

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) crimes committed within the sphere of the relations with the Public Administration (e.g. fraud against the State or other Governmental Agency; theft of public funds; fraud aimed at obtaining public financings);
- (ii) as per Article 6 of Law no. 409 dated November 11, 2001, crimes concerning the forgery of coinages, banknotes and duty stamps;
- (iii) as per Legislative Decree no. 61 dated April 11, 2002, corporate crimes (so called “white-collars” crimes as misrepresentation of company accounts; forgery of a prospectus; obstructed control; fictitious capital formation; fraudulent restitution of contributions; etc.);
- (iv) as per Law no. 7 dated January 14, 2003, crimes committed with purposes of terrorism and eversion of democratic order;
- (v) as per Law no. 228 dated August 11, 2003, crimes against the fundamental rights of freedom (in Italian “reati contro la personalità individuale”);
- (vi) as per Law no. 62 dated April 18, 2005, crimes relevant to “Market Abuse”;
- (vii) as per Article 8 of Law no. 7 dated January 9, 2006, mutilation of female genitals;
- (viii) as per Law no. 123 dated August 3, 2007, crimes against person (manslaughter and negligently causing serious or very serious injuries), committed in violation of safe working practices and the protection of hygiene and health at work;
- (ix) as per Legislative Decree no. 231, Article 63 sub. 3, dated November 21, 2007, crimes concerning receiving, recycling and use of money, goods or usefulness of unlawful origin, as well as self-laundering;
- (x) as per Article 7 of Law dated 18 March 2008 no. 48, IT crimes and illegal data treatment.
- (xi) as per Law no. 94, dated July 15, 2009, crimes of organised crime and as per Law no.146 dated March 16, 2006, transnational offences;
- (xii) as per Law no. 99, dated July 23, 2009, crimes against industry and trade and crimes against infringements of copyright;

- (xiii) as per Law no. 116, dated August 3, 2009, induction not to make statements or to make false statements to the court;
- (xiv) as per Article 2 sub. 2 of Legislative Decree no. 121 dated July 7, 2011, environmental offences;
- (xv) as per Article 2 sub. 1 of Legislative Decree no. 109 dated July 16, 2012, employment of third country individuals with irregular permits of stay;
- (xvi) as per amendment by Article 77 sub. 77 of Law no. 190 dated November 6, 2012, bribery and corruption, both within the sphere of the relations with the Public Administration and private entities.

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 – compliance programs 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 (“Compliance Committee”);
- c) The persons who committed the crime have fraudulently avoided compliance with the above-mentioned compliance programs;
- d) The board indicated under previous item b) didn’t fail to supervise, nor the supervision was insufficient.

These are minimum requirements for the Compliance Program to contain:

1. 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”);
2. identification of procedures for regulating the decision-making process in Risk Areas, with respect to the crime prevention;
3. management of the financial resources for preventing the commission of crimes provided for by the Decree no. 231;
4. obligations for each division of the company to inform and report to the Compliance Committee;
5. disciplinary sanctions to be inflicted to trespassers of the measures and procedures provided for by the Compliance Program.