



## **Organizational, Management, and Control Model**

**Pursuant to Legislative Decree no. 231/2001**

*pursuant to Legislative Decree of 8 June 2001, no. 231*

*Adopted by the Board of Directors of*

*Piaggio Aero Industries S.p.A. on 19<sup>th</sup> September 2017*

**GENERAL PART**

Current version: third version

Log of changes:

<b>Version</b>	<b>Reason of the change</b>	<b>Date</b>
First version	Adoption of the Model	5 <sup>th</sup> April 2011
Second version	Update to new company organization	May 2014
Third version	Update to include dispositions of Law no. 186 of 15 December 2014, no. 68 of 22 May 2015, no. 69 of 27 May 2015	19 September 2017

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## Definitions

**Piaggio Aero or the Company:** Piaggio Aero Industries S.p.A.;

**Code of Ethics:** internal document adopted by the Company with the decision of the Board of Directors on 18<sup>th</sup> March 2015, in which the ethical principles to which the Company intends to standardize its entire business are defined;

**Legislative Decree:** Legislative Decree of 8 June 2001, no. 231, titled “*Rules for the administrative liability of Bodies, Companies and Associations, also without legal personality, pursuant to article 11 of law of 29 September 2000, no. 300*”, published in the Official Journal no. 141 of 19 June 2001, as subsequently amended and supplemented;

**Addressee:** directors and members of Corporate Bodies of the Company, employees of all kind as well as partners, by virtue of specific contractual clauses and limited to the sensitive process in which they may be involved;

**Employees:** people under the direction or surveillance of one of the Key Officers and all the subjects that have an employment relationship, of any kind, with the Company as well as posted workers or parasubordinate workers;

**Business structure:** organizational unit of the Company, grouped according to the similarity of the skills needed for the conduction of the regular business activities;

**Executives:** employee that is part of the management of an organization. This role is characterized by the right to dispose, autonomy from the employer and high discretion in decision-making;

**231 Model:** the present Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001

**Corporate Body:** corporate structure vested with the broadest powers over the ordinary and extraordinary management of the Company;

**Supervisory Board:** the Supervisory Board of the Company instituted pursuant to article 6 of the Legislative Decree with the decision of the Board of Directors on 2<sup>nd</sup> March 2016;

**Procedures:** the system of policies, rules and internal regulations that rule phases, operating methods, responsibilities and controls over specific process or types of operations or activities;

**Supervisory Activities Program:** high-level planning, of the activities of the Supervisory Board that includes, among other things, the schedule of the activities to be carried out throughout the year, the definition of the control frequency, the identification of criteria and analytical procedures, as well as the possibility of conducting unplanned controls or verification activities;

**Offences:** Offences for which the law foresees the administrative liability of Bodies, Companies and Associations

**Key Officers:** individuals vested, even if *de facto*, with the representation, administration or management and control functions over Piaggio Aero;

**Public Officer:** pursuant to article 357 of the Italian Criminal Code, it is defined as such any individual which exercises a public legislative, judicial or administrative function

## Chapter 1 – Legislative Framework

### 1.1 Introduction

With the Legislative Decree of June 8<sup>th</sup> 2001 no. 231/2001 (hereafter “Legislative Decree no. 231/2001” or “Legislative Decree”), pursuant to the authority delegated to the Italian Government with article 11 of Law of 29 September 2000, no. 300<sup>1</sup> it was established the regulation of the “*responsibility of entities for administrative offences deriving from crimes*”

In particular, the regulation is applied to the entities with legal personality as well as to the entities and associations without legal personality.

The Legislative Decree no. 231/2001 finds its roots in some international conventions to which Italy is a signatory state, that dictate the definition of the liability of entities incurring in given, specific types of offences.

In fact, according to the regulation introduced by the Legislative Decree, entities can be deemed “responsible” for some type of offences either committed or attempted, in the interest or advantage of the entities themselves, from top management (so-called “Key Officers”) and from those who are under the supervision of the top management (article 5, paragraph 1, of Legislative Decree no. 231/2001)<sup>2</sup>.

The administrative liability of the entity is independent from the criminal liability of the person that committed the crime; the two liabilities proceed in parallel.

This expanded liability is essentially aimed at including within the sphere of the sanctioning schemes the capital of the entity and, ultimately, the economic interest of the stakeholders. The latter, up to the moment of entry into force of the Legislative Decree, did not suffer the direct consequences of the crimes committed in the interests or for the advantage of their own entity, by directors or by employees<sup>3</sup>.

The Legislative Decree no. 231/2001 represents an innovation to the Italian legal system as entities now are subject to, directly and autonomously, fines as well as interdiction penalties for crimes committed by individuals functionally linked to the entity pursuant to article 5 of the Legislative Decree.

However, the administrative liability of the entity is excluded if the entity has adopted and effectively implemented, before the commission of the offence, organizational, management and control models suited to prevent the offences themselves; these models can be adopted on the basis of codes of conduct (guidelines) drawn up by trade or sector associations representing the entity, including *Confindustria*, and communicated by the latter to the Italian Ministry of Justice.

The administrative liability of the entity is excluded if the Key Officers and/or the employees acted in their own or in a third party’s best interest.

### 1.2 Nature of the responsibility

Regarding the nature of the administrative responsibility pursuant to Legislative Decree no. 231/2001, the Explanatory memorandum highlights the “*birth of a tertium genus that combines the main element of the criminal justice system and the administrative one in an attempt to reconcile the preventative effect with those, even more unavoidable, of the highest possible guarantee*”.

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<sup>1</sup> The Legislative Decree no.231/2001 was published in the Official Journal of June 19<sup>th</sup>, 2001, no. 140; whereas Law no. 300/2000 is found in the Official Journal of October 25<sup>th</sup>, 2000, no. 250.

<sup>2</sup> Article 5, paragraph 1, of the Legislative Decree no. 231/2001: “Liability of the entity – *The entity is held liable for the commission of offences in its own interest or for its own advantage by: a) individuals vested with representation, administration or management functions over the entity or over one of its organizational structures granted with financial and functional autonomy, as well as by individuals exercising, even if de facto, the management or the control thereof; b) individuals subject to the direction or control of one of the individuals stated in letter a)*”.

<sup>3</sup> As stated in the foreword of the *Guidelines for the definition of Organizational, Management and Control models pursuant to Legislative Decree no.231/2001* published by *Confindustria* in March 7<sup>th</sup>, 2002 and subsequently integrated in October 3<sup>rd</sup>, 2002 with the appendix on the so-called Corporate Crimes (included within the Legislative Decree no.231/2001 as per Legislative Decree no.61/2002), updated the 31<sup>st</sup> of March 2008, and more recently in March 2014.

Indeed, the Legislative Decree no. 231/2001, has introduced in the Italian legal system a form of “administrative” liability for the entities – in accordance with the prescriptions of article 27, paragraph 1, of the Italian Constitution<sup>4</sup> - but with numerous similarities to the “criminal” liability.

Pursuant to this definition, it is worth noting – among the most significant – articles 2, 8 and 34 of Legislative Decree no. 231/2001. The first one reaffirms the principle of legality typical of criminal law; the second one states the independence of the entity’s liability with respect to the assertion of the criminal liability of the person committing such act. The latter states that this liability, derived from the commission of a crime, has to be asserted as a part of a criminal case and thus is accompanied by the typical guarantees of a criminal case. It is also noteworthy to underline the punishing nature of the sanctions applicable to the entity.

### **1.3 Offenders: Key Officers and individuals subject to the direction or supervision of one of the Key Officers**

As previously stated, the entity is responsible for the offences, pursuant to Legislative Decree no. 231/2001, committed in its own interest or advantage by:

- ó “individuals vested with representation, administration or management functions over the entity or over one of its organizational structures granted with financial and functional autonomy, as well as by individuals exercising, even if *de facto*, the management or the control thereof” (the above mentioned “Key Officers”; article 5, paragraph 1, letter a) of Legislative Decree no.231/2001)
- ó individuals subject to the direction or control of one of the above-mentioned Key Officers (the so-called individuals reporting to others; article 5, paragraph 1, letter b) of Legislative Decree no. 231/2001).

It is appropriate to reaffirm that entities are not responsible, as specifically stated in the Legislative Decree (article 5, paragraph 2), if the individuals acted in their own interest or in that of a third party<sup>5</sup>.

### **1.4 Types of offences**

According to Legislative Decree no. 231/2001, the entity can be deemed responsible only for the crimes specifically listed by articles 24 through 25 *duodecies* of the Legislative Decree if committed in its own interest or advantage by individuals identified by article 5, paragraph 1, of the Legislative Decree or by specific regulatory prescriptions pursuant to the Legislative Decree, as in the case of article 10 of Law no. 146/2006.

The types of offences can be divided in the following categories:

- ó **Crimes against the Public Administration;** referring to the first kind of offences originally identified by the Legislative Decree no. 231/2001 (articles 24 and 25)<sup>6</sup>;

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<sup>4</sup> Article 27, paragraph 1 of the Italian Constitution: “*criminal liability is individual*”.

<sup>5</sup> The Explanatory memorandum to the Legislative Decree no. 231/2001, with regard to article 5, paragraph 2 of the latter states: “*The second paragraph of article 5 changes from letter e) the delegation of the closure clause and excludes the Entity’s liability in the cases in which the individuals (either Key officers or employees) have acted in their own interest, or in that of a third part. The rule then consecrates the principle of rupture of the organizational assimilation; namely, it refers to the hypothesis in which the crime committed by the individual cannot in any way be linked to the Entity, as it was not committed even if the interest of the latter. It is to be noted that, shall the extraneity of the legal person be demonstrated as previously described, the judge will not even need to verify whether the legal person has even fortuitously obtained an advantage (and thus, result in the non applicability of the first paragraph).*”

<sup>6</sup> It comprises the following offences: Misappropriation to the detriment of the State or the European Union (art. 316-bis of the Italian Criminal Code); Inappropriate receipt of sums to the detriment of the State (art. 316-ter of the Italian Criminal Code); Aggravated fraud in the detriment of the State or of any other public body (art. 640, paragraph 2, point 1 of the Italian Criminal Code); Aggravated fraud for the obtainment of public sums (art. 640-bis of the Italian Criminal Code); Informational fraud in the detriment of the State or of any other public body (art. 640-ter of the Italian Criminal Code); Extortion (art. 317 of the Italian Criminal Code); Corruption for the purpose of exercise of powers and corruption for the purpose of commission of acts against obligations (art. 318, 319 and 319-bis of the Italian Criminal Code); Corruption in legal acts (art. 319-ter of the Italian Criminal Code); Unduly induction to giver or to promise benefits (art. 319-quater of the Italian Criminal Code); Corruption of public employees (art. 320 of the Italian Criminal Code); Penalties for the corrupting party (art. 321 of the Italian Criminal Code); Inducement to corruption (art. 322 of the Italian Criminal Code); Extortion, unduly induction to give benefits or the promise thereof, corruption and inducement to corruption of members of the bodies of the European

- ó **Crimes against public faith; namely crimes resulting in counterfeiting money, credit cards, stamped paper and other identification instruments**, identified by article 25-*bis* of the Legislative Decree and introduced by Law no. 409 of November, 23<sup>rd</sup>, 2001 on “*Urgent dispositions in connection with the introduction of the Euro*”<sup>7</sup>;
- ó **Corporate crimes**, the Legislative Decree no. 61 of April, 11<sup>th</sup>, 2002, as a part of the reform of company law, extended the administrative liability of the entities also to specific corporate crimes (such as financial misstatement, unlawful influence over the shareholders’ meeting, cited in the article 25-*ter* of Legislative Decree no. 231/2001, and subsequently modified by Law no. 69, of 27 May 2015)<sup>8</sup>;
- ó **Crimes with aims of terrorism or subversion of the democratic order** (cited by article 25-*quater* of Legislative Decree no. 231/2001, introduced by article 3 of Law no. 7 of 14 January 2003). It comprises “*crimes with aims of terrorism or subversion of the democratic order, listed in the criminal code and in special laws*”, as well as crimes, different from the one listed before that “*still disobey what is stated in article 2 of the International Convention for the Suppression of the Financing of Terrorism, held in New York, on 9 December 1999*”<sup>9</sup>;

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institutions, of officers of the European institutions and of foreign officers (art. 322-*bis* of the Italian Criminal Code); illicit induction to give or to promise benefits (“Anticorruption” Law no.190/2012).

<sup>7</sup> Article 25-*bis* was included within the sphere of the Legislative Decree no.231/2001 by article 6 of the Law Decree no. 350/2001, subsequently transformed in law, with some modifications, by article 1 of Law no. 409/2001. It comprises the following offences: Counterfeiting of currency. Agreed insertion and use of counterfeited currency in national boundaries (article 453 of the Italian Criminal Code); Currency alteration (article 454 of the Italian Criminal Code); Expenditure and insertion within national boundaries, in lack of agreements, of falsified currency (article 455 of the Italian Criminal Code); Expenditure of falsified currency in bona fide (article 457 of the Italian Criminal Code); Counterfeiting of stamps, insertion, obtainment, possession or issue into circulation of counterfeited stamps (article 459 of the Italian Criminal Code); Counterfeiting of currency-grade paper for the manufacturing of currency or stamps (article 460 of the Italian Criminal Code); Manufacturing or possession of watermarks or other instruments aimed at the counterfeiting of currency, of stamps, or currency-grade paper (article 461 of the Italian Criminal Code); Use of counterfeited or altered stamps (article 464 of the Italian Criminal Code). Law no.99 of July 23<sup>rd</sup>, on “Dispositions on the development and internationalization of companies, as well as on energy”, through article 15, paragraph 7, modified article 25-*bis*, including the sanctioning of the counterfeiting and the alteration of marks and identification markings (art. 473 of the Italian Criminal Code) as well as the insertion into national boundaries and commercialization of products with falsified markings (article 474 of the Italian Criminal Code).

<sup>8</sup> Article 25-*ter* was included within the sphere of the Legislative Decree no.231/2001 by article 3 of the Legislative Decree no.61/2002, subsequently modified by Law no.69 of May 27<sup>th</sup>, 2015. It comprises the following offences: Financial misstatement (article 2621 of the Italian Civil Code as modified by article 9 of Law no.69 of May 27<sup>th</sup>, 2015); Facts of minor relevance (article 2621-*bis* of the Italian Civil Code introduced by article 10 of Law no.69 of May 27<sup>th</sup>, 2015); non-prosecution for the specific tenuity (article 2621-*ter* of the Italian Civil Code introduced by article 10 of Law no.69 of May 27<sup>th</sup>, 2015) Financial misstatements of listed companies (article 2622 of the Italian Civil Code, as modified by article 12 of Law no.69 of May 27<sup>th</sup>, 2015); Misstatements by the External Auditors (article 2624 of the Italian Civil Code; article 35 of Law no.262 of December 8<sup>th</sup>, 2005 has included as a foreword to article 175 of the Single Code foreseen by the Legislative Decree no. 58 of February 24<sup>th</sup>, 1998 and subsequent amendments, at part V, title II, section III, articles 174-*bis* e 174-*ter*); Obstruction to control (article 2625 of the Italian Civil Code), Fictitious capital gathering (article 2632 of the Italian Civil Code); Unduly return of provisions (article 2626 of the Italian Civil Code); Unlawful conferral of profits and reserves (article 2627 of the Italian Civil Code); Unlawful operation on shares or stock belonging to the company, or to the parent company (article 2628 of the Italian Civil Code); Operations in detriment to the creditors (article 2629 of the Italian Civil Code); Abstention from the communication of conflict of interests (article 2629-*bis* of the Italian Civil Code, introduced by article 31, first paragraph, of Law no.262/2005 integrating letter r) of the article 25-*ter* of the Legislative Decree no.231/2001); Unduly repartition of company assets by liquidators (article 2633 of the Italian Civil Code); Corruption amongst private parties (art. 2635 of the Italian Civil Code, as modified by articles 3 through 5 of the Legislative Decree no. 38 of March 15<sup>th</sup>, 2017); Unlawful influence over the shareholders’ meeting (article 2636 of the Italian Civil Code); Market rigging (article 2637 of the Italian Civil Code); Obstruction to Public Authorities (article 2638 of the Italian Civil Code). The Legislative Decree, definitely approved by the Council of Ministers, in its meeting of January 22<sup>nd</sup>, 2010 and awaiting its publication in the Official Journal, enforcing Directive 2006/43/EC on statutory audits, by annulling article 2624 of the Italian Civil Code and modifying article 2625 of the Italian Civil Code, does not coordinate with article 25-*ter* of the Legislative Decree no.231.

<sup>9</sup> Article 25-*quater* was included within the sphere of the Legislative Decree no.231/2001 by article 3 of Law no.7 of January 14<sup>th</sup>, 2003. It comprises “*crimes with aims of terrorism or subversion of the democratic order, listed in the criminal code and in special laws*”, as well as crimes, different from the one listed before that “*still disobey what is stated in article 2 of the International Convention for the Suppression of the Financing of Terrorism, held in New York, on 9 December 1999*”. Such convention sanctions anyone who, by any means, directly or indirectly, voluntarily or involuntarily, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (i) Any act intended to cause death or

- ó **Market abuse**; cited in article 25-*sexies*, introduced by article 9 of Law no. 62 of April, 18th 2005 (“*Community Law 2004*”)<sup>10</sup>;
- ó **Crimes against the individual person**; cited in art. 25-*quinquies*, introduced in Legislative Decree no. 231/2001 by article 5 of Law no. 228 of August 11<sup>th</sup>, 2003. Examples include Exploitation of under-age prostitution, Under-age pornography, Purchase and sale of slaves, Unlawful traffic of individuals<sup>11</sup>;
- ó **International crimes**; article 10 of Law no. 146 of March, 16th 2006 states that the administrative liability of entities is applicable following the commission of the offences, listed in the very same law, having and international nature<sup>12</sup>;
- ó **Crimes against life and physical integrity**; listed in article 25-*quater.1* of the Legislative Decree. It comprises also female genital mutilation practices;
- ó **Involuntary crimes against occupational health and safety**; article 25-*septies*<sup>13</sup> of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 589 and 590, paragraph 3, of the Italian Criminal Code (Involuntary homicide and Unintentional Serious or most serious involuntary injuries), committed in violation of the rules on safety and on the protection of hygiene and health in the workplace;

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serious bodily injury to a civilian when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act; (ii) Acts considered crimes pursuant to the Conventions on the safety of civil aviation and maritime navigation; physical protection of nuclear material; protection of diplomatic agents and on the suppression of terrorist bombings. The category comprising “*crimes with aims of terrorism or subversion of the democratic order, listed in the criminal code and in special laws*” is referred to by the lawmakers in a generic fashion, not providing a specific indication of the norms the violation of which could entail the application of this article. It can nonetheless be individuated as the main offences article 270-*bis* of the Italian Criminal Code (*Association with the purpose of terrorism, also international in nature, or subversion of the democratic order*) which punishes those who promote, creates, organizes, manages or finances associations aimed at the execution of violent acts with terroristic or subversive purposes; and article 270-*ter* of the Italian Criminal Code (*Assistance to affiliates*) that sanctions those who host or offer servicing, shelter, means of transportation or of communication to the affiliates of organizations stated in articles 270 and 270-*bis*.

<sup>10</sup> The regulatory prescriptions state that the company can be held responsible for the abuse of reserved information (article 184 of the Single Code on Finance) and market manipulation (article 185 of the Single Code on Finance). Pursuant to article 187-*quinquies* of the Single Code on Finance, the entity can also be held responsible for the payment of an amount equal to that of the pecuniary administrative sanction following the abuse of reserved information (article 187-*bis* of the Single Code on Finance) and market manipulation (article 187-*ter* of the Single Code on Finance), if committed, in its interest or advantage, by individuals that can be classified as “Key Officers” or “individuals reporting to others”.

<sup>11</sup> Article 25-*quinquies* was included within the sphere of the Legislative Decree no.231/2001 by article 5 of Law no.228 of August 11<sup>th</sup>, 2003. It comprises: Slavery and servitude (article 600 of the Italian Criminal Code); People trafficking (article 601 of the Italian Criminal Code); Purchase and transfer of slaves (article 602 of the Italian Criminal Code); Prostitution of minors (article 600-*bis* of the Italian Criminal Code); Child pornography (article 600-*ter* of the Italian Criminal Code); Possession of pornographic material (article 600-*quater* of the Italian Criminal Code); Tourism with the aim of sexual exploitation of minors (article 600-*quinquies* of the Italian Criminal Code).

<sup>12</sup> The crimes foreseen by article 10 of Law no.146 of March 16th, 2006 (Criminal conspiracy; Mafia Organization; Criminal conspiracy aimed at the trafficking of foreign tobacco products; Criminal conspiracy aimed at drug trafficking; illegal immigration, induction to abstain from declaring or to declare false information to the Judiciary, and assistance) are deemed **international** if the criminal conduct is committed in more than one State; or, if committed in one State, with a significant portion of the preparatory and planning activities being conducted in a different State; or if committed in a State, in its commission is involved a criminal group engaged in criminal activities in more than one State.

In this case, no further prescriptions were introduced within the Legislative Decree no. 231/2001. The liability derives from an autonomous prescription contained in the aforementioned article 10 of Law no.146/2006, stating the specific applicable administrative sanctions for the crimes hereby stated, as well as referring in its last paragraph that “*the administrative crimes foreseen by this article are subject to the prescriptions foreseen by the Legislative Decree no.231 of June 8th, 2001*”. Legislative Decree no. 231/2007 annulled the norms contained in Law no.146/2006 over articles 648-*bis* and 648-*ter* of the Italian Criminal Code (Laundering and Receiving of unlawfully obtained goods), which are punishable pursuant to Legislative Decree no. 231/2001, independently from their international nature.

<sup>13</sup> Article added by article. 9, of Law no.123 of August 3rd, 2007.



- ó **Crimes relating to the receiving, using and laundering of unlawfully received money and goods, including self-laundering;** article 25-*octies*<sup>14</sup> of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 648, 648-*bis*, 648-*ter* and 648-*ter.1* of the Italian Criminal Code;
- ó **Informational crimes and unlawful use of data;** article 24-*bis* of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 615-*ter*, 617-*quater*, 617-*quinquies*, 635-*bis*, 635-*ter*, 635-*quater* and 635-*quinquies* of the Italian Criminal Code;
- ó **Organized crime;** article 24-*ter* of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 416, paragraph 6, 416-*bis*, 416-*ter* and 630 of the Italian Criminal Code and to crimes listed in articles 74 of the Single Code pursuant to Presidential Decree no. 309 of October, 9<sup>th</sup>, 1990;
- ó **Crimes against industry and trade;** article 25-*bis* of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 513, 513-*bis*, 514, 515, 516, 517, 517-*ter* and 517-*quater* of the Italian Criminal Code;
- ó **Crimes against intellectual property rights;** article 25-*novies* of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 171, paragraph 1, letter a-*bis*), and paragraph 3, 171-*bis*, 171-*ter* and 171-*septies*, 171-*octies* of Law no. 633 of 22 April 1941;
- ó **Falsehood of information and misstatements towards the Judiciary or induction to do so;** (article 377-*bis* of the Italian Criminal Code), cited in article 25-*novies* of the Legislative Decree<sup>15</sup>;
- ó **Environmental crimes;** article 25-*undecies* of the Legislative Decree extends the administrative liability of entities to the crimes listed in articles 452-*bis*, 452-*quater*, 452-*sexies*, 727-*bis* and 733-*bis* of the Italian Criminal Code; to some articles included in Legislative Decree no. 152/2006 (Single Code on the Environment); to some articles included in law no. 150/1992 on the protection of threatened animal and vegetal species, as well as dangerous animals; to article 3, paragraph 6, of Law no. 549/1993 on the protection of the ozone layer and the environment; and to some articles of Legislative Decree no. 202/2007 on pollution caused by ships. Moreover on May 28<sup>th</sup> 2015 it was published in the Official Journal Law no. 68 of May 22<sup>nd</sup> 2015 “Dispositions on crimes against the environment” that, through article 1, paragraph 8, modifies article 25-*undecies* of the Legislative Decree no. 231/2001.;
- ó **Crimes consisting in the employment of illegal aliens;** article 25-*duodecies* of the Legislative Decree extends the administrative liability of entities to the crimes listed in article 2, paragraph 1 of Legislative Decree no. 109 of July 16<sup>th</sup>, 2012 in case of employment of citizens of foreign countries lacking an irregular residence permit, or in possession of an expired document;
- ó **Corruption amongst private parties,** article 25-*ter* 1, letter s *bis* of the Legislative Decree extends the administrative liability of entities to the crimes listed in article 2635 of the Italian Civil Code.

The above mentioned list will be likely extended in the near future, pursuant to the trend of expanding the scope of operation of the Legislative Decree, in compliance with international and European obligations<sup>16</sup>.

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<sup>14</sup> Article 63, paragraph 3, of the Legislative Decree no.231 of November 21<sup>st</sup>, 2007, published in the Official Journal dated December 14<sup>th</sup>, 2007, Ordinary Series no.268, on the enforcement of Directive 2005/60/EC of October 26<sup>th</sup>, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing; as well as Directive 2006/70/EC, laying down its implementing measures, introduced the new article of Legislative Decree no.231/2001 foreseeing the administrative liability of the entity also in cases on the laundering, receiving and using of illegally obtained money, goods or assets. Furthermore, Law no.186 of December 15<sup>th</sup>, 2014 on “Dispositions over the entry and exit of capital withheld abroad as well as for the enhancement of measures against tax evasion. Dispositions on self-laundering”, article 3, paragraph 3, introduced to the Italian Criminal Code the new offence of self-laundering. The same Law, in article 3, paragraph 5, modified article 25-*octies* of the Legislative Decree no.231/2001, as to introduce this new crime among those rising the administrative liability of entities.

<sup>15</sup> Article 25-*novies* was introduced by article 4 of Law no.116/2009.

<sup>16</sup> Law no.34 of February 25<sup>th</sup>, 2009 on dispositions for compliance with the obligations deriving from the membership to European Communities (European Law 2007), published in the Official Journal no.56 of March 6<sup>th</sup>, 2008, Ordinary Series no.54, grants authorization to the Government for the enactment of some general dispositions. The Law foresees several principles and directive criteria over the liability of entities and amendments to Legislative Decree no.231/2001. In particular, article 29 (Principles and directive criteria for the enforcement of the Council Framework Decision 2003/568/JHA of July

## 1.5 Sanction inflicted by the Law

Articles 9 through 23 of the Legislative Decree no. 231/2001 foresee the application over the company of the hereby stated sanctions, following the commission or attempted commission of the aforementioned crimes:

- ó pecuniary sanctions (and preventive confiscation as a precautionary measure);
- ó interdiction (also applicable as a precautionary measure) lasting no less than 3 months and not exceeding two years (pursuant to article 14, paragraph 1, of Legislative Decree no. 231/2001, “*disqualification can only affect the specific activity related to the offence committed by the entity*”), that can be divided into:
  - ó interdiction from the conduction of the activity;
  - ó temporary suspension or annulment of permits, licenses or concessions instrumental in the commission of the offence;
  - ó prohibition from doing business with the Public Administration, exception being made for the obtainment of a public service;
  - ó exclusion from benefits, loans, grants or subsidies and the possible revocation of those already granted;
  - ó prohibition from advertising products or services;
  - ó requisition (and preventive confiscation as a precautionary measure)
  - ó publication of the sentence (shall one of the interdiction sanctions be applied).

The pecuniary sanction is determined by the Criminal court judge applying a system based on “quotas” that cannot be less than 100 and not exceeding 1000 quotas of varying amounts between €258,22 and €1549,37. At the moment of application of the pecuniary sanction, the judge decides:

- ó the number of quotas, taking into account the seriousness of the offence, the degree of the entity's responsibility as well as the actions carried out by the entity in order to eliminate or to reduce the consequences of the offence and to prevent the commission of further offences;
- ó the amount of each quota, on the basis of the economic and financial condition of the entity.

Interdiction sanctions are applied only in relation to the offences for which they have been explicitly foreseen (namely, crimes against the Public Administration; some crimes against public faith –such as currency counterfeiting–; crimes with aims of terrorism or subversion of the democratic order; crimes against the individual person; crimes against life and physical integrity; international crimes; involuntary crimes against occupational health and safety laws; crimes relating to the receiving, using and laundering of unlawfully received money and goods, including self-laundering; crimes against industry and trade; crimes against intellectual property rights; some environmental crimes; crimes consisting in the employment of illegal aliens; unduly induction to give or promise utilities) and as long as at least one of the following condition is respected:

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22nd, 2003 on combating corruption in the private sector) of the Law calls for the Government to introduce, within the Criminal Code, a type of offence that, notwithstanding current prescriptions stated in article 2635 of the Italian Criminal Code, punishes the conduct of directors, officers, statutory auditors, liquidators and appointed individuals to monitoring functions which commit, or abstain from committing conducts in violation to their conferred obligations following the receiving or promise thereof, of benefits for itself or for third parties; conducts that could result in the distortion of competition over the purchase of commercial goods or services; and also those who give or promise benefits. The Law also calls for the inclusion within article 25-*ter* of the legislative Decree no. 231/2001, of the aforementioned criminal conducts, foreseeing proper pecuniary and interdiction sanctions over the legal entities in the interest or advantage of which such crime was committed.

- ó the entity has obtained significant profit from the commission of the offence and the offence itself has been committed by either a Key Officer or by an individual subject to the direction or supervision of one of the Key Officers if serious organizational deficiencies were instrumental in the commission of the offence;
- ó in case of repetition of crimes<sup>17</sup>

The judge establishes the type and the duration of the interdiction taking into account the suitability of the various sanction in preventing the commission of offences of the same type and, if necessary, can rule the joint application of various sanctions (article 14, paragraphs 1 and 3, Legislative Decree no. 231/2001)

Interdiction from conducting the activity, prohibition from doing business with the Public Administration and prohibition from advertising products or services can be applied definitely in serious situations<sup>18</sup>. It is remarked that the activity of the entity (instead of the application of the sanction) can proceed under the direct control of a commissioner nominated by the judge pursuant to article 15 of Legislative Decree no. 231/2001<sup>19</sup>.

### **1.6 Attempted commission**

If the offences, included in the Legislative Decree no. 231/2001, are merely attempted, the pecuniary sanctions (in terms of monetary amount) and interdiction (in terms of length) are reduced by one third and up to one half.

Shall the entity voluntarily prevent the commission of the conduct or the effective execution of the event, the application of sanctions is to be excluded (article 26 of Legislative Decree no. 231/2001).

### **1.7 Modifying events of the entity**

The Legislative Decree no. 231/2001 regulates the asset liability of entities even with regard to the modifying events to which it is subject such as transformation, merger, split up and sale of a business.

Article 27, paragraph 1, of Legislative Decree no.231/2001 states that the entity is responsible for the payment of the pecuniary sanction with its assets or common fund, whereas the notion of assets is referred to entities with legal personality, while the notion of common fund must be referred to the unincorporated associations<sup>20</sup>.

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<sup>17</sup> Article 13, paragraph 1, letter a) and b) of the Legislative Decree no. 231/2001. On this subject, also article 20 of the Legislative Decree no. 231/2001 is relevant. Pursuant to the latter, "*Repetition is engaged in when the entity, having already been definitely convicted at least once for an unlawful act deriving from a criminal act, engages in the same conduct in the five years following the definitive conviction.*"

<sup>18</sup> On this subject it is also relevant article 16 of the Legislative Decree no. 231/2001, pursuant to which: "*1. The definitive interdiction from the exercise of the business activity if the entity obtained a significant profit and has already been convicted at least three times in the last seven years, to temporary interdiction from the conduction of business activities. 2. The Judge can apply the definitive prohibition to engage in business activities with the Public Administration or to publicize goods or services when the entity has already been subject to the same sanction at least thrice in the last seven years. 3. Shall the entity adopt an organizational structure used continuously and exclusively for the commission or for enabling the commission of crimes for which administrative liability is foreseen, definitive interdiction from the conduction of business activities is always to be applied, whereas the provisions stated in article 17 are not applicable.*"

<sup>19</sup> On this subject it is to be referred article 15 of the Legislative Decree no.231/2001: "*Judicial Commissioner – If the conditions for the application of interdiction sanctions subsist, the Judge can rule against the application of the sanction and instead rule the continuation of the activities by the entity under the control of a commissioner for a period equal to the length of the original interdiction if one of the following conditions subsists: a) the entity carries out a public service or a public utility the interruption of which could result in serious prejudice to the community; b) the interruption of the business activities could result, taking into consideration the size of the entity and the economic situation of the location it is established in, in serious consequences over employment. With the sentence foreseeing the continuation of the activities, the Judge states the roles and powers of the Commissioner, taking into consideration the specific activity in the context of which the crime was committed. Pursuant to its roles and powers, the Commissioner shall guide the adoption and efficient enforcement of Organizational, Management and Control Models adequate as to prevent the commission of crimes such as the one effectively committed. The Commissioner cannot carry out activities of extraordinary nature without the Judge's approval. The profit deriving from the continuation of the activities is confiscated. The continuation of the activity by the Commissioner cannot be applied when the interdiction from the conduction of business activities follows the definitive application of an interdiction sanction.*"

<sup>20</sup> The provision at hand renders explicit the will of the lawmaker of identifying an autonomous liability over the entity different from that of the author of the crime (on this subject, it is to be referred article 8 of the Legislative Decree no.231/2001) but also different from that of the various components of the company structure. Article 8 "*Autonomy of the entity's liability*" of the

Articles 28 through 33 of the Legislative Decree no.231/2001 rule the applicability over the liability of the entities of modifying events connected to transformation, merger, split up and sale of a business. The lawmaker has balanced two opposite needs:

- ó on one end, prevent that these operation may become an instrument to easily avoid the administrative liability of the entity;
- ó on the other end, do not penalize corporate reorganizations without any elusive intent.

The Legislative Decree no. 231/2001 Explanatory memorandum states “the general criteria has been to rule the applicability of pecuniary sanction in accordance with the principles stated in the Italian Civil Code regarding the generality of the other debts of the original entity; maintaining conversely the link between the interdiction sanction and the business in which the offence was committed”.

In the event of transformation, article 28 of the Legislative Decree no. 231/2001 states (referring to the nature of such acts implying exclusively a simple change in the type of the entity, without determining the extinction of the original entity) that the liability for the offences committed before the date in which the transformation took place remain the same.

In case of merger, the entity that results from the operation (even in the cases of merger by incorporation) is liable for the offences of which the original entities where liable for (article 29 of Legislative Decree no.231/2001).

Article 30 of Legislative Decree no.231/2001 states that, in the event of partial demerger, the initial entity remains liable for the offences committed before the date on which the demerger took place.

The entities resulting from the demerger are mutually liable for the monetary sanctions due to the commission, by the original entity, of offences prior to the demerger, limited to the amount of the assets transferred during the demerger.

This limit does not apply to the entities resulting from the demerger that received, even partially, the business or assets in which the offence was committed.

The interdiction resulting from offences committed prior to the demerger are applied to the entities resulting from the demerger that received, even a part of, the business or the assets in which the offence was committed.

Article 31 of the Legislative Decree foresees general provisions applicable to merger and demerger operations relating to the definition of the sanction in the case that those operations took place before the emission of the final verdict. It is made clear that the judge has to apply the pecuniary sanctions on the basis of the economic and financial situation of the original entity, and not of those of the entities resulting from the operations (article 11, paragraph 2<sup>21</sup> of Legislative Decree no. 231/2001).

The entity resulting from the operation, and which will be held liable for the interdiction can request to the judge for the conversion of the interdiction to a pecuniary sanction if: (i) the organizational deficiency that made possible the commission of the offence has been solved and (ii) the entity has refunded the damage and made available (for confiscation) the profit gained from the commission of the offence. Article 32 of Legislative Decree no. 231/2001 allows the judge to take into account the sentences already imposed to the entities involved in the merger or demerger in order to determine the repetition, pursuant to article 20 of the Decree, of the offences committed by the entities resulting from the merger or demerger occurred after the operation took place<sup>22</sup>.

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Legislative Decree no. 231/2001 foresees “1. *The liability of the entity subsists even if a) the author of the crime was not identifies or it is not prosecutable; b) the crime is extinguished following conditions different from amnesty.* 2. *Unless the regulatory prescriptions state otherwise, the entity is not prosecuted if amnesty is granted in relation to a crime raising its administrative liability and the accused individual has renounced to its application.* 3. *The entity can renounce to the application of amnesty.*”

<sup>21</sup> Article 11 of the Legislative Decree no. 231/2001: “Criteria for the definition of the pecuniary sanction - 1. *In defining the pecuniary sanction, the judge determines the number of quotas taking into account the seriousness of the conduct, the degree of responsibility of the entity and the activities conducted as to eliminate or reduce the consequences of the conduct or to prevent the commission of further crimes.* 2. *The amount of the single quota is based on the economic and financial conditions of the entity as to ensure the efficiency of the sanction.(...)*”.

<sup>22</sup> Article 32 of the Legislative Decree no.231/2001: “Relevance of the merger or demerger pursuant to reiteration of the conduct - 1. *In the case of liability of the entity created from the merger or incurring in a demerger resulting from crimes committed after the date of merger or demerger, the Judge can take into account the repetition, pursuant to article 20, also considering eventual sanctions applied to the entities engaging in the merger or to the demerging entity applied for crimes committed prior to such date.* 2. *To this aim, the Judge takes into account the*

For the transfer of business the rule is stated in article 33 of Legislative Decree no. 231/2001<sup>23</sup>, the receiving party, in case of transfer of a business in which an offence was committed, is mutually liable for the payment of the pecuniary sanction applied to the ceding party, with the following limitations:

- ó The ceding party is given the benefit of being heard
- ó The obligation of the receiving party is limited to the pecuniary sanctions resulting from the mandatory financial books, or for the administrative offences of which it was in any way in knowledge of.

Conversely, the interdiction sanctions applied to the ceding party are not applied to the receiving party.

### **1.8 Offences committed abroad**

Pursuant to article 4 of Legislative Decree no. 231/2001, the entity can be held accountable in Italy for the commission of offences – included in the Legislative Decree – outside of national boundaries<sup>24</sup>. The Explanatory Memorandum to the Legislative Decree no.231/2001 highlights the need not to leave unprosecuted a frequent criminal situation, in order to avoid the evasion of the rules.

The assumptions on which the liability for offenses committed abroad are based on are:

- ó the offences have to be committed by an individual functionally linked to the entity, pursuant to article 5, paragraph 1, of the Legislative Decree no. 231/2001;
- ó the entity needs to be headquartered in Italy;
- ó the entity can only be held liable for those cases stated in articles 7, 8, 9, 10 of the Italian Criminal Code (in those cases in which the law foresees the initiation of the prosecution of the guilty individual following the request by the Italian Ministry of Justice, the entity is prosecuted only if the initial request was made against the entity as well)<sup>25</sup>; and also in accordance with article 2 of Legislative Decree no. 231/2001, only for those offences for which its liability it is clearly stated in *ad hoc* disposition.

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*nature of the violations and of the activities in the context of which such violations were committed as well as the characteristics of the merger or demerger. 3. With regard to the entities resulting from the demerger, the repetition can be considered, as per paragraphs 1 and 2, only if these entities have been conferred, even partially, with the range of activities in which the crime was committed by the demerging entity". The Explanatory Memorandum to the Legislative Decree no.231/2001 clarifies that "the repetition, in such case, is not automatically considered and it is part of the discretionary evaluation by the Judge, taking into consideration the specific and concrete circumstances. With regard to the entities resulting from the demerger, the repetition can only be considered in the cases in which the resulting entity is conferred, even partially, with the scope of activities in which the first crime was committed".*

<sup>23</sup> Article 33 of the Legislative Decree no.231/2001: "Transfer of Business. - 1.In the cases of transfer of business in the context of which the criminal conduct took place, the receiving party is mutually obligated, granted the benefit or preventive hearing of the ceding party and within the limit of the company value, to the payment of the pecuniary sanction. 2. The obligation of the receiving party is limited to the pecuniary sanctions resulting from the mandatory financial books, or for the administrative offences of which it was in any way in knowledge of. 3. The prescriptions of this article are applied also in the case of transfer of Company". On this issue, the Explanatory Memorandum to the Legislative Decree 231/2001 establishes: "It is evident how also this kind of operations are susceptible to the commission of maneuvers aimed at eluding liability: as such, it results even more evident the conflicting necessities of protection of the operation as well as the continuation of the judicial process, being confronted with hypotheses in which the operations do not involve the identity (or the liability) the ceding and the receiving parties".

<sup>24</sup> Article 4 of the Legislative Decree no.231/2001 reads as follow: "1.In the cases and in the modes foreseen by articles 7, 8, 9 and 10 of the Italian Criminal Code, entities headquartered within national boundaries are held liable for the crimes committed also outside the state, as long as the State in which the crime was committed does not proceed against it. 2. In the cases for which the law foresees the prosecution only if requested by the Ministry of Justice, the entity is prosecuted only if a request against it is presented."

<sup>25</sup> Article 7 of the Italian Criminal Code: "Crimes committed abroad – The national or foreign individual is punished in accordance with Italian law if it commits abroad one of the following crimes: 1) crimes against the individuality of the Italian State. 2) Crimes of counterfeiting of national stamps and the use of such stamps. 3) Crimes of counterfeiting of currency granted with legal tender in the Italian state, or stamp or public credit valuables. 4) Crimes committed by Public Officers or employees, abusing from or violating the powers and obligations vested on them.

- 6 if, under the circumstances foreseen by the previously stated articles of the Italian Criminal Code, the State in which the offence was committed does not initiate the criminal prosecution of the entity.

### **1.9 Trial for the assessment of the offence**

The liability for an administrative offence deriving from a crime is asserted in a criminal proceeding. In this regard, article 36 of Legislative Decree no. 231/2001 states that “*The assertion of the administrative liability is under the jurisdiction of Criminal court judges. In the conduction of the proceeding over the assertion of the administrative liability of the entity are applied the rules regarding court composition and related proceeding dispositions linked to the offences from which the proceeding depends*”.

A further rule, established pursuant to the efficiency and homogeneity of the legal proceedings, is the mandatory conjunction of the trials: the trial against the entity and the trial against the individual who committed the offence must be carried out, whenever possible, together (article 38 of Legislative Decree no. 231/2001). This rule is balanced by article 38, paragraph 2 identifying under which conditions the trials for the assessment of the administrative liability shall be carried out separately<sup>26</sup>.

The entity is represented in the criminal proceeding by its legal representative, unless the letter is being held directly liable for the commission of the offence from which the administrative liability of the entity depends. If the legal representative is not present, the defense attorney (article 39, paragraphs 1 and 4 of the Legislative Decree no. 231/2001) represents the entity.

### **1.10 Exempting value of Organizational, management and control models**

A fundamental aspect of the Legislative Decree no. 231/2001 is the exempting value conferred to the Organizational, management and control models of the entity.

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5) *Any other crime for which special regulatory prescriptions or international conventions have established the applicability of Italian criminal law*”. Article 8 of the Italian Criminal Code: “*Political crime committed abroad – the citizen or foreign individual committing a crime included amongst those stated in number 1 of the aforementioned article is punished by Italian law following the request by the Ministry of Justice. If it is the case of a crime the prosecution of which is initiated following the denounce by the damaged party, it is needed, in addition to the request, also the denounce. Pursuant to criminal law, it is deemed a political crime any crime that damages an interest of the state, or a political right of one of its citizens. It is also deemed political the common crime committed, entirely or partially, over political motives.*” Article 9 of the Italian Criminal Code: “*Common crime by the citizen committed abroad – The citizen that, outside of the hypotheses previously stated, commits while abroad a crime for which the Italian law foresees life imprisonment, or imprisonment of no less than three years is punished in accordance with the law itself, given its presence in the Italian territory. If it relates to a crime for which it is foreseen imprisonment for an inferior period, the guilty party is punished following the request by the Ministry of Justice or following the denounce of the damaged party. In the cases foreseen by both previous hypotheses, shall the crime be committed in detriment to the European Communities, to a foreign State or to a foreign citizen, the offender is punished following the request by the Ministry of Justice as long as its extradition was not granted or not accepted by the Government of the State in which the crime was committed.*” Article 10 of the Italian Criminal Code: “*Common crime committed by a foreign individual abroad – the foreign citizen that, outside of the hypotheses stated in articles 7 and 8, commits while abroad, and in detriment to the Italian State or one of its citizens a crime for which the Italian law foresees life imprisonment or imprisonment of no less than one year, is punished in accordance with the law itself, as long as it is present in the Italian territory and that a request by the Ministry of Justice or the denounce by the damaged party have been presented. If the crime is committed in detriment to the European Communities, to a foreign State or to a foreign citizen the offender is punished in accordance with Italian law, following the request by the ministry of Justice and as long as: 1) it is present within the Italian territory; 2) it is a crime for which life imprisonment or imprisonment for at least three years is foreseen; 3) extradition was not granted or was not accepted by the Government of the State in which the crime was committed or by that of the State to which the individual appertains.*”.

<sup>26</sup> Article 38, paragraph 2, of the Legislative Decree no. 231/2001: “the administrative offence of the entity is separately prosecuted exclusively if: a) the suspension of the proceeding has been dictated pursuant to article 71 of the Criminal Proceeding Code [suspension of the proceeding due to the inability of the accused party, E.N.]. b) the proceeding has been established following the brief proceeding or has resulted in the application of the sanctions stated in article 444 of the Criminal Proceeding Code [application of sanctions per request, E.N.], or it has been emitted the convicting penal decree. c) the adherence to legal proceeding rules renders it necessary.” For the sake of completeness, it is referred also article 37 of the Legislative Decree no.231/2001, pursuant to which “*The assertion of the administrative crime of the entity is not incurred in if the criminal proceeding cannot be initiated or continued against the individual author of the crime due to the lack of one or more prosecution conditions*” (Namely, those conditions foreseen by Title III, of Volume V of the Criminal Proceeding Code: denounce, request for prosecution, authorization to prosecution, foreseen by articles 336, 341, 342, 343 of the Criminal Proceeding Code, respectively).

Indeed, shall the offence be committed by a Key Officer the entity is not responsible if it is able to prove that (article 6, paragraph 1 of Legislative Decree no. 231/2001):

- ó the Corporate body has adopted and efficiently enforced, prior to the commission of the offence, Organizational, management and control models suitable to prevent the very same kind of offences;
- ó the task of monitoring the effectiveness and the compliance with the models, as well as their updating have been assigned to a Business structure provided with autonomous power of initiative and control;
- ó the individuals that committed the offence did so fraudulently eluding the Organizational, management and control models;
- ó there was no missed or insufficient surveillance by the Supervisory Board.

In case of offence committed by Key Officers, there is, therefore, a presumption of liability of the entity due to the fact that the former represent the strategy, the vision as well as the will of the entity itself. This presumption, however can be overcome if the entity is able to demonstrate that it is unconnected to the offence committed by the Key Officer proving the above mentioned conditions and thus that the offence was not committed due to an “organizational deficiency”<sup>27</sup>.

Shall an individual subject to the direction or supervision of one of the Key Officers commit the offence, the entity is held liable only if the commission of the offence was rendered possible due to un-abidance to the direction or surveillance duties to which the entity is obliged<sup>28</sup>.

In any way, the lack of surveillance is automatically excluded if the entity, prior to the commission of the offence, has adopted and efficiently implemented an Organizational, management and control model suitable to prevent the commission of offences of the same kind of the one committed.

Shall the criminal offence be committed by individuals subject to the direction or supervision of one of the Key Officers, there is a reversing of the burden of proof. The prosecution must prove, as stated in article 7, the failed adoption and effective enforcement of an Organizational, management and control model suitable to prevent the commission of offences of the same kind of the one committed.

The Legislative Decree no. 231/2001 draws up the main contents of Organizational, management and control model stating that, in relation to the extension of the powers being delegated and the risk of commission of offences, as specified in article 6, paragraph 2, the former must:

- ó identify the sensitive processes in the context of which offences can be committed;
- ó state specific protocols aimed at governing the definition and the enactment of the company’s decisions pursuant to the offences to be prevented;
- ó identify proper methods for the management of financial resources suitable to prevent the commission of offences;
- ó clearly state mandatory information flows towards the Body in charge of the surveillance over the proper functioning and application of the model;
- ó introduce a disciplinary system suitable to punish the non-abidance to the measures indicated in the model.

Moreover, article 7, paragraph 4 of Legislative Decree no. 231/2001 states as requisites for an effective enforcement of the Organizational models:

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<sup>27</sup> The Explanatory Memorandum to the Legislative Decree no.231/2001 states, with regard to this issue, as follows: “Pursuant to the entity’s liability it shall be required not only that the criminal conduct can be linked to it from an objective point of view (the conditions under which such link is evidenced are stated by article 5); but also, the crime shall constitute a concrete expression of the company’s policy or at least derive from an organizational deficiency”. Furthermore: “the starting point is based on the presumption (empirically motivated) that, shall the crime be committed by a Key Officer, the “subjective” requisite of liability [namely, the entity’s so-called “organizational deficiency”] is fulfilled since the Key Officer expresses and represents the entity’s policy; shall this not be the case, the burden of the proof of its extraneity shall fall over the company, and that will only be possible evidencing the existence of a series of concurring requisites.”

<sup>28</sup> Article 7, paragraph 1, of the Legislative Decree no. 231/2001: “Individuals subject to others direction and to organizational models adopted by the entity – In the case foreseen by article 5, paragraph 1, letter b) the entity is held liable by the commission of the crime if such conduct was rendered possible through the non-abidance to the direction and monitoring duties”.

- ó the periodic monitoring and resulting modification of the model shall significant and serious violations be discovered or following changes to the organizational structure or in the conducted activities;
- ó a disciplinary system suitable to punish the non-abidance to the measures indicated in the model.

### **1.11 “Linee Guida di Confindustria” and Code of Ethics**

Article 6, paragraph 3 of Legislative Decree no. 231/2001 states that “Organizational models can be adopted, ensuring the needs stated in paragraph 2, on the basis of codes of conduct drafted by the associations representing the entities, communicated by the former to the Italian Ministry of Justice that, in agreement with the competent Ministries, can issue, within 30 days, comments about the suitability of the models to prevent the commission of offences”.

*Confindustria*, in accordance with what stated previously cited, has provided companies with the “Guidelines for the drafting of Organizational, Management and Control Models pursuant to Legislative Decree no. 231/2001” (hereinafter “*Linee Guida di Confindustria*”) setting the main characteristics for the definition and enforcement of Organizational, Management and Control Models suitable to prevent the commission of offences included in the Legislative Decree.

In particular, the “*Linee guida di Confindustria*” suggest entities to use risk assessment and risk management processes, foreseeing the following phases in the definition of the model:

- identification of risks and controls;
- adoption of some general instruments, such as a Code of Ethics over the offences foreseen by Legislative Decree no. 231/2001, and a disciplinary system;
- identification of the criteria for the constitution of a Supervisory Board, providing an indication of its requisites, tasks, duties, and powers; as well as the informational obligations.

The “*Linee guida di Confindustria*” were transmitted, prior to their widespread diffusion, to the Italian Ministry of Justice pursuant to article 6, paragraph 3 of Legislative Decree no. 231/2001, as to allow the second to issue its comments within 30 days. The last version of this document, dated March 2014, was approved by the Italian Ministry of Justice on July 21<sup>st</sup>, 2014.

Piaggio Aero has adopted its own Organizational, Management and Control Model on the basis of “*Linee guida di Confindustria*”.

The Code of Ethics is integral part of the Model of the Company and it is drafted in a separated document: with this document, the Company aims to promote and spread its vision and mission, highlighting the system of ethical values and behavioral rules which shall inspire all Company activities as to favor the commitment to a morally correct conduct in abidance with all regulatory prescription by Company employees and every other person engaged in relations with the Company.

### **1.12 Ruling on suitability**

The assertion of the liability of the entity, appointed to the Criminal court judge, is conducted through:

- the assertion of the existence of the offence raising the administrative liability of the entity;
- the ruling on the suitability of the adopted Organizational Models.

The ruling of the Judge on the theoretical suitability the Organizational model as to prevent the commission of offences included in Legislative Decree no. 231/2001 is conducted in accordance with the so-called “posthumous prognosis” criteria.

The ruling is issued on the basis of an *ex ante* criteria: the judge positions himself in the company’s context at the time of commission of the crime in order to assess the coherence of the adopted model. Namely, the model is deemed “suitable to prevent the commission of offences” if, before the commission of such offence, it could and should have been deemed suitable to nullify or, at least, minimize with reasonable certainty, the risk of commission of the offence subsequently incurred.



## Chapter 2 – Description of the Company – Elements of corporate governance and general organizational form

### 2.1 *Piaggio Aero Industries S.p.A.*

Piaggio Aero Industries S.p.A. was founded in 1998 in order to take over the business complex of *Industria Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.*, controlled by a government-appointed administrator. Piaggio Aero Industries is nowadays the only Company in the world active in the engineering, construction and maintenance of both aircrafts (business aviation and patrol, surveillance and ISR aircraft) and aeronautical engines.

The Company is active, also outside of the Italian territory, in any kind and field of the mechanical engineering industry; in the production; engineering, trade; sale; lease; repair; and maintenance of engines; of aircrafts; of watercraft; of railway wagons; and of tramway and road vehicles. It is also active in public and private air transport; in the public transportation of people and goods including medical services; in aviation; including the spread of substances, flying school and personnel professional training.

### 2.2 *Corporate Governance model of Piaggio Aero Industries S.p.A.*

It is hereby stated a brief description of the Corporate Governance model of Piaggio Aero Industries S.p.A. as stated in the Company Charter.

#### *Shareholders' meeting*<sup>29</sup>

The shareholders' meetings, reunited in both ordinary and extraordinary sessions, are validly constituted, and take decisions as per the applicable regulatory prescriptions.

#### *Board of Directors*<sup>30</sup>

The Company is managed by a Board of Directors. The number of Director in the Board shall not be less than five nor more than nine.

The Directors remain in office for a maximum span of three accounting periods, unless the shareholders, at appointment, decided otherwise. The members of the Board can remain in office until their dismissal or resignation, and are eligible for re-election.

The Board of Directors is vested with the broadest powers for the ordinary and extraordinary management of the Company, being delegated with everything that according to the law or to the Charter is not under the direct jurisdiction of the Shareholders' meeting. The Board of Directors decide in compliance with article 2436 of the Italian Civil code on the following issues:

- merger operations in the cases regulated by articles 2505 and 2505 bis of the Italian Civil Code, as well as demerger operations regulated by article 2506 ter of the Italian Civil Code;
- establishment or closure of company sites;
- transfer of the registered office within the national territory;
- conferral of the legal representation of the Company to specific Directors;
- share capital reduction due to losses;
- Changes to the Company Charters as to comply with regulatory requirements.

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<sup>29</sup> Articles 10 through 13 of the Company Charter

<sup>30</sup> Articles 14 through 17 of the Company Charter

### ***Board of Statutory Auditors<sup>31</sup>***

Control over operative management is appointed to the Board of Statutory Auditors; which is composed by three effective members and two substitutes nominated in compliance with the law. The Statutory Auditors remain in office for a span of three accounting periods and are eligible for re-election. The Shareholders' meeting that appoints the Board of Statutory Auditors also determines the President of the Board of Statutory Auditors and the compensation for the Auditors.

The statutory audit is performed by the External Auditors. The appointment is granted by the Shareholders' meeting on the basis of a motivated proposal filed by the Board of Statutory Auditors, for the duration of three accounting periods.

### ***Delegation of Authority***

The Company has formalized a Delegation of Authority as a supporting instrument to Corporate Governance. Such document is to be read jointly with the Organizational, Management and Control Model of the Company and the Code of Ethics. The Delegation of Authority is the main reference for any decision regarding Company management and prevails over any other policy and procedure adopted by the Company.

### ***2.3 Piaggio Aero Industries S.p.A. organizational form***

The Company organizational structure is the one periodically published on the Company intranet.

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<sup>31</sup> Articles 19 through 20 of the Company Charter

## Chapter 3 - Organizational, Management and Control Model and methodology for its update

### 3.1 Foreword

The adoption of the Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001, in addition to being a factor for the exclusion of the liability of the Company for the commission of crimes foreseen in the Legislative Decree; constitutes an act of social responsibility by the Company creating benefits for all the stakeholder, shareholders, managers, employees, creditor and all other subjects whose interests are linked to the Company.

The introduction of a control system over the entrepreneurial action, jointly with the definition and distribution of ethical principles, improving the already high standards of behavior adopted by the Company adopt a regulatory function in as they govern the conducts and decisions of those that on a daily basis are called to work for the Company in compliance with the aforementioned ethical principles and behavior standards.

The Company has adopted the Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001 on 5<sup>th</sup> April 2011 for the first time and in July 2016 it initiated a series of activities (hereafter “the project”) aimed at a continuous improvement and update of the principles already established in its Corporate Governance culture in accordance with “*Linee Guida di Confindustria*”.

### 3.2 Piaggio Aero Industries S.p.A. project for the update of its Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001

The methodology chosen to carry out the Project, in terms of organization, definition of operating methods, operational steps, allocation of responsibilities among the various Business Structures, has been elaborated in order to guarantee the quality of the results.

Hereafter the operating methods and the criteria adopted in each phase are briefly described:

- ó Project kick-off: in this phase the processes in which offences included in Legislative Decree no. 231/2001 could be committed were identified (namely, those projects commonly referred to as “sensitive process”). Preparatory for this identification were the analysis, mainly documental, of the corporate and organizational structure of Piaggio Aero which allowed a preliminary identification of the Business processes/ sensitive processes and a preliminary identification of Business structure in charge of that process/activity.
- ó Identification of Key Officers and conduction of interviews: the goal of this phase was to identify the individuals with a deep understanding of processes/activities and of internal controls (hereafter Key Officers), completing and deepening the preliminary identification of activities/sensitive processes of the Business areas, as well as Business structure and people involved. The analysis have been carried out through structured interviews with Key Officers allowing the identification for each sensitive process the management and control methods adopted, with a particular focus on element of compliance and to the preventive monitoring methods. In this phase, a map of the activities that, according to the previously stated elements, could be exposed to the commission of offences included in the Legislative Decree no. 231/2001 was drafted.
- ó Update of the Model: In this phase, the objective was to conduct the updating of the Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001 of the Company, articulated in all of its components. To this avail, all the relevant Guidelines were considered, as well as the peculiarity of the Company as to define a customized 231 Model to be submitted to the Corporate Body for approval. The execution of this phase was supported both by the results of the previous phases and by the strategic choices of the Corporate Body of the Company.

### 3.3 The Organizational, Management and Control model Piaggio Aero Industries S.p.A.

The Legislative Decree no. 231/2001 grants, in coherence with the other circumstances stated in articles 6 and 7 of the Decree, a discriminatory value to the adoption and effective implementation of the 231 Models to the extent

that those Model are suitable to prevent, with reasonable certainty, the commission, both effective or attempted, of the offences foreseen by the Legislative Decree.

In particular, pursuant to article 6, paragraph 2 of the Legislative Decree no. 231/2001 an Organizational, Management and Control model must:

- ó identify the sensitive processes in the context of which offences can be committed;
- ó state specific protocols aimed at governing the definition and the enactment of the company's decisions pursuant to the offences to be prevented;
- ó identify proper methods for the management of financial resources suitable to prevent the commission of offences;
- ó clearly state mandatory information flows towards the Body in charge of the surveillance over the proper functioning and application of the Model;
- ó introduce a disciplinary system suitable to punish the non-abidance to the measures indicated in the model.

In light of the previously stated considerations, the Company updated its model that, adhering the indications stated in "*Linee Guida di Confindustria*", takes into account its peculiar business environment, in coherence with its own Corporate Governance system and that is able to enhance the existent control systems and Business structures.

The adoption of the Model, pursuant to Legislative Decree no. 231/2001, does not constitute an obligation. The Company however believes that its adoption is coherent with its adopted policies in order to:

- ó institute and/or strengthen the controls that allow the Company to prevent or promptly react and stop the commission of offences from Key Officers and individual subject to the direction or supervision of one of the Key Officers that could result in administrative liability for the Company;
- ó increase awareness among the individuals that cooperate, under various titles, with the Company (supplier, partners, etc.), requiring them to conduct operations in a way that does not constitute a risk of the commission of offences, limited to the activities performed in the interest of the Company;
- ó ensure its integrity, by complying with the explicit prescriptions stated in article 6 of the Legislative decree;
- ó improve the efficacy and the transparency in managing Business activities;
- ó result in a full awareness by the potential author of the crime that he is committing an illegal action (whose commission is strongly condemned and contrary to the interest of the Company even when apparently the Company could gain an advantage).

The Model, therefore, represents a coherent set of principles, procedures and prescriptions that: i) impact the internal functioning of the Company and the ways in which it interacts with external parties and ii) govern the duly management of a control system over sensitive processes, aimed at preventing the commission (both effective or attempted) of offences foreseen by the Legislative Decree no. 231/2001.

The Model, as approved by the Board of Directors of the Company, includes the following elements:

- ó a procedure for the identification of the processes in the context of which, crimes rising administrative liability pursuant to the Legislative Decree could be committed; *performed with the Identification of Areas at Risk of Offence Matrix, shared with the Key Officers and subsequently formalized in the Special Parts*
- ó control procedures (or standards) of control in relation with the observed sensitive processes; *formalized inside the Special Parts of the 231 Model as well as in the corporate policies and procedures*
- ó identification of the methods management of financial resources suitable to prevent the commission of offences; *formalized inside the Special Parts of the 231 Model as well as in the corporate policies and procedures*
- ó Supervisory Board; *included in the General Part of the 231 Model*
- ó information flows to and from the Supervisory Board and specific reporting obligations *formalized in the General Part of the 231 Model and in the procedure "Informational flows towards the Supervisory Board"*

- ó disciplinary system aimed at the punishment of the violations of the prescriptions stated in the 231 Model; *formalized in the General Part of the 231 Model*
- ó training and communication plan for the employees and other subjects maintaining relations with the Company; *formalized in the General Part of the 231 Model*
- ó criteria for the update and adjustment of the 231 Model; *formalized in the General Part of the 231 Model*
- ó Code of Ethics.

Moreover, the above-mentioned elements are represented in the following elements:

- ó The Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001 (this document)
- ó Code of Ethics.

The “Organizational, Management and Control Model pursuant to Legislative Decree no. 231/2001” contains:

(i) In its General Part, a description of:

- ó The regulatory framework;
- ó The business setting, Corporate Governance and organizational structure of the Company;
- ó The main characteristics of the Supervisory Board of the Company, providing a description of powers, tasks and information flows with which it is granted;
- ó Disciplinary and sanction system;
- ó Training and communication plan to be adopted in order to assure the widespread knowledge of the measures and dispositions of the Model;
- ó Criteria for the update and adjustment of the Model.

(ii) In the Special Parts, a description of:

- ó Offences foreseen by the Legislative Decree no. 231/2001 that the Company decided to take into consideration due to the main aspects of its business activities/processes;
- ó Sensitive activities and processes, as well as the relevant control standards.

The document defines the Code of Ethics as an integral part of the Model and as a vital part of the control system.

The Code of Ethics includes the ethical principles and values that shape the Corporate culture and that have to inspire the behavior of those who operate in the interest of the Company both from the inside and from the outside, in order to prevent the commission of offences that could result in the administrative liability of the Company.

The approval of the Code of Ethics creates an internal complex of rules that is both coherent and effective for the prevention of illegal behavior not aligned with Company guidelines. It is remarked that the Code of Ethics is completely integrated with the 231 Model of Piaggio Aero Industries S.p.A.

## Chapter 4 – The Supervisory Board pursuant to Legislative Decree no. 231/2001

### 4.1 *The Supervisory Board of Piaggio Aero Industries S.p.A.*

Pursuant to article 6, paragraph 1, letters a) and b) of the Legislative Decree no.231/2001, the company could be exempted from the administrative liability resulting from the commission of offences by the individuals described in article 5 of Legislative Decree no. 231/2001, if the Corporate Body has, among other things:

- ó adopted and efficiently enforced, prior to the commission of the offence, Organizational, management and control models suitable to prevent the very same kind of offences;
- ó entrusted the activities of surveillance on the effective functioning and observance of the Model as well as the update<sup>32</sup> activities of the Model to a Corporate structure granted with autonomous power of initiative and control.

The task of continuous surveillance on the widespread and effective enforcement of the Model, on the abidance to its dispositions by the addressees, as well as the proposal of update in order to improve its effectiveness in preventing the commission of offences or illegal conducts, is assigned to the Corporate Body instituted by the Company or, in case of corporations, to the Board of Statutory Auditors, to the Supervisory Committee or to the Committee for management control pursuant to article 6, paragraph 4-bis of Legislative Decree no.231/2001.

The conferral of the aforementioned tasks to a Corporate Body vested with autonomous power of initiative and control, and the proper and effective conduction of such tasks, represent an essential prerequisite for the exemption of administrative liability foreseen by the Legislative Decree no.231/2001.

The “*Linee Guida di Confindustria*”<sup>33</sup> suggest that such Corporate Body should possess the following requisites:

- i. autonomy and independence;
- ii. professionalism;
- iii. continuity.

The elements of autonomy and independence would require the absence, upon the Supervisory Board, of operative tasks that, by involving the Board itself into decisions and operative activities, may compromise its objectivity of

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<sup>32</sup> The Explanatory memorandum to Legislative Decree no. 231/2001 states on this issue that: “*the entity (...) shall furthermore monitor the effective functioning of the Models, and therefore on the adherence to the latter: pursuant to this aim, and to ensure the maximum effectiveness of the system, it is foreseen that the company shall grant itself with a structure to be constituted internal to it (as to avoid maneuvers aimed at creating a false legitimacy over the operational conducts of the company granted by obliging third parties; and especially with the aim of creating a true deficiency of the entity), vested with autonomous powers and specially appointed with such tasks (...) of particular relevance is the prevision of an obligation of information towards the aforementioned internal control structure, functional to ensuring its operative capability (...)*”.

<sup>33</sup> *Linee Guida di Confindustria*: “... the requisites necessary for the execution of the conferred mandate, and thus present in the Supervisory Board foreseen by the Legislative Decree no.231/2001 can be summarized as follows:

- **Autonomy and independence:** these characteristics are obtained with the positioning of the Supervisory Board as a staff structure in the highest possible hierarchical level, foreseeing its functional dependence to the ultimate corporate structure, or to the Board of Directors
- **Professionalism:** this characteristic is referred to the complex of instruments and techniques that the Supervisory Board must have at its disposal for the efficient conduction of the appointed activities. It refers to those specialized techniques possessed by individuals carrying out “inspection” duties; but also advisory techniques over the analysis of the internal control system; and also legal, with particular regard to criminal law. On the topic of inspection and analytical activities over the internal control system, it is evident the link to –for example– statistical sampling; to risk assessment and evaluation techniques; to measures for its mitigation (authorization procedures; check and balances; etc); to flowcharting and procedures for the individuation of critical issues; to interviewing techniques and survey elaboration techniques; to psychological foundations; to methods for the identification of fraud; etc. It refers to techniques that can be used either successively, in order to identify the reasons for which a crime could have been committed and who incurred in it (inspective approach); or preventively as to enact –at the time of adoption of the Model and in its subsequent modifications– the most suitable measures for the prevention, within reasonable terms, of the commission of crimes (advisory approach); or even so in real time as to monitor the adherence of everyday conducts to those defined in the Model
- **Continuity:** in order to ensure the efficient and constant enforcement of such a complex Model as the one being defined, even more so in companies boasting a medium or large size, it is necessary the existence of a structure engaged exclusively and permanently to the monitoring activities over the Model which is furthermore not appointed with operational tasks that could lead the Structure in taking decisions with financial or economic implications”.

judgment; the existence of direct link between the Supervisory Board and the ultimate corporate structure; as well as the financial resources that, in the annual process of budgeting, are destined to the functioning of the Supervisory Board.

As such the *“Linee Guida di Confindustria”* state that *“in case of mixed composition or comprising individuals internal to the Company inside the Supervisory Board, not being possible a complete independence of those individuals from the Company, the independence of the Supervisory Board shall be evaluated in its entirety”*.

The element of professionalism should be interpreted as the amount of theoretical and operative knowledge needed to effectively perform the tasks of the Supervisory Board, namely specialized techniques of those who engage in inspection and advisory activities.

The element of continuity renders necessary the presence, within the Supervisory Board, of a structure dedicated in a continuous fashion to the surveillance activities over the Model.

The Legislative Decree no.231/2001 does not provide precise indication on the composition of the Supervisory Board<sup>34</sup>

Lacking such indication, the Company has chosen for a solution that, taking into consideration the aims pursued by the law, can ensure, with regard to the dimension and the organizational complexity of the Company, the effectiveness of the controls under the responsibility of the Supervisory Board, respecting the above-mentioned elements of autonomy and independence.

In this framework, the Supervisory Board of the Company is a collegial body composed of three members chosen for their professional and soft skills, such as important control skills, independence of judgment and moral integrity.

#### ***4.1.1 General principles in terms of institution, appointment and replacement of the Supervisory Board***

The Supervisory Board of the Company is instituted with a decision by the Board of Directors and remains in charge for the timespan stated in the decision and in any way until the Board of Directors that nominated it remains in charge. The Supervisory Board is eligible for re-election.

The appointment as member of the Supervisory Board is subject to the existence of the objective requisites for eligibility<sup>35</sup>.

In the choice of the members the only relevant criteria are those referring to the specific professionalism and skills requested for the role, the good repute and the utmost autonomy and independence; the Board of Directors when appointing new members, must explicitly declare the existence of the requisites of independence, good repute and professionalism of its members<sup>36</sup>

In particular, following the approval of the Model or, in the event of new appointments, the subjects appointed as members of the Supervisory Board must release a statement in which they attest the absence of each of the following causes of ineligibility:

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<sup>34</sup> The *Linee Guida di Confindustria* state that the provisions included in the Legislative Decree no.231/2001 *“do not provide indications over the composition of the Supervisory Board. As such, it is possible to adopt either a monocratic or a collegial composition. In its collegial composition, subjects both internal and external to the entity can be called to take part in the Board (...). Even if theoretically the composition of the Board is indifferent to the lawmaker, the selection of one over the other must take into consideration the objective being pursued by the Law, and as such, must ensure the effectiveness of the controls relative to the dimension and the organizational complexity of the entity”*. *Confindustria, Linee Guida*, updated edition of March 2014.

<sup>35</sup> *“This is the case shall the collegial composition of the Supervisory Board be decided for, and within the latter all the different professional competences that concur to the control over corporate management in the traditional configuration of corporate governance (e.g., a member of the Board of Statutory Auditors; the appointed individual of internal controls) are represented. In such cases, the existence of the foreseen requisites is ensured, even if the case of no further indications, by the personal and professional characteristics requested by applicable regulatory provision on independent directors, on statutory auditors and on appointed individuals over internal controls”*. *Confindustria, Linee Guida*, updated edition of March 2014.

<sup>36</sup> Intended as the necessity for the Board of Directors, at appointment *“to declare the existence of the requisites of independence, autonomy, good repute, and professionalism of its members”*. Court Order of June 2007, Court of Naples, Judge for Preliminary Investigations, section. XXXIII

- ó family relations, marriage or up to fourth degree of consanguinity with members of the Board of Directors, of the Board of Statutory Auditors and with External Auditors;
- ó conflict of interests, even if potential, with the Company capable of jeopardizing the independence requested by the role and the tasks of the Supervisory Board;
- ó owning, directly or indirectly, equity participation in entities that could allow the exercise of considerable influence over the Company;
- ó administration of –during the three accounting periods preceding the appointment as member of the Supervisory Board or to advisory duties to the Supervisory Board – of businesses in bankruptcy state;
- ó convicted individuals, even if without a final decision or with a decision issued pursuant to article 444 of the Italian Criminal Code (so called “*patteggiamento*”), in Italy or abroad, for the commission of one of the offences foreseen by Legislative Decree no. 231/2001 or other offences affecting its good repute and moral integrity;
- ó convicted individuals, even if without a final decision, to a sanction implying disqualification, even if temporary, from holding public offices or the temporary disqualification from exercising managerial duties over legal entities or companies;
- ó pending court proceedings for the application of Law no. 1423 of December 27<sup>th</sup>, 1956 and Law no. 575 of May 31<sup>st</sup>, 1965 or ruling of a requisition order pursuant to article 2 bis of Law no. 575/1965 or decree of application of a preventive measure, either personal or real;
- ó lacking of subjective requisites of good repute stated in Presidential Decree no. 162 of March 30<sup>th</sup>, 2000 for the members of the Board of Statutory Auditors of listed companies, pursuant to article 148 paragraph 4 of Legislative Decree no. 58 of February 24<sup>th</sup>, 1998 “Single Code on Finance”.

Whereas one of the above mentioned causes of ineligibility manifest itself for one of the members, clearly asserted through a resolution of the Board of Directors, the member of the Supervisory Board is automatically revoked from the office.

The Supervisory Board in the conduction of its tasks – under its direct surveillance and responsibility – can benefit from the collaboration of all Business structure or external advisors, availing from their respective competences and abilities. This option allows the Supervisory Board to ensure a high level of professionalism and the requisite of continuity.

The above-mentioned causes of ineligibility should be considered even in reference to possible external advisors involved in the activities and in the conduction of the tasks of the Supervisory Board.

In particular, when the external advisor is appointed, it has to release a statement where it declares:

- ó the absence of the above-mentioned causes of ineligibility (e.g. conflict of interests, family relations with members of the Board of Directors, Key Officers, Statutory Auditors and External Auditors, etc);
- ó that it has been properly brought to its attention the dispositions and behavioral rules stated in the Model

The annulment of the powers of the Supervisory Board and their allocation to another subject can happen exclusively for motivated cause (even linked to Corporate restructuring) through a decision of the Board of Directors and with the approval of the Board of Statutory Auditors.

In this regard, with “motivated cause” it is intended, for example:

- ó serious negligence in the conduction of its tasks such as: the missed drafting of the biannual informative memorandum or the annual summary memorandum on the activities carried out by the Supervisory Board; the missed definition of the surveillance program;
- ó “*the missed or insufficient surveillance*” by the Supervisory Board – pursuant to article 6, paragraph 1, letter d) of the Legislative Decree no. 231/2001– resulting from a definite sentence against the Company pursuant to the legislative Decree, or from the sentence of application of an agreed sentence (the so-called “*patteggiamento*”)



- ó shall the member be internal to the Company, the existence of responsibilities and roles inside the Company that are incompatible with the requisite of independence and continuity. In any way, any disposition regarding this member (e.g. dismissal, relocation, disciplinary action, appointment of a new supervisor) should be submitted to the Board of Directors;
- ó shall the member be external to the Company, serious and asserted reason of incompatibility that hinders autonomy and independence;
- ó the ceased existence of even one of the requisites of ineligibility

Any decision regarding the members or the Supervisory Board in its entirety concerning annulment, substitution or suspension are under the exclusive jurisdiction of the Board of Directors.

#### **4.2 Powers of the Supervisory Board**

The activities conducted by the Supervisory Board cannot be questioned by other Business structure. The surveillance and control of the Supervisory Board is in fact, strictly functional to the objectives and effective enforcement of the Model and it cannot substitute the institutional control functions of the Company.

The Supervisory Board is vested with the powers of action and control needed to ensure an effective and efficient surveillance on the Model pursuant to article 6 of Legislative Decree no 231/2001.

The Supervisory Board is vested with the powers of action and control that extend to all the Business structures of the Company and that should be used in order to effectively and timely carry out the disposition indicated in the Model.

In particular the Supervisory Board is vested, as to enable the conduction of its duties, with the following powers and tasks<sup>37</sup>:

- ó rule its own functioning also through the definition of a Charter over its own activities that includes: scheduling of activities, the determination of timetables of controls, identification of the analytical criteria and procedures, information flows coming from other Business structures;
- ó monitor the functioning of the Model with reference to the prevention of the commission of offences foreseen by the Legislative Decree no.231/2001;
- ó perform periodic and continuous inspections activities – with frequency and operative methods indicated in the program of monitoring activities – and unannounced controls, taking into considerations various sector of interventions and their respective weak points in order to verify the efficiency and the effectiveness of the Model;
- ó free access to any Business structure – without the need of any preventive agreement – to request information, documentations and data deemed necessary in order to carry out the tasks state in Legislative Decree no. 231/2001, from all employees and executives. In case it receives a motivated the denial to

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<sup>37</sup> Specifically, the tasks that the Supervisory Board is called to carry out, also pursuant to article 6 and 7 of the Legislative Decree no.231/2001, can be summarized as follows:

- *Vigilance over the **effectiveness** of the Model, that is obtained through the monitoring of the coherence between the concrete conducts and the define Model;*
- *Examination of the **adequacy** of the Model, namely of its real (and not merely formal) capacity to prevent the commission of undesired conducts;*
- *Analysis of the **conservation** over time of the requisites of solidity and functionality of the Model;*
- *Monitoring of the necessary dynamic **updating** of the Model, shall the analyses carried out evidence the necessity of enacting corrections and integrations. Such updating is performed, usually, in two different both join moments;*
- ***Proposal of upgrading initiatives** to the Model to the Business and Corporate structures capable of concretely deciding on the issue*
- ***Follow-up**, namely the monitoring of the enforcement and effective functioning of the proposed solutions.*

Confindustria, Linee Guida, updated edition of March 2014.

access to data, the Supervisory Board drafts, if it does not agree with the motivations exposed, a report subsequently submitted to the Board of Directors;

- ó ask relevant information or documentation, even in digital copy, related to the sensitive process, to the Directors and to the control Bodies of the company, to External Auditors, to partners, to advisors and in general to addressees of the Model. The obligation of the addressee to comply with the request of the Supervisory Board has to be inserted in the contracts;
- ó manage, develop and propose the constant adjustment of the Model, drafting, when necessary, proposal for the Corporate Body for update and adjustment of the Model needed as a result of: i) significant violation of the dispositions of the Model; ii) significant change to the organizational form of Company and/or of the operating methods; iii) changes to the applicable regulatory framework;
- ó monitor the abidance to the procedures stated in the Model and detect those behavioral deviations emerging from the analysis of the information flows and from the notices to which the Head of the various Business Structures are obliged to as per the Model;
- ó ensure the periodic update of the identification system of sensitive processes, of the mapping and classification of sensitive processes;
- ó manage the relations with and ensure information flows to the Board of Directors, as well as to the Board of Statutory Auditors;
- ó promote initiatives regarding the distribution and training on the disposition of Legislative Decree no. 231/2001 and the Model, on the impacts of the regulatory framework over the activities of the Company and on behaviors, implementing also control on the attendance. In this regard it will be necessary to differentiate the programs with reference to those operate in different sensitive processes.
- ó verify the definition of an effective internal communication system in order to allow the transmission of relevant information pursuant to the Legislative Decree no. 231/2001 ensuring the secrecy and the protection of the signaling party;
- ó ensure the knowledge of those behaviors that must be signaled and the methods for the signaling;
- ó provide insight and explanation on the meaning and on the implementation of the indications stated in the Model;
- ó elaborate and submit for approval to the Corporate Body the forecast of the financial resources needed in order to ensure the correct performance of the tasks assigned, acting in complete independence. This forecast, that has to ensure the full and correct performance of the tasks, must be approved by the Board of Directors. The Supervisory Board can autonomously use resources exceeding the budget, if the usage of the excess resources is needed to face exceptional and urgent situations. In those cases the Supervisory Board has to inform the Board of Directors in its next available meeting;
- ó signal in a timely fashion to the Corporate Body, as to render possible the application of appropriate measures, the asserted violations to the Model that could lead to a liability for the Company;
- ó monitor and evaluate the suitability of the disciplinary system pursuant to Legislative Decree no. 231/2001.

In performing these activities the Supervisory Board can avail from the existent Business structures and specific competences.

### ***4.3 Obligation to provide information to the Supervisory Board***

The Supervisory Board must be promptly informed, through a dedicated communication system, on acts, behaviors or events that may cause a violation of the Model or that, more broadly, are relevant pursuant to the Legislative Decree no.231/2001.

The obligation to provide information about potential behaviors in violation with the dispositions stated in the Model falls within the diligence and loyalty commitments of the employee.

The Business structures that conduct operation within the context of sensitive processes must communicate to the Supervisory Board information about: i) the periodic results of control activities carried out pursuant to the implementation of the Model, also if requested (e.g. reports summarizing the activities carried out; etc.); ii) eventual anomalies identified among the information provided.

In addition to the information regarding general violations of the Model as described before, the following information, as an example, must be provided to the Supervisory Board:

- ó operations that fall within the sensitive process (e.g. nonscheduled inspection from Public Officers, ongoing litigations, etc.);
- ó measures and/or information issued by judicial police, or by any other authority, including administrative ones, involving the Company regarding offences included in Legislative Decree no. 231/2001;
- ó requests for legal assistance submitted by employees when a judicial proceeding involving offences included in Legislative Decree no. 231/2001 is started, unless expressly prohibited by judicial authorities;
- ó reports resulting from the control activities conducted by the Head of Business structures in which elements, facts, events or abstentions with a potential impact on the observance of the disposition stated in the Model may emerge;
- ó information relating to disciplinary proceedings and eventual sanctions inflicted (including sanctions inflicted to employees) or motivated closure of disciplinary proceedings;
- ó Inquiry committees or internal relations from which liability for the commission of offences included in Legislative Decree no. 231/2001 emerges;
- ó any other information that, although not included in the aforementioned list, is relevant for a correct and complete surveillance and update of the Model.

In maintaining relation with advisors, partners, suppliers, etc. it shall be contractually included an obligation to provide information if they receive, directly or indirectly, from an employee/representative of the Company a request to conduct operations in a way that could determine a violation of the Model.

In this regard, the following general prescriptions are applied:

- ó it must be collected any eventual notice on: i) the commission, or the reasonable risk of commission, of offences foreseen by the Legislative Decree no. 231/2001; ii) conducts not in line with standard of conducts issued by the Company; iii) conducts that, in any way, can determine a violation of the Model
- ó the employee that comes to the knowledge of a violation, attempt or suspect of violation of the Model, can contact his own superior or, if the notice does not give positive outcome or the employee feels discomfort in speaking to his superior, can directly signal the Supervisory Board;
- ó advisors, partners, suppliers, in maintaining relations and conducting activities in favor of the Company, may directly signal to the Supervisory Board any situation in which they received, directly or indirectly, from an employee/representative of the Company a request to conduct operations in a way that could determine a violation of the Model;
- ó in order to collect in an effective way the above mentioned notices and signals, the Supervisory Board will promptly and broadly communicate the procedures for issuing said notices;
- ó the Supervisory Board discretionally and under its own responsibility assesses the notices received and the cases in which it in necessary its engagement, interviewing the signaling party and/or the author of the alleged violation;
- ó the outcome of the assessment must be motivated and documented in writing.

The specific information flows from and to the Supervisory Board for each process, as well as their contents and frequency, are formalized in the document "Information flows towards the Supervisory Board". The information flows included in such policy must not be considered exhaustive. The Supervisory Board can ask at any time, the documentation that will deem necessary even if not foreseen by the aforementioned policy.

The correct fulfilment of the obligation to provide information by the employee cannot constitute a reason to inflict disciplinary measures<sup>38</sup>.

The Company adopts suitable and effective measures to ensure the protection of the privacy of the identity of the employee that signaled to the Supervisory Board useful information for the identification of behavior in contrast with the prescriptions stated in the Model, in the procedures adopted for its enforcement, and in the procedures defined by the Internal Control System, except in the case of contrasting legal obligations or following the necessity of protection of the Company or of individuals accused wrongly or in violation of the *bona fide* principle.

#### **4.3.1 Collection and documentation of the information**

Every information, notice, report, foreseen by the Model it is archived by the Supervisory Board in a dedicated archive (either in hard- or digital-copy) for a period of at least 10 years.

#### **4.3.2 Reporting by the Supervisory Board to the Corporate Bodies**

The Supervisory Board shall report on the implementation of the Model, critical aspects and the necessity of corrective intervention. As such, different lines of reporting by the Supervisory Board are established:

- ó on a continuous basis, the Supervisory Board reports to the Board of Directors, represented by the CEO;
- ó at least on an annual basis, the Supervisory Board shall present a report to the Board of Directors, in front of the Board of Statutory Auditors as well.

The meetings with the Corporate and Business structures and with the CEO must be documented. The Supervisory Board is in charge of archiving these documents.

The Supervisory Board elaborates:

- ó at least on an annual basis, an information report on the activities carried out to be presented to the Board of Directors and the Board of Statutory Auditors (providing specific indication of the activities and controls carried out and the relative results, the eventual update of the map of risk areas, etc.);
- ó immediately and without delay, a communication on the emerged extraordinary situations (e.g. significant violation of the principles stated in the Model, new regulatory framework, significant modification of the organizational form of the Company, etc.) and, in case of urgent notices received, to be presented to the CEO.

Periodic reports by the Supervisory Board are drafted in order to allow the Board of Directors to better evaluate the need to adopt corrective interventions to the Model and must contain:

- ó eventual problems derived from the implementation of the procedures included in the Model;
- ó a final report on the notices and signals received on the Model;
- ó disciplinary proceedings and sanctions applied by the Company, with exclusive reference to the sensitive processes;
- ó an overall evaluation of the functioning of the Model with indication of potential integration, correction and modification points.

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<sup>38</sup> “Through the regulation of the methods for compliance with the obligation of information it is not intended the promotion of the so-called “internal rumors” (whistleblowing), but rather the creation of a reporting system over those real facts and/or conducts, independent from the hierarchical system, that allows personnel to report those violations of the rules by other employees, free from fear of retaliation. Under this interpretation, the Supervisory board assumes also the role of Ethic Officer, without nonetheless, being granted with the disciplinary powers; which are better positioned in a specific committee, or for more serious cases, in the Board of Directors”. *Confindustria, Linee Guida*, updated edition of March 2014.

Furthermore, the Supervisory Board must cooperate with the Business structures on the basis of their own specific profile, in particular:

- ó with the Business structure Human Capital & Organization about personnel training and disciplinary proceedings related to the observance of the Model and of the Code of Ethics;
- ó with the Business structure Finance about the control of financial flows and the preparation of the financial statements;
- ó with the Business structure(s) responsible for the management of Health and Safety (Employer, Appointed Individuals and *RSPP*) about compliance with the regulatory prescriptions and over the monitoring of the procedures in place;
- ó with the External Auditors about the economic and financial situation of the Group.

Moreover, using its own budget, the Supervisory Board can avail itself from both internal or external specialized resources in order to carry out specific controls.

The meeting with the Business structure must be documented. Copies of the memorandum are archived by the Supervisory Board.

The Board of Directors is entitled to convene the Supervisory Board that, in turn, it is entitled to ask the Chairman to convene the Board of Directors for urgent reasons.

The Supervisory Board will also participate to the meeting amongst the Board of Directors and Board of Statutory Auditors for the discussion on the periodic or extraordinary reporting by the Supervisory Board or for any issue relating to the Model.

## Chapter 5 – Disciplinary system

### 5.1 Role of the disciplinary system

Article 6, paragraph 2, letter e) and article 7, paragraph 4, letter b) of Legislative Decree no. 231/2001 state as a condition for an effective enforcement of the Organizational, Management and Control Model the introduction of a disciplinary system suitable to sanction the non-abidance to the measure indicated in the Model.

For this reason, the definition of an adequate disciplinary system constitutes a vital prerequisite for the exempting value of the Model.

The implementation of a disciplinary measure in case of violation of the disposition included in the Model is independent from the commission of an offence and from the verdict of the related criminal prosecution conducted by the judicial authority<sup>39</sup>.

The disciplinary system was drafted taking into account the following principles:

- ó application of the disciplinary sanctions regardless of the verdict of the related criminal prosecution; being the conduct standard foreseen by the model decided autonomously by the company and independent from the criminal act that such conducts can give rise to;
- ó differentiation on the basis of the type of addressee and the type/seriousness of the violation observed (element of “proportionality”);
- ó identification of the sanctions to be implemented towards the addressee in compliance with the National Collective Bargaining Agreement and with the applicable laws (requisite of “compatibility”);
- ó identification of procedures for the assertion of violations or partial application of the Model, as well as a specific procedures for the application of the sanctions, identifying the subject responsible for their application and more in general responsible over the monitoring, implementation and updating of the disciplinary system.

In particular the addressees of the disciplinary system are:

- ó all individuals that, even *de facto*, are representatives of Piaggio Aero or one of its Business structure granted with managerial and financial autonomy;
- ó all individuals subject to the direction or supervision of one of the above-mentioned representatives and more broadly all employees as well as those who, under various titles and responsibilities, work with the Company and contribute to the realization of the overall company activities, including partners, suppliers, etc.

The disciplinary system is published and distributed through the present Model.

The compliance with the prescription included in the Model adopted by the Company must be deemed integral part of the contractual obligations of the addressees.

The violation of the system determines a deterioration of the relationship of trust with the Company and may lead to disciplinary, legal or criminal retaliation. In more serious cases, the violation may lead to the interruption of the employment relationship (for employees), or the termination of the contract (for third parties.)

For these reasons it is required that each addressee is familiar with the prescriptions stated in the Model of the Company, in addition to the rules applicable to the specific processes carried out within his Corporate structure.

The disciplinary system hereby stated, adopted pursuant to article 6, paragraph 2, letter e) of Legislative Decree no. 231/2001 must in fact be complementary to the disciplinary system stated in the National Collective Bargaining Agreement in “Metalworking and Mechanical Engineering industry” and of “Executives of companies producing

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<sup>39</sup> *“The disciplinary assessment of the conducts carried out by the employer, notwithstanding the eventual control by the occupational judge, must not necessarily be equal to the evaluation carried out by the judge during the criminal proceeding; due to the autonomy that a violation of the Code of Ethics or internal procedures assumes with regard to a criminal offence. The employer is not obliged, prior to engage in any action, to attend the culmination of the penal proceeding being carried out. The principles of timeliness and promptness of the sanctions render not only unduly but also not advisable to withhold the application of the disciplinary sanction until the culmination of the criminal proceeding eventually being carried out”.* *Confindustria, Linee Guida*, updated edition of March 2014.

goods and services” (*Contratti Collettivi Nazionali del Settore Industria metalmeccanica e installazione di impianti e dei Dirigenti di aziende produttrici di beni e di servizi*) applicable to the different kind of employees of the Company.

The implementation of a disciplinary measure in case of violation of the disposition included in the Model is independent from a possible criminal prosecution deriving from the commission of an offence foreseen by the Legislative Decree no.231/2001.

The disciplinary system and its proper application are constantly monitored by the Supervisory Board.

No disciplinary proceeding can decay and no disciplinary measure can be applied, regarding a violation of the Model, without the preventive opinion of the Supervisory Board.

## **5.2 Sanctions and disciplinary measures**

### **5.2.1 Sanctions for employees**

The infringement –by part of the employees– of the provisions included in the Model and of all the documentation included therein, represents a disciplinary violation.

The sanctions applied to employees are the ones included in the applicable National Collective Bargaining Agreement, in compliance with article 7 of Law no. 300/1970 (Workers’ Statute) and with other possible regulations.

In particular the sanctions applied, are the ones included in the National Collective Bargaining Agreement for employees (*Contratti Collettivi Nazionali del Settore Industria metalmeccanica e installazione di impianti*) dated December 05<sup>th</sup>, 2012 and executives (*Dirigenti di aziende produttrici di beni e di servizi*) dated December 03<sup>rd</sup>, 2014.

The sanctions are applied in compliance with the procedures included in the aforementioned National Collective Bargaining Agreement, by the Human Capital & Organization Business structure, upon completion of the assertion process.

The sanctions to be applied to employees for the mere violation of behavior rules and procedure described in the Model are:

- ó for the violation, even though abstention and in complicity with other parties, of principles included in the Model, an oral warning (in the event of repeated and/or serious violation other forms of sanctions may be applied);
- ó for the obstruction to the monitoring activities carried out by the Supervisory Board and, more broadly, for any sort of behavior aimed at avoiding the control system stated in the Model, the sanction of suspension without pay.

With regard to occupational health and safety, the notice of irregularity for the application of disciplinary measure can come from all subjects having surveillance and monitoring obligations over the activities of the employees.

The following sanctions can be applied to the employees:

- a) oral warning;
- b) written warning;
- c) fine of up to 3 hours of normal salary calculated on the basis of the minimum payroll;
- d) suspension from work and salary up to a maximum of 3 days;
- e) dismissal.

#### **a) Oral warning**

In compliance with the National Collective Bargaining Agreement, shall incur in an oral warning the employee who:

- commits a small infringement with small negligence and little consequences outside the Company;

- in general, commits a slight breach of the obligation included in the 231 Model or engages in a conduct not compliant with the prescriptions stated in the 231 Model.

**b) Written warning**

In compliance with the National Collective Bargaining Agreement, shall incur in written warning, the employee who:

- commits a small infringement, but superior to the one punished with an oral warning, acting in negligence while conducting activities in the context of the Company activities;
- does not abide in a negligent form to the obligation to provide information to the Supervisory Board stated in the 231 Model;
- relapses more than twice, in committing an infringement leading to oral warnings;
- commits shortcomings punishable with oral warning that, for particular circumstances, for specific consequences or for their reiteration, have increased relevance;
- in general, commits a non-serious breach of the obligations included in the 231 Model or engages in a conduct not in coherence with the prescriptions stated in the 231 Model while carrying out an activity in risk-prone areas, or in violation of the instructions coming from a superior.

**c) and d) Fine and suspension**

In compliance with the National Collective Bargaining Agreement, shall incur in the fine (of up to 3 hours of retribution) and suspension from work and salary the employee who:

- commits infringements that have an impact even outside the Company;
- commits shortcomings punishable with lesser sanction that, for particular circumstances, for specific consequences or for their reiteration, have increased relevance
- in general, commits a breach (repeated or serious) of the obligation included in the 231 Model or engages in a conduct not in coherence with the prescriptions stated in the 231 Model while carrying out an activity in risk-prone areas, or in violation of the instructions coming from a superior.

**e) Dismissal**

The employee that, in carrying out an activity within the context of a sensitive process, or engages in a conduct not in coherence with the prescriptions stated in the 231 Model which is clearly aimed at the commission of one of the offences foreseen by the Legislative Decree no.231/2001, undergoes the disciplinary sanction of the dismissal, in compliance with the National Collective Bargaining Agreement.

In particular, the sanction is applied if the employee has, voluntarily and negligently (only for offences related to occupational health and safety), committed an infringement of such seriousness, that even in theoretical way, can result in a criminal offence pursuant to Legislative Decree no. 231/2001.

The Company is entitled to request the compensation of the damages resulting from the violation of the Model by part of an employee. The compensation will be proportional to:

- ó the level of responsibility and autonomy of the employee the committed the infringement;
- ó the possible existence of past disciplinary sanctions over the same employee;
- ó the degree of intentionality of the conduct;
- ó the seriousness of the consequences, intended as the level of risk to which the Company has been exposed – pursuant to Legislative Decree no. 231/2001– following the commission of the infringement.

**5.2.2 Sanctions for Executives**

The failure to comply with the disposition included in the Model by the Executives, according to the seriousness of the infraction and taking into consideration the trust involved in the employment relationship, may lead to the



application of conservative disciplinary sanctions, if the trust was not undermined, or the dismissal for motivated cause, in accordance to the seriousness of the infraction and in compliance with the general principle previously identified; as well as with the applicable regulatory and contractual provisions and taking into consideration that the violations, in any way, constitute non fulfilment of the employment relationship.

If the infraction of the 231 Model caused by the Executives, constitutes a specific criminal offence, the Company may apply towards the individual responsible the following measures, as it awaits the conclusion of the criminal proceeding:

- ó precautionary suspension, with pay, of the Executive;
- ó relocation of the Executive to another position within the Company.

Following the outcome of the criminal proceeding that confirms the violation of the 231 Model by the Executive and thus its conviction for one of the offenses listed in the Legislative Decree, the Executive will be subject to the disciplinary action reserved for the most serious offences.

In particular, the disciplinary measure adopted in case of infringements of particular seriousness is the termination of the employment relationship for motivated cause.

The penalty of dismissal for motivated cause is applied in cases of particularly serious infringements that may determine the subjugation of the Company to the measures prescribed in Legislative Decree no.231/2001 capable of annulling the trust element in the employment relationship such as to hinder the continuation of the employment relationship itself due to lack of trust.

No sanction can be applied to Executives for the violation of the 231 Model without the preliminary involvement of the Supervisory Board.

This involvement is given as occurring, when the proposal for the application of the sanction comes from the Supervisory Board itself.

### ***5.2.3 Sanctions for Directors***

In case of violations of the disposition of the Model by one or more Directors, it will be given prompt communication to the Board of Directors and Board of Statutory Auditors so that appropriate measures may be applied in compliance with regulations requirements and provisions adopted by the Company. It is remarked that pursuant to article no. 2392 of the Italian Civil Code the Directors are responsible towards the Company for failing to comply with obligations imposed by the law with the proper diligence. Therefore, in relation to the damages caused by specific events closely related to the failure to apply the proper diligence, a social responsibility pursuant to articles 2393 of the Italian Civil Code and following may be stated.

The Board of Directors is responsible for evaluating the infringement and for the implementation of the most suitable measures against the Director or Directors that have committed the offence. In this evaluation, the Board of Directors is supported by the Supervisory Board and adopts its resolution, in accordance with the Board of Statutory Auditors, with the absolute majority of voters, abstaining from the vote the Director or Directors that have committed the infraction.

The applicable sanctions for Directors are the annulment of the mandate or of the assignment and, shall the Director be also an employee of the Company, its dismissal.

The Board of Directors and the Board of Statutory Auditors pursuant to article 2406 of the Italian Civil Code, are responsible for summoning the Shareholder' meeting, if necessary. The call for the Shareholders' meeting is mandatory for the decision on the annulment of the assignment or on an action of liability towards the Directors (the action of liability towards the Directors cannot be considered a sanction).

### ***5.2.4 Sanctions for partners and third parties acting on behalf of the Company***

Regarding partners or external parties acting on behalf of the Company, the sanctions methods for their application over the for violations of the Code of Ethics, the Model and the related implementing procedures are preliminarily defined.

These measures may include, for violations of greater seriousness, and in any case when the violation may affect the trust of the Company towards the person responsible for the violations, the termination of the contract and a possible request for compensation if such behavior caused damage to the Company, such as, for example, the application, even as a precautionary measure, of the penalties foreseen by the Legislative Decree no.231/2001.

The Supervisory Board, acting in coordination with the CEO or any individual appointed by him, ensures that specific procedures are in place for the communication to third parties of principles and guidelines contained in the 231 Model and in the Code of Ethics and ensures that the third parties are informed about the consequences that may result from the violation of said principles and guidelines.

#### ***5.2.5 Sanctions for Statutory Auditors***

When a violation is incurred in by one or more Statutory Auditors, the Supervisory Body, upon receiving the notice, communicates the information to the Board of Directors as well as to the Board of the Statutory Auditors.

The Board of the Statutory Auditors carries out all the necessary investigations and, previous consultation with the Board of Directors, decides on the appropriate sanctions taking into consideration the seriousness of the violation and in compliance with the powers foreseen by the regulatory prescriptions and/or by the Company Charter.

#### ***5.2.6 Measure applicable to the Supervisory Board***

In case of negligence and/or malpractice by the Supervisory Board in the supervision of the correct implementation of the Model, on its observance and in the case of missed individuation of violations to it, the Board of Directors will takes appropriate measures, together with the Board of Statutory Auditors, according to the modes provided by the current legislation, including the annulment of the assignment, but excluding the request of compensation.

In order to ensure a full right of defense, it must be provided a time limit within which the subject can present the applicable justifications and/or defense documents and can be interviewed.

In case of allegedly illegal conducts incurred in by the members of the Supervisory Board, the Board of Directors, subsequent to the receiving of the report, investigates on the unlawful conduct and also decides the appropriate sanction to be applied.

## Chapter 6 – Training and communication plan

### 6.1 Introduction

The Company, in order to effectively implement the 231 Model, intends to ensure the correct divulgation of its contents and principles within and outside the organization.

In particular, the objective of the Company is to communicate the contents and the principles of the 231 Model not only to its employees, but also to the individuals that, while not falling under the formal qualification of employee, work –also occasionally– for the achievement of the objectives of the Company pursuant to specific contractual relations. As a matter of fact, the addressees of the 231 Model are both the individuals that granted with representation, administration or managerial functions within the Company, and the individuals under the supervision of the former (pursuant to art.5 of the Legislative Decree no. 231/2001), and also, more generally, all those who work for the achievement of the purpose and the objectives of the Company. Therefore, the addressees of the Model include the members of the Corporate Bodies, the individuals involved in the functions of the Supervisory Board, employees, partners, external consultants, suppliers, etc.

Indeed, the Company intends to:

- induce the awareness, of all those who act on its name or on its behalf in the context “sensitive areas”, that they can incur in prosecutable offences, in case of the violation of dispositions stated therein;
- inform those that act in any qualification on its name, on its behalf or on its interest that the violation of the provisions contained in the 231 Model entails the implementation of specific penalties or the termination of the contractual relation;
- reiterate that illegal conducts, of any typology and independently from the purpose, are not tolerated, as these conducts are contrary to the principles of the Company’s Code of Ethics (also in the case the Company can apparently obtain an advantage from it).

The training and communication activity is differentiated according to the addressee, but in any case it is inspired to the principles of completeness, clarity, accessibility and continuity as to enable the full awareness of addressees with regard to the corporate provisions that they need to respect and the ethical rules that shall inspire their conducts.

The addressees need to fully respect all the provisions of the 231 Model, also in observance to the loyalty, correctness and diligence commitments that arise from the legal relations established by the Company.

The training and communication activity is under the supervision of the Supervisory Board, to which the tasks of “promotion and definition of the initiatives for the diffusion of the knowledge and the comprehension of the 231 Model, as well as the training of the personnel and its awareness to the compliance with the principles contained in the 231 Model” and of “promotion and realization of communication and training interventions with regard to the contents of the Legislative Decree no. 231/2001, to the effects of the legislation on the Company’s activity and to the behavioral rules” are assigned.

### 6.2 Employees

Each employee is obliged to: i) acquire a functional knowledge of the principles and contents of the 231 Model and of the Code of Ethics; ii) know the operational procedures with which its activity needs to be performed; iii) actively contribute, in relation to its roles and responsibilities, to the effective implementation of the 231 Model, signaling observed deficiencies

In order to ensure an effective and logical communication activity, the Company promotes the knowledge of the contents and the principles of the 231 Model and of the procedures for the implementation within the organization to the addressees, with a level of depth differentiated according to positions and roles.

Piaggio Aero, with regard to all the employed and/or comparable personnel, foresees an educational/training activity with the following standards:

- ó Information, at the moment of employment or at the beginning of the working or comparable relation, by means of access to the 231 Model and the Code of Ethics directly from the corporate intranet; the

employees are required to sign a declaration of knowledge and compliance with the principles of the Model and of the Code of Ethics described therein. In any case, for those employees not granted with Intranet access, the documentation is made available using alternative means as the allegation to the pays lip or the posting on corporate bulletin boards;

- ó Compulsory Training Program by means of ad hoc meetings or web learning with the Head of the different Business Structures concerning the structure and the components of the 231 Model;
- ó Program of meetings (annual or ad hoc in case of organizational and/or process changes) promoted by the single Head of the Business Structure with the employees in order to explain the 231 Model, with particular attention to the Code of Ethics and to the specific control procedures relative to their competent and operating area as well as to the sanction system;
- ó Publication of the 231 Model and subsequent updates/modifications on the Piaggio Aero intranet website.

### ***6.3 Members of the Corporate Bodies and individuals appointed with representation functions***

The 231 Model is made available to the members of corporate bodies and to the individuals boasting representation functions at the moment of acceptance of the position being conferred; furthermore, it is requested to the parties to sign a declaration of compliance with the principles of the Model and of the Code of Ethics.

The proper communication and training instruments are adopted in order to keep the individuals updated with regard to the incurred modifications to the 231 Model (if any), as well as to any relevant procedural, regulatory or organizational change.

### ***6.4 Supervisory Board***

Specific information and training (e.g., according to Company's organizational and/or business change, etc.) is to be addressed to the members of the Supervisory Board and/or to the individuals employed in the execution of its functions.

### ***6.5 Other addressees***

The activity of communication of the contents and the principles of the Model is addressed also at third parties that maintain with the Company relations of collaboration which are contractually regulated (e.g., suppliers, consultants and other independent collaborators, etc.) with particular reference to those conducting operations within the area of activity considered as sensitive pursuant to the Legislative Decree no. 231/2001.

For this purpose, the Company provides to third parties an abstract of the guiding Principles of the 231 Model and the Code of Ethics and evaluates the possibility to organize ad hoc training sessions, when considered necessary.

### ***6.6 Contractual clauses***

For those external individuals engaged, even if indirectly, in the exercise of Piaggio Aero business activities, and in order to ensure their abidance to the provisions and procedures included in the Model, the Company integrates contracts and conferral letters with specific clauses foreseeing the commitment of the counterparty to the abidance to the Model, knowing that the violation thereof could be used as a reason for the suspension of payments and the temporal or definitive termination of the contract by Piaggio Aero.

In the case of contracts to be drafted with providers of public services, bodies for which predetermined contractual models can exist, the Company sends in digital form an informative report regarding the Legislative Decree no. 231/2001 including the request to comply with the 231 Model.

This rendered necessary as to ensure the respect of the procedures and of the principles of the Model also by individuals that, being third parties external to the Company, are not and cannot be exposed to the risk of disciplinary sanctions explicitly foreseen for the employees.

## **Chapter 7 - Implementation of the Model – Criteria for the supervision, the updating and adjustment of the Model**

### **7.1 Checks and controls over the Model**

The Supervisory Board must draft annually a surveillance program as to broadly plan its activities, foreseeing a schedule of the activities to perform over the year, the definition of the controls' frequency, the identification of the criteria and the analytical procedures, the possibility to perform unplanned reviews and controls.

In conducting its activities, the Supervisory Board can make use of both the support of Company's internal structures with specific capabilities on business sectors under control as well as external consultants, with regard to the execution of the technical operations necessary for the conduction of the control function. In such cases, the external consultants must always report the results of their operations to the Supervisory Board.

The Supervisory Board is vested, during the reviews and the inspections, with the broadest power in order to effectively perform its tasks.<sup>40</sup>

### **7.2 Updating and Adjustment**

The Board of Directors decides on, with regard to the updating and the adjustment of the 231 Model, modifications and/or integrations that can become necessary consequently to:

- ó relevant violations to the Model's provisions;
- ó modifications to the Company's internal structure and/or to the methods for the development of organizational activities;
- ó regulatory changes;
- ó results of the control activities.

Subsequent to their approval, the modifications and the instructions for their immediate implementation are communicated to the Supervisory Board.

The Supervisory Board preserves, in any case, specific tasks and powers with regard to the handling, the development and the promotion of the constant updating of the Model. For this purpose, the Supervisory Board expresses remarks and proposals, relating to the organization and to the control system, to the appointed Business Structures or to the Board of Directors, in cases of particular relevance.

In particular, in order to ensure that the modifications to the Model are performed with the necessary promptness and effectiveness, at the same time without incurring in deficiencies of coordination among the operational processes, the provisions contained in the 231 Model and their diffusion, the Board of Directors has decided to delegate to the CEO the task of implementing periodic modifications to the Model with regard to descriptive aspects, when considered necessary. It is opportune to clarify that the expression "descriptive aspects" refers to elements and information that come from the documents decided by the Board of Directors (e.g., redefinition of the organizational chart, etc.) or by Business Structures with specific power of attorney (e.g., new organizational procedures, etc.).

During the presentation of the annual summary report, the CEO presents to the Board of Directors a specific note with regard to the modifications made pursuant to the received conferral in order to make them objects of approval

However, the approval of updating and/or adjustments to the Model caused by the following factors remains an exclusive competence of the Board of Directors:

- ó regulatory modification with regard to the administrative responsibilities of entities;
- ó identification of new sensitive activities, or modification to the ones previously identified, also following the potential go-live of new business activities;

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<sup>40</sup> On this issue, refer to paragraph 4.2.

- ó formulation of remarks by the Ministry of Justice with regard to the Guidelines pursuant to article 6 of the Legislative Decree no. 231/2001 and articles 5 and following of the Ministerial Decree no.201 of June 26th, 2003;
- ó offences foreseen by the Legislative Decree 231/2001 committed by the addressees of the provisions of the 231 Model or, more in general, relevant violations to the 231 Model;
- ó deficiencies and/or gaps in the provisions of the Model observed during reviews on the effectiveness of the latter.

The 231 Model , in any case, shall be subject to a periodic audit procedure every three years to be made following the decision of the Board of Directors.

## Chapter 8 – Special Part

### 8.1 Foreword

The structure of this Organizational Model foresees a “General Part” – regarding the corporate organization in its entirety, the project for the implementation of the 231 Model, the Supervisory Board, the disciplinary system, the training and communication procedures – and “Special Parts”, regarding the detailed implementation of the principles quoted in the “General Part”, with reference to the type of offences foreseen by the Legislative Decree no.231/2001 that the Company decided to take into account because of the characteristics of its conducted activities.

The structure of the “Special Parts” allows to highlight the specific sensitive areas with regard to the offences foreseen by the Legislative Decree no. 231/2001. The foreseeing of “Special Parts” in the structure of the Model enables the timely updating, by means of the additions of new sections, shall the lawmaker intend to include additional relevant type of offences.

With regard to each macro area taken into account, the sensitive activities and the related control instruments implemented for the prevention of the commission of crimes are described.

These instruments are binding to the addresses of the 231 Model and they results in positive obligations (the compliance with procedures, the communications to the control bodies) and obligations to abstain from (the compliance with the prohibitions), of which full awareness is provided

The compliance with these obligations, as already stated in the “General Part” and as it is intended to be reiterated here, has a specific legal value; as a matter of fact, in case of violation of these obligations, the Company reacts applying the disciplinary and penalty system previously described.

Furthermore, the following “Special Parts” need to read in coherence with the behavioral principles included in the corporate procedures and in the Code of Ethics, that guide the behaviors of addresses in the different operational areas, with the purpose of preventing improper behaviors or behaviors not in line with the Company guidelines.

The following “Special Parts” respectively analyze:

- Special Part “A”: Crimes against the Public Administration
- Special Part “B”: Corporate crimes
- Special Part “C”: Crimes with aims of terrorism or subversion of the democratic order; international crimes; organized crime and employment of illegal aliens
- Special Part “D”: Crimes against the individual person
- Special Part “E”: Involuntary crimes against occupational health and safety laws
- Special Part “F”: Informational crimes and unlawful use of data
- Special Part “G”: Crimes relating to the receiving, using and laundering of unlawfully received money and goods, including self-laundering
- Special Part “H”: Crimes relating to counterfeiting, falsehood of identification marks, crimes against industry and trade
- Special Part “I”: Crimes against Intellectual Property Rights

- Special Part “L”: Falsehood of information and misstatement towards the judiciary or induction to do so
- Special Part “M”: Environmental crimes
- Special Part “N”: Corruption amongst private parties

With reference to the other crimes giving rising the administrative responsibility of the entities pursuant to the Decree (crimes of market abuse and female genital mutilation practices), it is considered noteworthy that in accordance to the latter, even if taken into consideration during the preliminary assessment, no sensitive activities have been identified (following specific analysis and the interviews with the Key Officers). Namely, at the time of writing of this Model, it seems that no activities that could concretely be classified as sensitive pursuant to these categories of offences exist.

Sensitive processes	Special Parts											
	Crimes against the Public Administration	Corporate Crimes	Crimes with aims of terrorism or subversion of the democratic order; international crimes; organized crime and employment of illegal aliens	Crimes against the individual person	Involuntary crimes against occupational health and safety laws	Informational crimes and unlawful use of data	Crimes relating to the receiving, using and laundering of unlawfully received money and goods, including self-laundering	Crimes relating to counterfeiting, falsehood of identification marks, crimes against industry and trade	Crimes against Intellectual Property Rights	Falsehood of information and misstatement towards the judiciary or induction to do so	Environmental crimes	Corruption amongst private parties
	A	B	C	D	E	F	G	H	I	L	M	N
1	Application for obtaining authorizations required for the import, export and transit of weapons											
2	Management of compulsory legal requirements											
3	Management of relations with aviation safety-regulatory bodies (e.g., ENAC, ARMAEREO)											
4	Political and technical lobbying towards local, national and international bodies											
5	Management of relations with public officers in the context of periodic audits and monitoring activities carried out by the Public Administration											
6	Management of relations with certifying bodies											
7	Soft Financing activities (obtaining and managing public grants, funds and insurances)											
8	Management of inter-company relations											
9	Selection and management of suppliers for the procurement of goods, services and professional services											
10	Negotiating, stipulating and executing sales contracts											
11	Management of legal and extra-judicial controversies											
12	Management of personnel hiring and bonus schemes											
13	Management of relations with trade unions											
14	Atuhorization and management of personnel and travel & accommodation expenses											
15	Management of Research & Development											



Sensitive processes	Special Parts												
	Crimes against the Public Administration	Corporate Crimes	Crimes with aims of terrorism or subversion of the democratic order; international crimes; organized crime and employment of illegal aliens	Crimes against the individual person	Involuntary crimes against occupational health and safety laws	Informational crimes and unlawful use of data	Crimes relating to the receiving, using and laundering of unlawfully received money and goods, including self-laundering	Crimes relating to counterfeiting, falsehood of identification marks, crimes against industry and trade	Crimes against Intellectual Property Rights	Falsehood of information and misstatement towards the judiciary or induction to do so	Environmental crimes	Corruption amongst private parties	
	A	B	C	D	E	F	G	H	I	L	M	N	
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## 8.2 *Log of changes*

Current version: third version

<b>Version</b>	<b>Reason of the change</b>	<b>Date</b>
First version	Adoption of the Model	5 <sup>th</sup> April 2011
Second version	Update to new company organization	May 2014
Third version	Update to include dispositions of Law no. 186 of 15 December 2014, no. 68 of 22 May 2015, no. 69 of 27 May 2015	19 September 2017