Lex Mundi Anticorruption Compliance Guide

Italy

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Anti-Corruption Compliance

What is the key anti-bribery and corruption legislation in your jurisdiction?	The strategies of contrasting bribery and corruption in the Italian legal system are founded on two pillars: repression and prevention. These are regulated by criminal law and administrative law tools respectively, which have led to a comprehensive stratification of norms governing anti-corruption efforts in Italy. Several forms of corruption and bribery are penalized in the *Italian Criminal Code*, particularly in the part concerning offenses against the public administration (*Art. 314 and following*). There are also provisions in the *Italian Civil Code* governing private corruption (*Art. 2635*) and instigation to private corruption (*Art. 2635-bis*) which constitute corporate offenses. Both private and public corruption can have corporate liability implications under *Legislative Decree 231/2001*, which provides inter alia for the liability of a legal entity under certain conditions when these offenses are committed in the interest or to the benefit of a company. The preventive administrative response to corruption was strengthened through the passing of *Law no. 190/2012* which governs prevention and combating of corruption and illegality in the public administration, in the implementation of international anti-corruption conventions. Crucially, this law provided for the establishment of the National Anticorruption Authority (**ANAC**), which is the central body tasked with monitoring, preventing and combatting corruption and illegality in the public administration. **ANAC** among other things defines the *National Anticorruption Plans*, monitors the activities of the public administration, analyses phenomena of corruption, and carries out investigative actions.
Has there been a specific anti-bribery and corruption law enacted in your jurisdiction in the last ten years?	In the last ten years, a series of legislative reforms have been introduced with respect to bribery and corruption. Among these, as hinted above, *Law no. 190/2012* constituted an important stepping stone, through which the legislature complemented the repressive response to corruption with a specific focus on prevention in the administrative sphere. According to this law, the Public Administration bodies must adopt individual Anti-Corruption plans in line with the National Anti-Corruption Plan, which identifies activities at risk of corruption, define internal systems and controls and provide for the appointment of a person in charge of anti-corruption within the institution. Three years following the introduction of this legislation, *Law no. 69/2015* was passed to further strengthen the criminal response governing corruption. This law had three significant effects: it heightened the gravity of criminal penalties, introduced the rule on pecuniary compensation in case of conviction, and included incentives to cooperate with the judicial authorities post delictum.

	The legislature also reformed the private corruption offenses contained in the *Italian Civil Code* and amended the *Anti-Mafia Code* in 2017 to extend preventive measures to suspects of criminal associations aimed at committing corruption crimes. Notably, the Italian Government proposed in October 2018 a new draft anti-corruption law introducing penetrating amendments to the criminal response to corruption. Among other things, the bill would significantly heighten the severity of the penalties, in particular by introducing severe disqualification penalties preventing one from holding public office or from contracting with the Public Administration. The draft law would also incentivize voluntary, timely and factual cooperation with the authorities. It would also amend the law governing corporate liability for corruption (*Legislative Decree 231/2001*), inter alia by prolonging potential disqualification measures for corruption offenses for companies as well.
Is a bribe payment to domestic government officials prohibited by the legislation?	At the domestic level, the Italian legal framework prohibits and punishes both the conduct of the corrupt public official or person charged with a public service who receives or accepts the promise of goods or other benefit (passive corruption) as well as the conduct of the corruptor who gives or promises money or other benefit (active corruption). In the latter regard, the *Criminal Code* establishes, among others, that certain penalties provided for the corrupted official also apply to the corruptor, namely the individual who gives or promises money or other benefits to the public official or to the person charged with a public service (*Art. 321, Criminal Code*). Further, when it comes to the offense of undue induction to give or promise benefits (*Art. 319-quater, Criminal Code*), this provision punishes not only the public official who, abusing his or her capacity or powers, induces a person to unduly give or promise money or other benefit to him or herself or a third party, but also punishes the person who gives or promises the money or other benefit. It should be noted that the *Criminal Code* also penalizes whoever offers or promises money or other benefits to a public official or person charged with a public service, even where the offer or promise is not accepted (*Art. 322, Criminal Code*).
Is a bribe payment to foreign government officials prohibited by the legislation?	With the increasing internationalization of the phenomenon of corruption, provoked by the growth of transnational business transactions and of international institutions, the legislature extended the ambit of application

	of certain corruption offenses to include bribes paid to officials of European Union member states and institutions, of foreign states and of international public organizations. More specifically, international corruption is provided for in *Art. 322-bis* of the *Criminal Code*. On the one hand, this provision extends corruption offenses inter alia to members of European Union institutions and public officials of its member states, as well as to officials of the International Criminal Court. On the other hand, this norm also punishes the corruptor and instigator when the money or other benefit is given, offered or promised to inter alia: (i) members of European Union institutions and public officials of its member states, as well as to officials of the International Criminal Court; (ii) persons who exercise functions or activities corresponding to those of public officials and persons charged with a public service in other foreign States or international public organizations when the conduct is committed to procure for oneself or for others an undue advantage in international economic operations or to obtain or maintain an economic or financial activity.
Is requesting or accepting a bribe prohibited by the legislation?	The law governing this aspect is particularly fragmented and articulated. First and foremost, the law punishes the public official or person charged with a public service who, abusing his or her official capacity or powers, “obliges” another to unduly give or promise, to him or herself or to a third person, money or other benefits. (*Art. 317, Criminal Code*). The law also penalizes the public official or individual charged with a public service who, abusing his or her official capacity or powers, “induces” another to unduly give or promise, to him or herself or to a third person, money or other benefits (*Art. 319-quater, Criminal Code*). Moreover, the crime of corruption for the exercise of a function punishes the public official who, for the exercise of his or her functions or powers, unduly receives, for himself or for another, money or other benefit or accepts the promise thereof (*Art. 318, Criminal Code*). At the same time, the public official is also punished where he or she, to omit or delay or for having omitted or delayed an act of his or her office, or to carry out or for having carried out an act contrary to the duties of office, receives, for him or herself or for a third party, money or other benefit, or accepts the promise thereof (*Art. 319, Criminal Code*). These provisions punishing corruption for the exercise of a function and corruption for an act contrary to the duties of office respectively also apply to a person charged with a public service. With respect to private corruption, the *Italian Civil Code* penalizes inter alia directors, directors-general, directors in charge of drafting corporate accounting documents, auditors and liquidators of companies and private entities, which, also through an intermediary, solicit or receive, for themselves or for others, undue money or other benefit, or accept the

	promise thereof, to carry out or omit an act of violation of the duties inherent to their office or the duties of loyalty. The penalty of imprisonment is applied if the fact is committed by those subject to the management or supervision of one of the persons indicated in the first paragraph (*Art. 2635, Civil Code*). Furthermore, the instigation of corruption between private individuals is also punished (*Art. 2635-bis, Civil Code*).
Who is subject to the legislation?	With respect to offenses against the Public Administration, the corruption and extortion offenses contained in the *Criminal Code* necessarily imply the involvement of a public official or of a person charged with a public service. The notions of a public official and of a person charged with a public service are expressly provided for by the *Criminal Code*. For purposes of criminal law, the public official is he or she who exercises a public legislative, judicial or administrative function (*Art. 357, Criminal Code*), while the person charged with a public service is he or she who, at whatever title, provides a public service (*Art. 358, Criminal Code*). As noted above, the criminal law provisions are extended under certain conditions to foreign public officials. Private citizens are also subject to the application of the criminal law provisions governing corruption to the extent that they participate in corrupt acts or act as the corruptor. With respect to private corruption, as mentioned above, the *Italian Civil Code* penalizes directors, directors-general, directors in charge of drafting corporate accounting documents, auditors and liquidators of companies and private entities. As will be seen in Point 7. below, these provisions also extend to companies.
Is there criminal liability for corporate entities who have either paid or accepted a bribe payment?	Italian law provides for the administrative liability of legal persons, companies, and associations without legal personality under *Legislative Decree 231/2001* governing corporate liability. While the law formally refers to “administrative” corporate liability, such liability is in substance criminal in that the liability of the company depends on the commission of certain criminal offenses (predicate offenses) and the criminal courts are the competent authority. The predicate offenses which can lead to corporate liability under *Legislative Decree 231/2001* include corruption offenses. In particular, a company can be held liable if certain crimes of corruption provided in the Criminal Code are committed (or attempted to be committed) in the interest

	or to the advantage of the company by a person with representative, administrative or directive capacity, also de facto, or by a person subject to their direction or surveillance. In practice, if a corruption offense is committed by a corporate officer, a company might be charged with the administrative offense provided for in *Article 25* (extortion and corruption) and *Article 25-ter, paragraph 1, s-bis*) (private corruption) of *Legislative Decree 231/2001* consisting in the failure to put in place and effectively implement adequate systems and controls aimed at preventing the commission of the same type of crime as the one which was committed.
What is the penalty for individuals violating the law?	The penalty for individuals will depend on the specific offense with which the individual accused is charged. In general terms, the penalties for public corruption include imprisonment and, under certain conditions, disqualification depending on the type of offense. The disqualification penalty can consist among others of a ban from holding public office and a ban from contracting with the Public Administration. Further, in case of conviction for certain corruption offenses in the public sector, the court will also order pecuniary reparation. A conviction for private corruption will lead to imprisonment and, under certain conditions, to the application of a temporary disqualification sanction. In case of conviction, confiscation is ordered of the proceeds of the crime both in public corruption and private corruption cases. The individual can also be compelled to provide compensation for the harm caused.
Assuming corporate entities are liable for violating the legislation, what is the penalty for corporate entities violating the law?	In general, terms, if a company is held liable under *Legislative Decree 231/2001*, it may be subject to (i) pecuniary sanctions; (ii) disqualification sanctions; (iii) confiscation of the proceeds of the crime; (iv) publication of the judicial decision. With respect to corruption offenses, the penalties will vary depending on whether the entity is liable for public corruption or private corruption. With respect to corruption involving public officials, *Art. 25 of Legislative Decree 231/2001* provides for the application of pecuniary sanctions which can vary and, in the worst case, can reach up to around EUR 1.2 million. This amount can rise, under certain conditions, in the case of the commission of concurrent offenses. In case of conviction for certain corruption offenses, disqualification sanctions can also be imposed on the company for a period of not less than one year. Disqualification sanctions can consist of: ban from

	exercising business activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; prohibition to contract with the Public Administration, unless if to obtain the provision of a public service; exclusion from benefits, funding, grants or subsidies and the possible revocation of those already granted; and prohibition to advertise goods or services. With respect to private corruption, *Art. 25-ter, paragraph 1 s-bis,* of *Legislative Decree 231/2001*, in the case of private corruption, provided for in *Art. 2635, paragraph 3* of the *Civil Code*, a pecuniary sanction of up to 900 thousand euros will apply, and in cases of instigation to corruption provided for in *Art. 2635-bis, paragraph 1* of the *Civil Code*, a pecuniary sanction of up to EUR 600 thousand will apply. Disqualification sanctions will also be applied. Moreover, in case of conviction, the judge will also always order the confiscation of the price or profit of the offense, except for the part that can be returned to the injured party. This is without prejudice to the rights acquired by third bona fide parties. When confiscation of the price or profit cannot be applied, the confiscation will concern money, goods or other benefits of an equivalent value to the price or profit of the offense. Further, the publication of the conviction decision will also be ordered when disqualification sanctions are applied against the company. Finally, during the proceeding, precautionary measures, as well as seizure, can be ordered.
Assuming corporate entities are liable for violating the legislation, does having a compliance program designed to prevent bribery constitute a defense?	In the event of commission of one of the listed crimes, the company may avoid liability if it is ascertained that the company had put in place adequate systems and controls aimed at preventing the commission of the same type of crime as the one committed by the corporate officer. More specifically, according to *Legislative Decree 231/2001*, the company can avoid liability if, among others: (i) it had adopted and effectively implemented, prior to the commission of the relevant fact, an organizational and management models (231 Model) aimed at preventing the crimes in question; (ii) it had entrusted an internal, yet independent, supervisory board to oversee the enforcement of the control system; (iii) the agent, being a manager or another high-level corporate official, who committed the crime, fraudulently eluded the control system; and (iv) the supervisory board had duly overseen the enforcement of the control system. In addition, the adoption and implementation of an adequate and effective 231 Organizational Model and other systems and controls after the commission of the offense could under certain conditions lead to, inter alia, a reduction of pecuniary sanctions and to the non-applicability of disqualification measures.

	Although the adoption and implementation of systems and controls provided for by *Legislative Decree 231/2001* are not mandatory, it represents one of the most effective defenses for a company charged with an offense under the decree.
Assuming corporate entities are liable for violating the anticorruption law, is it possible for a corporate entity to reach a deferred prosecution agreement or leniency agreement with the enforcement authorities?	The Italian legal system does not provide for deferred prosecution agreements (DPAs) but envisages the possibility of a plea bargain. A plea bargain constitutes an agreement between a prosecutor and a company which must necessarily be ratified by the criminal judge. *Art. 63 of Legislative Decree 231/2001* provides that a company may obtain a plea bargain if the decision with respect to the individual accused is also concluded or can be concluded with a plea bargain, or in all cases in which the administrative offense of the company is punished only with a pecuniary sanction. In cases where a plea-bargain can be requested, the disqualification sanction and the total amount of the pecuniary sanction will be reduced up to one third. The judge will reject the request for a plea-bargain if he or she deems that a definitive disqualification sanction should be applied.