

BRIEF SUMMARY OF ITALIAN LEGISLATIVE DECREE n. 231/2001
Criminal liability of legal entities

On June 8, 2001, the Italian Government – in compliance with the principles set forth in EU legislation on the prevention of corporate crimes and the assessment of companies’ liability –enacted the Legislative Decree no. 231/01 (hereinafter the “Decree no. 231”) that introduced for the first time into the Italian legal system the direct liability of companies and other legal entities for crimes committed by directors, executives, their subordinates and other subjects acting on behalf of the legal entity (e.g. the agents), when the unlawful conduct has been carried out in the interest of or to the benefit of the company concerned.

Currently the crimes provided for by the Decree no. 231 are the following:

- (i) offences against the Public Administration (Articles 24 and 25);
- (ii) cybercrime and unlawful data processing (Article 24-bis);
- (iii) organised crime offences (Article 24-ter);
- (iv) counterfeiting coins, public credit cards, revenue stamps and instruments or distinctive marks (Article 25-bis)
- (v) crimes against industry and commerce (Article 25-bis.1)
- (vi) corporate crimes (Article 25-ter)
- (vii) Terrorism crimes and terrorist-related offences or subversion of the democratic system (Article 25-quater);
- (viii) practices of female genital mutilation (Article 25-quater.1);
- (ix) offences against the individual (Article 25-quinquies);
- (x) market abuse offences (Article 25-sexies);
- (xi) manslaughter or actual or grievous bodily harm, committed in violation of the regulations governing health and safety in the workplace (Article 25-septies)
- (xii) receiving, laundering and using money, goods or benefits of illicit origin as well as self laundering (Article 25-octies)
- (xiii) crimes relating to copyright infringement (Article 25-novies)
- (xiv) inducement not to make statements or to make false statements to the judicial authorities (Article 25-decies)
- (xv) environmental crimes (Article 25-undecies)
- (xvi) employment of illegal third-country nationals (Article 25-duodecies);
- (xvii) racism and xenophobia (Article 25-terdecies);

- (xviii) offences of fraud in sporting competitions, abusive gambling or betting and gambling by means of prohibited devices (Article 25- quaterdecies);
- (xix) transnational crimes (Article 10, Law 16 March 2006, no. 146);
- (xx) tax crimes (Article 25-quinquesdecies).

Among the penalties provided for by the Decree no. 231, the most serious are: ban from business activity, suspension or withdrawal of licenses and permits, prohibition to contract with the State or Governmental agencies, exclusion or revocation of financing and subsidies, prohibition to advertise goods and services, confiscation of profits, as well as fines up to 1.5 ml of Euro.

Companies shall not be considered liable pursuant to Decree no. 231 if the following conditions exist:

- a) Prior to the crime committed, the managing body of the entity adopted – and effectively implemented – a compliance program (hereinafter referred to as the “Compliance Program”) that were suitable for preventing crimes similar to those committed;
- b) The task of supervising the model implementation, as well as its updating, was entrusted to a board set-up within the entity, having independent initiative and control powers (hereinafter referred to as the “Supervisory Body”);
- c) The persons who committed the crime have fraudulently avoided compliance with the Compliance Program;
- d) The Supervisory Body didn’t fail to supervise, nor the supervision was insufficient.

These are minimum requirements for the Compliance Program to contain:

- a) identification of the risk areas, i.e. areas of activity of the company where there is the possibility to commit the mentioned crimes (hereinafter referred to as “Risk Areas”);
- b) identification of procedures for regulating the decision-making process in Risk Areas, with respect to the crime prevention;
- c) management of the financial resources for preventing the commission of crimes provided for by the Decree no. 231;
- d) obligations for each division of the company to inform and report to the Supervisory Body;
- e) disciplinary sanctions to be inflicted to trespassers of the measures and procedures provided for by the Compliance Program;
- f) one or more whistleblowing channels, which guarantee the confidentiality of the reporter's identity and the prohibition of retaliatory or discriminatory acts, direct or indirect, against the reporter.