

# 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 legislative instruments. 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 apply 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. The new Law no. 3/2019 (so called “Spazza-corrotti”) has extended the applicability of this crime to those who carry out public official activities in public international organisations, to members of parliamentary assemblies or international organisations and to officials of international courts.

## **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, 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 is that of imprisonment that goes from one to a maximum of 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. 679/2017. 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. 679/17 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 whistle-blower;
- the sanctions applied to the employer in the event of retaliation and/or discrimination of the whistle-blower.

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 whistle-blower.

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

- specific information channels suitable to allow employees to report potential offences and to guarantee the confidentiality concerning the identity of the whistle-blower;
- specific sanctions against whistle-blower who reports false information or against who breach the above-mentioned protection measures, discriminating the whistle-blower.

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

According to the above mentioned Law, in disciplinary proceedings, the identity of the whistle-blower 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, 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.

However, according to the new Article 323 *ter* inserted by the Law no. 3/2019, if the person who committed crimes against the Public Administration reports it voluntarily and cooperates with the justice before knowing to be investigated (or at least within four months from the commission of the offence), he/she will not be charged with any crime.

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

Certainly, the Law 3/2019 (the so-called “Spazza-corrotti”) which was enacted at the beginning of 2019 presents the most recent development. It significantly affects a large number of provisions of the Criminal Code and Criminal Procedure Code (as well as various regulations located in other areas of the legal system), with the aim of strengthening the activity of prevention, detection and repression of crimes against the Public Administration. Among the most significant changes, it is worth mentioning (I) the worsening of the punishment for the crime of corruption provided for by Article 318; (II) the extension of the applicability of the additional punishments in cases of conviction for crimes against the Public Administration; (III) the exclusion, in case of conviction for these crimes, from access to certain benefits during the execution of the penalty.

### **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.

He is founding and managing partner of the Firm, following a seven-year professional experience at a Law Firm of primary importance in Italy, where he opened and supervised the Brescia office.

He provides both judicial and non-judicial assistance in the area of Economic and Corporate Criminal Law for domestic and international clientele.

He attended relevant criminal proceedings in this field, defending Italian and multinational companies, as well as individuals.

He is President and member of ODVs (Supervisory boards) as per Legislative Decree no. 231 of 2001.

Member of the Board of the Topic Legal Bocconi Alumni Association, delegated for the area of Criminal Law.

He has received the “Emerging Professional of the year” award at the TopLegal Awards 2017, the “Rising Star Professional” award at the LegalCommunity Corporate M&A Awards 2017 and the “Lawyer of the year under 35” award at the Le Fonti Awards 2018.

He is a speaker in many conventions concerning the area of Economic and Corporate Criminal Law.



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