

# Overview on anti-corruption rules and regulations in ITALY

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## **I. What is the anti-corruption legal framework in your country (including brief overview on active / passive bribery, bribery of foreign officials, and commercial bribery)?**

In Italy, the anti-corruption framework is scattered between various legislation. First of all, there is a specific national anti-corruption legislation, provided for by the Law no. 190/2012(ad its updates), with the aim of strengthening the effectiveness of the measures put to combat the corrupt phenomenon. Secondly, reference should be made to the Criminal Code, that, in articles 318-322, recognises both passive and active bribery and the incitement to bribery, too. Finally, our legal framework provides for specific Decrees that concern the rules to be adopted by the Public Administration, regarding, for example, transparency and assignments.

## **II. Does this framework also cover extra-territorial corruption?**

In principle, the Italian Criminal Law should be applied to anyone who commits a criminal offence on its territory. However, the Italian Criminal Code provides, in article 322 *bis*, for the applicability of the rules referred to the active and passive bribery and the incitement to bribery to members of institutional bodies, namely members of the International Criminal Court, bodies of the European Communities, officials of the European Communities and officials of foreign States.

## **III. Is there a concept of corporate criminal liability?**

Yes, the administrative liability of legal entities is provided for by Legislative Decree no. 231/2001, which applies sanctions to companies, whose directors/employees have committed one or more offences listed in the same Decree in the interest or as a benefit of the company itself. Among these offences, the article 25 of the abovementioned Decree provides for the bribery crimes laid down by the Criminal Code.

#### **IV. What are the penalties for legal entities (if applicable) and natural persons?**

According to article 9 of the Legislative Decree no. 231/2001, if the Company was considered liable for the crimes committed in its interest, it would be sanctioned with fines up to € 1.5 million or disqualifying penalties (such as ban on concluding contracts with the Public Administration or cessation of all the business activities).

With regard to natural persons who commit bribery crimes, on the other hand, the penalty imposed by the Criminal Code in articles 318-322 consists in imprisonment up to twenty years.

#### **V. Which local authorities are competent for corruption investigations?**

The Public Prosecutor's Office, which may delegate judicial police officers to carry out investigations.

#### **VI. Are there whistle-blower regulations?**

Italy has enacted the regulation of the whistleblowing only in the last years thanks to the Law no. 190/2012 and the recent Law no. 179/2017. Both of them aim to protect those public and private employees who report misconducts that occur at the workplace, and to regulate employer's obligations in order to facilitate the whistleblowing process.

More in detail, the Law no. 179/17 identifies and clarifies:

- how to and to whom the employee has to report the misconduct;
- the measures to be implemented within the company in order to protect the whistleblower;
- the sanctions applied to the employer in the event of retaliation and/or discrimination of the whistleblower.

The Law provides a separate process for public and private employees, setting out to whom the employees must report the misconduct and what protection is in place in the event of retaliation or discrimination against the whistleblower.

In particular, private companies have to fulfil the Organizational Model set out by the Legislative Decree no. 231/2001, providing:

- specific informatic channels suitable to allow employees to report potential offences and to guarantee the confidentiality concerning the whistleblower's identity;
- specific sanctions against whistleblower who reports false information or against who breaches the above-mentioned protection measures, discriminating the whistleblower.

#### **VII. Are there voluntary disclosure / self-reporting programmes and procedures?**

According to the above mentioned Law no. 179/2017, in disciplinary proceedings, the identity of the whistleblower may not be disclosed, without his consent. If the dispute is founded, in whole or in part, on the alert, identity may be disclosed where its knowledge is absolutely indispensable for the defence of the accused.

## What are the consequences for assessment of guilt or admission of wrongdoing for future business, work, permits e.a.?

According to Article 317 *bis* of Italian Criminal Law, for example, the conviction for corruption for an act contrary to official duties (article 319 of the Criminal Code) and in judicial acts (article 319 *ter* of the Criminal Code) imposes a permanent or temporary ban on public offices.

## VIII. What are the latest developments in anti-corruption in your jurisdiction?

Certainly the above-mentioned Law no. 190/2012 and its amendments (the last of these in 2017), aimed at preventing and suppressing corruption in the public administration and, secondly, the tightening of the sanctioning treatment of the bribery offence by Law No. 69/2015.

## IX. The Author



**Andrea Puccio** graduated cum laude in Law at the University of Milan “Luigi Bocconi” and he is admitted to the Milan Bar.

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