.

### 4.3 Structure, nomination and duration

Alitalia's Supervisory Board is appointed by the Steering Committee which is also responsible for appointing the Chairman. The Supervisory Board must have the following requisites: (i) eligibility, (ii) autonomy and independence and (iii) professionalism, as specified in the previous paragraph.

No specific indications on the structure of the Supervisory Board are provided for by Leg. Dec. 231/2001. Consequently, in compliance with general legal requirements, the solution chosen by the Company ensures the execution of effective controls by the Supervisory Board, in full compliance with aforementioned autonomy and independence requisites, and based on company size and complex organisational structure.

In this context, Alitalia's Supervisory Board is formed by 3 members, by an external professional, also acting as the Chairman, by a member of the Auditing Board and by the Director of Legal, Corporate and Auditing Department.

Acceptance by each member of the Supervisory Board implies commitment to comply with (i) the Model and the Code of Conduct in all aspects connected with the Board itself (ii) the Regulation adopted (iii) in general, all continuity duties relating to the fulfilment of duties and the prompt conveyance of relevant instances to the Steering Committee.

In any case, the Steering Committee shall verify on an annual basis, on-going suitability requisites of both individual members and of the Supervisory Board Members as a whole.

In case of death, expiry, revocation or renunciation by a member of the Supervisory Board, the Steering Committee will undertake to quickly replace him/her. The mandate of the new member shall expire at the same time as the mandates of previously appointed members.

In case of the Chairman's death, expiry, revocation or renunciation, the member shall temporarily be replaced by the oldest member of the Board, until a new Chairman of the Supervisory Board is appointed by the Steering Committee.

The mandate of the Supervisory Board is valid for as long as of the Board of Directors is in office.

### 4.4 Revocation

The revocation of a member of the Supervisory Board may only occur for a just cause, by Steering Committee resolution and with the agreement of the Auditing Board.

The following instances provide some examples of revocation for a "just cause":

- Seriously negligent fulfilment of a duty connected with the position held;
- "*Omitted or insufficient supervision*" by the Supervisory Board, according to art. 6, paragraph 1, let. d) of Leg. Dec. 231/2001, following a conviction, even if it has not become final, inflicted

upon the Company or other companies in which the individual was a Surveillance Board member, pursuant to Leg. Dec. 231/2001, or if the member benefits from plea bargaining.

#### **4.5 Reasons for revocation**

Should any circumstances arise which could potentially affect the requisite of honourability of one or more members of the Surveillance Board, the Steering Committee, with the Auditing Board's agreement, may revoke the mandate of the member for the duration of the potentially compromising situation. In this case, the Steering Committee shall also establish how the Board will be structured during the revocation period.

#### **4.6 Temporary impediment**

Should any temporary circumstances arise, which could temporarily influence a member of the Supervisory Board in the fulfilment of his/her mandate or compromise his/her requisite of autonomy and independence, a deliberation by the Steering Committee may dispose, further to revocation of the aforementioned member, and with the agreement of the Auditing Board, the appointment of a new member for the duration of the temporary impediment.

#### **4.7 Duties and powers**

The Supervisory Board is vested with autonomous powers of initiative, action and control, which can be extended throughout all the Company departments and units; such powers must be used to ensure that all the tasks provided for by the Model and the legal applicative regulations of the Model itself are promptly and accurately implemented in order to monitor effective compliance with the Model, pursuant to art. 6 of Leg. Dec. 231/2001.

No Company unit or department is allowed to questions activities that are put forward by the Supervisory Board, since the monitoring and control activity executed by the Supervisory Board is strictly functional to the achievement of an efficient implementation of the Model and in no way can the Company's institutional monitoring functions be replaced or substituted. Thus, the Supervisory Board is entitled to require company information and documentation autonomously and without having to request any authorizations from the company's top management and such requests cannot be turned down.

In particular, the Supervisory Board is vested with the following powers, in order to carry out and execute the duties assigned to it:

- Verify that the Model is correctly implemented by Employees and Recipients in general;
- Verify that the Model is adequate and effective, with particular attention paid to areas “at risk” of offence and suitability of adopted procedures in order to prevent the perpetration of offences pursuant to Leg. Dec. 231/2001;
- Promote and ensure that the Model is appropriately distributed and that Employees and Recipients are well aware of its contents;
- Ensure that the Model is properly updated, reporting immediately to the Steering Committee and to the Auditing Board any needs to integrate and update it further to changes in current legislation, of the company's structure or any other relevant circumstances;

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- Execute regular checks within the Company so that procedures indicated in the Model and principles of the Code of Conduct are adequately utilized;
- Promote, alongside the relevant company departments, training and internal communication programmes, specifically referring to the Model, to behavioural standards and adopted procedures, as required by the Decree;
- Should omissions or insufficiencies be reported in the execution of the Model provisions, or potential breaches of the Model's indications, information and reports shall be requested without delay to the individuals responsible for the Department where the offence was perpetrated or the authors of the offences (if known). The Supervisory Board promptly establishes sanctions to be inflicted and measures to be adopted in order to correct the problem and impede the commission of further offences;
- Keep in constant contact with company departments which must provide, even without prior notice, free and unlimited access to information, data, documents and any other element which may be relevant for the execution of the duties assigned. To this end, information may be requested directly to all the Company's personnel. Lack of cooperation with the Disciplinary Board represents a disciplinary offence;
- Report to the Steering Committee and Auditing Board any instances in which the Model's provisions have been breached or Company's Employees haven't complied with the requirements set out by the Supervisory Board.

During the fulfilment of its activities, the Supervisory Board may be supported by the Internal Auditing Department and by other internal Company Departments characterised by specific competences in the areas that are being monitored, as well as by external consultants.

In general, the Supervisory Board operates in concert with the appropriate company's organisational units with regards to all aspects related to the operational implementation of the Model.

The Supervisory Board is also supported by a Secretary, nominated by the Board itself, in the implementation of its duties.

The Company is in charge of adequately informing the company departments of the Supervisory Board's duties and powers.

The Supervisory Board does not manage or make decisions concerning the Company's running activities, nor can it organise or change the corporate structure, nor does it have any sanctioning powers.

Information revealed by Members of the Supervisory Board and individuals cooperating with the Supervisory Board during the fulfilment of their responsibilities must be covered by secrecy, except for cases when the disclosure of the information is necessary for the execution of the function or save for any mandatory legal requirements. The confidentiality provision, however, does not apply to members of the Steering Committee and of the Auditing Board.

### **4.8 Conveyance of information to and from the Supervisory Board**

#### *4.8.1 Supervisory Board reporting to corporate bodies*

The Supervisory Board conveys the information concerning the Model's implementation, the

evidence of any possible critical aspects and the necessity of adopting changes.

In particular, the Supervisory Board shall:

- Report to the Board of Directors, the Steering Committee and the Auditing Boards on a six-monthly basis and inform them of the evidence which has become known during monitoring actions, pointing out any problems that may have emerged and any measures that should be adopted to solve them.
- Prior to this, it shall communicate to the Board of Directors, the Steering Committee and the Auditing Board details of activities that have been planned for the year ahead;
- Immediately signal to the Steering Committee the need to update and integrate the Model following changes to the current legislation or to the company structure or any other relevant instances. The Board of Directors and the Auditing Board shall be promptly conveyed this communication.

The Supervisory Board can be summoned and at any time it can ask to meet the Board of Directors, the Steering Committee and the Auditing Board.

All meetings between the Supervisory Board and corporate units must be documented. The Supervisory Board is responsible for filing the relevant records.

#### *4.8.2 Information to be provided to the Supervisory Board*

The Supervisory Board must be immediately informed about any occurrence, behaviour or events which may determine the breach of the Model or, more generally, which may have some relevance in relation to Leg. Dec. 231/2001.

In particular, any situation which may expose the Company to the possibility of an offence being perpetrated must be reported in writing by the Company's Management and by each individual area Directors, as well as communicating regularly and promptly the arise of any new circumstance which may vary or widen the number of areas at risk of perpetration of offences pursuant to Leg. Dec. 231/2001.

Specifically, the following information shall promptly be notified to the Supervisory Board:

- any request for legal aid sent by Managers and/or Employees against which the Judiciary will act following the assessment of offences prescribed for by the Decree 231/2001;
- any enquiry committee or internal report from which the instances of offences defined under the Decree 231/2001 may be inferred;
- any notices of disciplinary procedures for facts committed in breach of the Model's provisions;
- any measures or information originating from penal investigative departments or any other authority from which the current conduct of investigations on known or unknown persons - for the instances of offences under the Decree 231/2001 - may be inferred;
- any notices of change in the structure of the organisation, powers and delegations;
- minutes and records of the meetings of Shareholders, the Board of Directors, the Steering Committee and the Auditing Board which may be relevant under the Decree 231/2001.

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In addition, the following information shall be notified to the Supervisory Board on a four-monthly basis:

- any decisions related to request, disbursement or utilisation of public financing;
- any tables or schedules summing up contracts awarded by national or European bidding procedures, or by private negotiation;
- any information on procurement contracts awarded by public bodies or entities performing functions of public interest;
- any information related to the implementation of the Model at all levels of the organisation, with particular reference to any enforced disciplinary procedures and inflicted sanctions or, conversely, any filed procedures with related motivations;
- any periodical reports on health and safety at work.

Similarly, all employees are required to notify any fact or circumstance observed in the fulfilment of their professional activities pursuant to Leg. Dec231/2001.

Partners, advisors and other recipients of the Model operating outside the Company are requested to directly and immediately report to the Supervisory Board any request received directly or indirectly from one of the Company's employees or representatives to the effect of causing behaviours that are likely to determine a breach of the Model. Such request is to be specified in the work contract that these individuals have undersigned with the Company.

Any individual working for the company must report and notify the perpetration of any breaches of Model prescriptions, with reference to their duty of diligence and loyalty towards the employer, pursuant to articles 2104 and 2105 of the civil code<sup>40</sup>.

The employee cannot be inflicted a disciplinary sanction as a consequence of his fulfilment of his reporting duties.

The Company shall adopt suitable and efficient measures in order to maintain the confidentiality of the person reporting useful information to the Supervisory Board when coming across non-compliance with the Model's prescription on personnel conduct, procedures implementation and internal monitoring procedures, except for specific cases provided for by law and the safeguard of the Company's rights or of rights of individuals who have been erroneously or maliciously accused.

Any kind of retaliation, discrimination, penalization against individuals who, in good faith, report issues to the Supervisory Board are prohibited. The Company reserves its right of taking measures against anyone who maliciously reports false information.

The following email address [odv.231@alitalia.it](mailto:odv.231@alitalia.it) has been created to provide further assistance in the observation of requirements provided for in the current paragraph.

Any report of non-compliant behaviour can be notified to the Supervisory Board verbally or in writing

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<sup>40</sup> These norms specify, respectively: “[1] that the employee shall use the diligence required by the nature of the work, in line with Company's interest and the higher interest of national production. [2] The employee shall, moreover, observe the prescriptions and work regulations specified by the employer and by his collaborators by whom the employee is supervised” (art. 2104 civil code); furthermore, “the employee shall not, directly or on behalf of any third party, enter in competition with the employer, nor disclose any information regarding the organization or the Company's production methods, nor use the information to put the Company at risk” (art. 2105 civil code)

in a sealed envelope, marked strictly confidential, to the following address:  
Supervisory Board di Alitalia S.p.A.  
Piazza Almerico da Schio Pal. RPU  
00054 Fiumicino (Roma).

Reports shall be dealt with by the Supervisory Board according to their Regulatory prescriptions.

#### **4.9 Informative note to and from the Supervisory Board and the Supervisory Boards of subsidiary companies**

Any subsidiary company which refers to its own Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001, sets up an independent and autonomous Supervisory Board, for the purposes specified in the Decree and under their responsibility.

Alitalia Supervisory Board may ask to be provided with information by the Supervisory Boards of the subsidiary companies, should it require it to be necessary for the fulfilment of its supervisory activities.

Supervisory Boards of subsidiary companies must comply with any request expressed by Alitalia's Supervisory Board.

In this regard, Alitalia's Supervisory Board may demand to acquire relevant documents and information and to carry out, individually or alongside the Supervisory Board of the pertinent owned company, regular controls and targeted monitoring on specific activities at risk.

The Supervisory Board of each subsidiary company shall send an informative note to Alitalia's Supervisory Board at least on a six-monthly basis, concerning the implementation of the Model, with particular reference to:

- the acquisition of control measures regulated by the Model;
- training activities devoted to the Model;
- relevant instances which may have emerged during the fulfilment of activities, any disciplinary sanctions inflicted and any significant modifications applied to the models.

Alitalia's Supervisory Board informs the Auditing Board and the Steering Committee, as indicated in the present paragraph, in the six-monthly report. Any potential corrections brought about to the organisational models of subsidiary companies, following verification procedures, are of exclusive competence of the subsidiary companies themselves.

#### **4.10 Compilation and storage of information**

Any information, report, evidence prescribed for by the Model and by the Supervisory Board is stored by the Board itself according to the procedures indicated in the Regulation.

## 5. THE DISCIPLINARY SYSTEM

### 5.1 General principles

Art. 6, paragraph 2, letter e) and art. 7, paragraph 4, letter b) of Leg Dec. 231/2001 establish that the introduction of a disciplinary system that is suitable for sanctioning non-compliance with the measures of the Model, is a prerequisite for an effective application of the Organisation, Management and Control Model. Therefore, the definition of a suitable disciplinary system represents a fundamental element for the effectiveness of the Organisation, Management and Control Model pursuant to Leg. Dec. 231/2001, in connection with companies' administrative liability.

Any breach of regulations contained in the Model, notwithstanding the perpetration of an offence itself, of penal charges or the outcome of penal proceedings may be brought before the relevant judicial authority<sup>41</sup>.

Any breach of regulations contained in the Model may result in the infliction of sanctions; the same applies in case of non-compliance with prescriptions indicated in the Code of Conduct.

Within the limits of powers conferred and competence, the Company's management is responsible, for giving notice, for investigating offences and inflicting disciplinary sanctions.

The Supervisory Board, upon becoming aware of a breach of the Model, shall carry out all necessary investigations and formulate a proposal concerning the disciplinary actions to be inflicted. Notice shall be given to competent company departments set out in the disciplinary system, which shall establish whether to implement or modify the measures prescribed for by the Supervisory Board. Relevant company authorities or organisational business areas shall monitor the application of the said disciplinary sanctions.

In any case, the initial notice and investigation phases, as well as the effective implementation of sanctions are carried out in compliance with current legislation, regulatory prescriptions and National Collective Labour Agreements.

### 5.2 Sanctions inflicted upon company employees

Any conduct failing to comply with the regulations dealing with conduct contained in the Model is always considered as a disciplinary violation.

The Company asks its employees to report any violations; any contribution shall be considered positively, even if the employee reporting the violation had previously taken part in the commission of the offence itself.

With regards to disciplinary measures contemplated for subjects subordinate to the management or

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<sup>41</sup> Given the complete separation between violations to the Company's code of conduct and internal procedures, and violating the Law - which entails committing a crime - the disciplinary assessment of the code of conduct carried out by the employers need not overlap with the judge's assessment in a penal court - except in the case of inspections by the employment judge. Therefore, the employer is not required to wait before the end of any penal procedure before he acts. It is thoroughly recommended that the infliction of the disciplinary sanction be delivered promptly, prior to any judgement delivered by the penal court of law. *Confindustria Guidelines, cit. 30*

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supervision of other company managers, any disciplinary sanction shall be specified by art. 7 of the Workers' Statute, which unites the employee's misconduct to the specific disciplinary measure to be adopted.

Dismissal and any other disciplinary measure are independent from possible administrative liability for any offence perpetrated by the employee.

### 5.2.1 Sanctions inflicted upon middle managers#

Any breach of regulations contained in the Model and in the Code of Conduct by members of staff constitutes a fundamental infringement of Company procedures which, therefore, violates Company regulations.

In particular, Company employees subject to the supervision and management by other individuals shall comply with prescriptions provided for by Alitalia - Compagnia Aerea Italiana S.p.A Company Collective Labour Agreement, undersigned on 30 October 2008.

The sanction inflicted shall be proportional to the gravity of the offence. In particular, the following elements shall be taken into account:

- the subjective element, that is the degree of intent in the behaviour or of the gravity of the offence (negligence, imprudence or malpractice);
- the overall conduct of the employee, with particular attention given to the existence or lack of previous disciplinary sanctions;
- the hierarchical level and possibility by the employee who perpetrated the offence of acting autonomously;
- the involvement of other individuals;
- the gravity of the consequences resulting from the offence, that is in respect of any harm and possible damages the company may incur in as a result of the offence itself;
- any other relevant circumstances relating to the violation in question.

The following applicable sanctions which can be inflicted upon personnel are provided for by Alitalia - Compagnia Aerea Italiana S.p.A. – Company Collective Labour Agreement<sup>42</sup>:

- verbal warning;
- written warning;
- pecuniary fine worth up to a maximum of 4 hours of income;
- suspension from work without pay for up to 10 days;
- dismissal with notice;
- dismissal without notice.

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<sup>42</sup> In particular: Art. 28 of the Disciplinary Sanctions section regarding flight assistants, is based on the following disciplinary sanctions: verbal warning; written warning; pecuniary fine worth 4 hours of flight indemnity income; suspension from work without pay for up to 10 days; dismissal with notice; dismissal without notice.

Art. 33 of the Disciplinary Sanctions section concerning pilots, is based on the following disciplinary sanctions: verbal warning; written warning; pecuniary fine worth no more than 4 hours of income (based on the monthly salary/173); suspension from work without pay for up to 10 days; dismissal with notice; dismissal without notice.

Violations that may lead to disciplinary action being inflicted upon, pursuant to Leg. Dec. 231/2001 are specified as follows:

1. An employee may be inflicted a “**verbal warning**” in case of breach of specific Model regulations (such as, failure to respect company procedures, failure to report the required information to the Supervisory Board, failure to supervise etc. ), or in case of non-compliant behaviour in performing activities for areas at risk, as prescribed for by the Model. Such conduct is regarded as a breach of Company regulations.
2. An employee may be inflicted a “**written warning**” in case of breach of specific Model regulations or non-compliant behaviour when performing activities in areas at risk, as prescribed for by the Model. Such conduct is regarded as a breach of Company regulations.
3. An employee may be inflicted a “**pecuniary fine worth up to a maximum of 4 hours of income**” in case of breach of specific Model regulations or in case of non compliant behaviour when performing activities in areas at risk, as prescribed for by the Model which may damage the Company’s integrity or put the Company at risk. Such conduct is regarded as a breach of Company regulations which may damage the Company’s integrity and/or may harm the Company’s interests.
4. An employee may be inflicted a “**suspension from work without pay for up to 10 days**” in case of breach of specific Model regulations or in case of non compliant behaviour when performing activities in areas at risk, as prescribed for by the Model, which damage the Company since acts contrary to the Company’s interests are carried out or in the case in which more than three sanctions referring to points 1, 2, and 3 have been inflicted upon an employee during the calendar year. Such conduct is regarded as a breach of Company regulations which damages the Company’s integrity and/or harms the Company’s interests.
5. An employee may be inflicted a “**dismissal with notice**” in case of breach of specific Model regulations, clearly aimed at perpetrating an offence prescribed for by Leg. Dec. 231/2001. Such conduct is regarded as a grave breach of Company regulations and/or serious non-compliance with the employee’s duty to cooperate in the Company’s interest.
6. An employee may be inflicted a “**dismissal without notice**” in case of breach of specific Model regulations when performing activities in areas at risk, as prescribed for by the Model, following which the Company is liable pursuant to Leg. Dec. 231/2001 or if the employee has been sanctioned more than three times in the calendar year for offences specified in point 4. Any such conducts deeply damage the relationship of trust with the Company and cause great moral and/or damage to the Company.

### 5.3 Sanctions inflicted upon Company executives

Company executives, when carrying out their professional activities, are required to comply with and to ensure compliance with the Company’s Model prescriptions by employees operating under their supervision or management.

Any violation by a Company executive of the regulations contained in the Model may result in the application of sanctions; some offences are indicated as follows:

- Lack of supervision by individuals who are responsible for the conduct of other individuals under their hierarchical control with regard to the fulfilment of their functions in activities at risk and activities connected with operation processes at risk;
- Failure to notify the Supervisory Board of any fact or circumstance met in the fulfilment of their functions, should the individual be informed of it, following which the Model is breached

and the Company could become liable pursuant to Leg. Dec. 231/2001;

- Failure to notify the Supervisory Board of any difficulties found in the fulfilment of their functions in areas at risk of offences, resulting from oversight activities carried out by relevant company departments;
- Failure to respect the codes of conduct outlined in the Model procedures, resulting in the violation of the Model itself and making the Company liable pursuant to Leg. Dec. 231/2001.

Any violation of provisions and regulations contained in the Model by a Company executive shall result in the application of sanctions upon the subject involved, on the basis of the principle of seriousness, repetition of offence, personal noncompliance, lack of supervision, pursuant to company regulations and relevant legislation.

#### **5.4 Sanctions inflicted upon members of corporate bodies**

Any breach of prescriptions or regulations of the Model by members of corporate bodies shall be promptly reported to the Steering Committee and to the Auditing Board by the Supervisory Board. Recipients of such notices shall then apply appropriate measures.

In order to guarantee the individual with the possibility to justify himself, a time limit must be established for him/her to notify the justification and/or written explanation, in addition to the possibility of expressing his reasons verbally.

#### **5.5 Sanctions inflicted upon the Supervisory Board**

Should the Supervisory Board's conduct be negligent and/or incompetent in the fulfilment of its monitoring functions concerning compliance with prescriptions and regulations provided for in the Model, and having failed to report and act upon any violation of the Model, suitable measures shall be applied by the Steering Committee as per legal provisions, including revocation of the mandate as well as a request for reimbursement of damages.

To enable the individual to adequately defend himself, a time limit must be set for notifying explanations and/or written notification, as well as verbal justifications.

#### **5.6 Sanctions inflicted upon Partners and Consultants**

Any breach of the Model by Partners or Consultants in the fulfilment of activities at risk of prescriptions and regulations provided for in the Model, notwithstanding any perpetration of offences pursuant to Leg. Dec. 231/2001 shall be punished in compliance with specific contractual clauses as set out in each individual contract.

Clauses specifically require third parties to comply with the Model's regulations and Code of Conduct, by avoiding perpetrating acts which could result, for instance, in the infringement of the Model's prescriptions by the Company.

Non-compliance with the aforementioned requirement, may lead to the termination of the work contract by the Company, and to the possible infliction of penalties.

Obviously, any breach of the regulations and prescriptions contained in the Model may also result in the reimbursement of damages to the Company arising from any offence committed by third parties.

## **6. THE TRAINING AND COMMUNICATION PLAN**

### **6.1 Overview**

The Company intends to establish and circulate the contents and principles of the Model in order to ensure a fully efficient application of the Model to anyone operating within or outside the business.

In particular, the Company intends to disclose the contents and principles of the Model not only to full members of staff but also to persons contractually bound with the Company, operating – albeit occasionally – in the pursuit of the company’s business interests.

The Model applies to individuals with representative, administrative or managing responsibilities or an internal body vested with autonomous powers of initiative and control, and with requisites of independence or to individuals with management and supervisory powers, also de facto, or to individuals managed or supervised by a Company executive (pursuant to art. 5, paragraph 1, lett. b) of Leg. Dec. 231/2001), but, also, generally to all individuals operating in the interests or to the advantage of the Company. Therefore, members of corporate bodies, employees, consultants and partners must comply with the Model’s prescriptions.

Consequently, the Company intends to:

- ensure that all individuals operating in the name of or in the interests of the Company during the fulfilment of their functions are aware of the fact that any breach of prescriptions provided for by the Model may lead to the perpetration of an offence and the consequent infliction of disciplinary sanctions;
- inform all individuals operating in any capacity, in the name of or in the interests of the Company that any breach of prescriptions provided for by the Model may result in disciplinary sanctions or in the termination of the work contract;
- one more time, draw attention to the fact that the Company shall not tolerate the perpetration of any kind of offences, regardless of the goals behind their perpetration, since such offences (even when the Company may appear to benefit from their commission) are in any case contrary to compliance with ethicalness of the Company’s corporate culture.

Communication and training activities shall be diversified to ensure relevance for all individuals involved; in any case they shall be full, clear, accessible and continuous in order to ensure full awareness of corporate procedures and the code of conduct to be adopted.

All individuals are required to comply at all times with any requirement prescribed for by the Model, in observance of their duties of lawfulness, ethicalness and due diligence, as well as their contractual obligations towards the Company.

Communication and training activities shall be promoted by the Supervisory Board, which shall also be in charge of promoting, together with specific relevant company departments, training and internal communication programmes, pursuant to the Model, the Code of Conduct and Decree procedures.

## 6.2 Employees

All employees are required to: i) be aware of and comply with the principles and contents of the Model; ii) be aware of operative procedures concerning their specific job duties; iii) contribute in an active way, according to their specific roles and responsibilities to ensure that the Model is efficiently implemented, by reporting any possible breaches of the same.

The Company intends to promote and facilitate awareness of the Model's contents and principles; the level of knowledge required shall vary according to the job position and role of each individual operating within the Company.

All employees must be able to access and consult all documentation related to the Model (extracts of the Model, the Code of Conduct, information on the Company's organisative structure, corporate activities and procedures) directly on the Company's intranet, in a specifically dedicated area. Each employee must print and store a copy of the Model. In any case, should intranet access not be possible for any reason, a copy of the Model shall be made available in a different way, for example by attaching it to the pay slip or displaying it onto the notice board.

Competent Company Boards cooperate with the Supervisory Board in identifying the most efficient way of providing training services concerning the principles and contents of the Model, in particular with regard to individuals working in sensitive areas pursuant to Leg. Dec. 231/2001 (such as: *staff meetings, on line courses, etc.*).

At the end of the training programme, participants will be required to sign a declaration stating that that they have attended the course.

Suitable communication procedures shall be adapted in order to update employees regarding any future modifications to the Model, in addition to any procedural, legal or organisative changes of relevance.

The Supervisory Board shall monitor employees' awareness levels of the contents of the Model by organizing *ad hoc* verification procedures.

## 6.3 Additional recipients

The contents and principles of the Model shall also be communicated to third parties with whom the Company's works with, for instance in case of contractually bound cooperation agreements or other external individuals collaborating with the Company (such as partners and consultants).

To this end, the Company establishes:

- Categories of external individuals cooperating with the Company to whom the Model prescriptions shall also apply in reason of activities performed.
- The way the Model and the Code of Conduct shall be communicated to relevant external individuals; necessary procedures shall be applied in order to obtain full compliance with the Model's requirements and effective knowledge of the prescriptions herein contained.