

LEGISLATIVE DECREE 231/2001

BRIEF SUMMARY

1. The Legislative Decree 231/2001

To enforce the delegated law as per Article 11 of Italian Act No. 300 of 29 September 2000, on 8 June 2001 the Legislative decree No. 231 (hereunder the “**Decree**”) was passed, and became effective by 4 July 2001. The Decree aims at bringing in line the Italian regulations in the area of corporate-liability with several international agreements, that Italy has signed, such as the Brussels Convention of 26 July 1995 on the protection of European Community financial interests, the Brussels Convention of 26 May 1997 on corruption involving officials of the EU or of Member States of the EU, the OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions.

The Decree, entitled “*Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica*” (Discipline of the administrative liability of legal persons, companies and associations also of those not having a legal status) **introduced into the Italian law a regime of administrative liability** (which is broadly related to the criminal liability of physical persons) **of the Italian companies as a result of certain offences committed**, in Italy or abroad, (and of the foreign companies acting in Italy, only with reference to the activity made in Italy) **on behalf or for the benefit of such entities**, (i) by individual persons having a representative, administrative or managerial position within the company or within a business unit linked to them, even if independent from a financial and functional viewpoint, as well as by individual persons who, also de facto, manage and control the company, as well as (ii) by individual persons subject to the management or supervision by one of the subjects mentioned above. Liability of legal persons doesn’t exclude that of individuals who materially committed the offence.

The broadening of the liability aims at punishing - for certain criminal offences - also those entities that have benefited from the offence. The more serious of the sanctions provided for include various types of disqualification such as the suspension or withdrawal of licences and permissions, the prohibition from signing agreements with the Italian Public Administration, the debarment from performing certain activities, the barring from or withdrawal of financings and contributions, and the prohibition from advertising goods and services.

As per art. 4 of the Decree, when a principal offender commits an offence abroad, the Italian judges may exercise nationality jurisdiction. In these circumstances, a company can be prosecuted only if it has a head office in Italy and if the country in which the offence was committed does not initiate any proceedings.

The following types of offenses are currently covered by the Decree: (i) crimes against the Public Administration, (ii) corporate crimes (iii) crimes of money laundering,

receiving stolen goods and utilization of illicit profits (iv) crimes concerning the forgery of coinages, banknotes and duty stamps, (v) crimes committed with purposes of terrorism and subversion of democratic order, (vi) crimes against the fundamental rights of freedom (in Italian " *reati contro la personalità individuale*") (vii) crimes of insider trading and market abuse, (viii) the so called "transnational offence", (ix) manslaughter and serious injuries caused by a non-fulfillment of the legislation providing for health and safety of the workers in the workplace (x) cybercrimes and unlawful data processing, (xi) crimes against the environments, (xii) crimes against the industry and trade, (xiii) crimes related to the racketeering, (xiv) crimes concerning the employment of irregular citizen (xv) crimes of private corruption and (xvi) tax and fiscal crimes (see Annex 1 below for the descriptions of each category of crimes).

By introducing the above mentioned administrative responsibility regime, Article 6 of the Decree makes provision, however, for a specific form of exemption from said responsibility if the body proves that:

- a) prior to the offence being committed, **the Board of Directors of the body approved - and effectively implemented – *compliance programs*** that were suitable for preventing offences of the same type as that/those perpetrated;
- b) the task of supervising the operations and ascertaining that the compliance programs were complied with - as well as of taking care of their updating - was entrusted to **a compliance officer having independent powers of initiative and control**;
- c) the persons who committed the offence have acted by **fraudulently** avoiding the above mentioned compliance programs;
- d) the body indicated under letter b) above performed its supervisory task and did so in a non-insufficient manner.

The Decree furthermore makes provision that - with regard to the extension of the delegated powers and the risk of committing the offences - the compliance programs as per letter a), must meet the following requirements:

1. identify the activities wherein it is possible that the offences dealt with by the Decree are committed;
2. make provision for specific protocols aimed at planning decision making and related implementation by the body with regard to the offences to prevent;
3. identify management procedures of the financial resources suitable for stopping these offences from being committed;
4. make provision for information obligations for the committee delegated to supervise the operations and the compliance with the compliance programs;
5. introduce an internal disciplinary system to punish non-compliance with the measures indicated in the compliance programs.

Annex 1 Crimes

Crimes against the Public Administration:

- 1) fraud against the State or other public body or the European Union (art. 640 c.p.),
- 2) serious fraud to receive public funds (art. 640 bis c.p.),
- 3) embezzlement against the State (art. 316 bis c.p.),
- 4) undue cashment of contributions, financings or other financial disbursements from the State or other public bodies (art. 316 ter c.p.),
- 5) IT fraud against the State or other public bodies (art. 640 ter c.p.),
- 6) bribery (art.317 c.p.),
- 7) corruption for official acts (art. 318 c.p.),
- 8) corruption in acts against official duties (art. 319 c.p.)¹,
- 9) corruption in judicial acts (art. 319 ter c.p.),
- 10) instigation to corruption (art. 322 c.p.).

Corporate Crimes:

- 1) Fraudulent statements (art. 173-bis TUF),
- 2) Misleading Corporate Communications (art. 2621 c.c.),
- 3) Misleading Corporate Communications to the detriment of Corporate, Shareholders or Creditors (art. 2622 c.c.),
- 4) Misleading Reports or Communications by the Auditors (art. 2624 c.c.),
- 5) Undue Capital Contributions Return (art. 2626 c.c.),
- 6) Unlawful distribution of gains and reserves (art. 2627 c.c.),
- 7) Unlawful operations over shares or quotas of the Company or over a Company's subsidiary (art. 2628 c.c.),
- 8) Operations in detriment of creditors (art. 2629 c.c.);
- 9) Omitted communication of conflict of interests (art. 2629-bis c.c.),
- 10) Misleading capital formation (art. 2632 c.c.),
- 11) Unlawful distribution of Corporate property by liquidators (art. 2633 c.c.),
- 12) Control obstacle (art. 2625 c.c.),
- 13) Undue influence over shareholders meeting (art. 2636 c.c.),
- 14) Market manipulation (art. 2637 c.c.),
- 15) Obstacle over Public Regulatory Authorities functions (art. 2638 c.c.).

Money Laundering crimes:

- 1) Fencing (art. 648 c.p.),
- 2) Money Laundering (art. 648-bis c.p.),
- 3) Use of unlawful originated money, goods or other utilities (art. 648-ter c.p.).

Crimes concerning the forgery of coinages, banknotes and duty stamps:

¹ For the concept of public officer, please see art. 320 c.p.

- 1) Counterfeiting money (art. 454 c.p.),
- 2) Counterfeiting of money, spending and introduction into the State, in concert, of counterfeit money (art. 453 c.p.),
- 3) Spending and introduction into the State, without concert, of counterfeit money (art. 455 c.p.),
- 4) Spending counterfeit money received in good faith (art. 457 c.p.),
- 5) Counterfeiting of revenue stamps, introduction into the State, purchase, possession or putting into circulation of counterfeit revenue stamps (art. 459 c.p.),
- 6) Counterfeiting watermarked paper in use for the manufacture of public credit cards or revenue stamps (art. 460 c.p.),
- 7) Manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper (art. 461 c.p.),
- 8) Use of counterfeit or altered revenue stamps (art. 464 c.p.),
- 9) Counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs (art. 473 c.p.),
- 10) Introduction into the State and trade of products with false signs (art. 474 c.p.).

Crimes of terrorism and subversion of democratic order:

- 1) Subversive associations (art. 270 c.p.),
- 2) Associations for the purpose of terrorism, including international terrorism or subversion of the democratic order (art. 270-bis c.p.),
- 3) Aggravating and mitigating circumstances (art. 270-bis.1 c.p.),
- 4) Assistance to associates (art. 270-ter c.p.),
- 5) Enlisting for the purposes of terrorism, including international terrorism (art. 270-quater c.p.),
- 6) Organisation of transfer for the purposes of terrorism (art. 270-quater.1 c.p.),
- 7) Training for activities with the purpose of terrorism, including international terrorism (art. 270-quinquies c.p.),
- 8) Financing of conduct with the purpose of terrorism (art. 270-quinquies.1 c.p.),
- 9) Subtraction of seized goods or money (art. 270-quinquies.2 c.p.),
- 10) Conduct for the purposes of terrorism (art. 270-sexies c.p.),
- 11) Attacks for the purposes of terrorism or subversion (art. 280 c.p.),
- 12) Acts of terrorism with deadly or explosive devices (art. 280-bis c.p.),
- 13) Acts of nuclear terrorism (art. 280-ter c.p.),
- 14) Kidnapping for the purpose of terrorism or subversion (art. 289-bis c.p.)
- 15) Kidnapping for the purpose of coercion (art. 289-ter c.p.),
- 16) Instigation to commit any of the offences envisaged by Chapters 1 and 2 of the Criminal Code (art. 302 c.p.),
- 17) Political conspiracy by agreement (art. 304 c.p.),
- 18) Political conspiracy by association (art. 305 c.p.),
- 19) Armed gangs: formation and participation (art. 306 c.p.),
- 20) Assisting participants in conspiracies or armed gangs (art. 307 c.p.).

Crimes against the fundamental rights of freedom:

- 1) Reduction to or maintenance in slavery or servitude (art. 600 c.p.),
- 2) Child prostitution (art. 600-bis c.p.),
- 3) Child pornography (art. 600-ter c.p.),
- 4) Possession of or access to pornographic material (art. 600-quater),
- 5) Virtual pornography (art. 600-quater.1 c.p.),
- 6) Tourism initiatives aimed at the exploitation of child prostitution (art. 600-quinquies c.p.),
- 7) Trafficking in persons (art. 601 c.p.),
- 8) Purchase and alienation of slaves (art. 602 c.p.),
- 9) Illegal intermediation and exploitation of labour (art. 603-bis c.p.),
- 10) Solicitation of minors (art. 609-undecies c.p.).

Crimes of insider trading and market abuse:

- 1) Market manipulation (art. 185 Legislative Decree No. 58/1998),
- 2) Abuse or unlawful communication of inside information. Recommending or inducing others to commit insider trading (art. 184 Legislative Decree no. 58/1998),
- 3) Prohibition of market manipulation (art. 15 EU Reg. No 596/2014),
- 4) Prohibition of insider dealing and unlawful disclosure of inside information (art. 14 EU Reg. No. 596/2014).

Cross-border crimes:

- 1) Provisions against illegal immigration (art. 12(3), (3-bis), (3-ter) and (5) Legislative Decree No 286/1998),
- 2) Association for the purpose of the illegal trafficking of narcotic or psychotropic substances (art. 74 Presidential Decree No 309/1990),
- 3) Criminal association for the purpose of smuggling foreign processed tobacco (art. 291-quater Presidential Decree No. 43/1973),
- 4) Inducement not to make statements or to make false statements to the judicial authorities (art. 377-bis c.p.),
- 5) Assisting offender (art. 378 c.p.),
- 6) Criminal conspiracy (art. 416 c.p.),
- 7) Mafia-type association, including foreigners (art. 416-bis c.p.).

Crimes in violation of rules that protect workers' health and safety:

- 1) Manslaughter (art. 589 c.p.),
- 2) Severe and Culpable Personal Injury (art. 648-bis c.p.).

IT and trademarks crimes:

- 1) False IT documents (art. 491 bis c.p.),

- 2) Unlawful access to an IT or telematic system (art. 615 ter c.p.),
- 3) Unlawful possession and diffusion of source codes (art.615 quarter c.p.),
- 4) Diffusion of devices, equipment or IT software which aim at damaging or interrupting an IT System (art. 615 quinquies c.p.),
- 5) Unlawful wiretapping, obstructing or interrupting IT or telematic communications (art. 617 quater c.p.),
- 6) Operation of devices aimed at the unlawful wiretapping, obstructing or interrupting IT or telematic communications (art. 617 quinquies c.p.),
- 7) Damaging of information, data and IT software (art. 635 bis c.p.),
- 8) Damaging of information, data and IT software used by the State or other Public Entity for public advantage (art. 635 ter c.p.),
- 9) Damaging of IT or telematic systems (art. 635 quarter c.p.),
- 10) Damaging of IT or telematic systems for public advantage (art. 635 quarter c.p.),
- 11) IT fraud of the electronic signature certifier (art. 640 quinquies c.p.),
- 12) Unauthorised duplication, reproduction, transmission or dissemination in public by any process, in whole or in part, of intellectual works intended for the television, cinema, sale or rental of records, tapes or similar media or any other media containing phonograms or videograms of musical, cinematographic or audiovisual works assimilated or sequences of moving images literary, dramatic, scientific or didactic, musical or dramatic-musical, multimedia works, even if included in collective or composite works or databases; reproduction, duplication, transmission or unauthorised dissemination, sale or trade, transfer for any reason or unauthorised importation of more than fifty copies or specimens of works protected by copyright and related rights; introduction into a system of telematic networks, through connections of any kind, of an original work protected by copyright, or part of it (art. 171 ter Law No. 633 /1941), Reproduction, transfer to another medium, distribution, communication, presentation or demonstration in public, of the contents of a database; extraction or re-use of the database; distribution, sale or rental of databases (art. 171 bis Law No. 633/1941 co. 2),
- 13) Failure to notify the SIAE of the identification data of media not subject to the mark or false declaration (art. 171 septies Law No. 633/1941),
- 14) Fraudulent production, sale, import, promotion, installation, modification, use for public and private use of apparatus or parts of apparatus suitable for decoding audiovisual transmissions with conditional access made over the air, via satellite, via cable, in both analogue and digital form (art. 171 octies Law No. 633/1941).

Environmental Crimes:

- 1) killing, destruction, catching, and possession of specimens of protected wild animal or plant species (art. 727 bis c.p.),
- 2) destruction or degradation of habitat within a protected site (art. 733-bis c.p);
- 3) illegal discharge of industrial wastewater containing hazardous substances and/or topping the limits established by law and/or by the competent authorities (art. 137 , paragraphs 2 , 3, and 5 Environmental Code),

- 4) illegal discharge into the waters of the sea by ships or aircraft of substances or materials for which it is imposed a total ban on spill (art. 137 paragraph 13 Environmental Code),
- 5) unauthorized management of waste (art. 256, paragraph 1, Environmental Code), Implementation and management of unauthorized landfills (art. 256, paragraph 3, Environmental Code), mixing of hazardous waste (art. 256, paragraph 5, Environmental Code) and temporary storage of hazardous medical waste (art. 256, paragraph 6, Environmental Code),
- 6) remediation of sites (art. 257, paragraph 1 and paragraph 2, Environmental Code),
- 7) preparation of false certificates in relation to the analysis of waste (art. 258, paragraph 4, Environmental Code),
- 8) illegal waste trafficking (art. 259, paragraph 1, Environmental Code),
- 9) organized activities for the illegal trafficking of waste (art. 260 , paragraph 1 and paragraph 2, Environmental Code),
- 10) indication of false information in the system of traceability of waste (art. 260 bis, paragraph 6, Environmental Code); waste transport undocumented (SISTR) or accompanied by false or altered documentation (art. 260 bis, paragraph 7, Environmental Code),
- 11) violation of the limit values and the requirements established by regulations or by the competent authorities for atmospheric emission (art. 279, paragraph 5, Environmental Code),
- 12) offenses relating to international trade in animal and plant species in danger of extinction, as well as offenses relating to violation of rules for the marketing and possession of live specimens of mammals and reptiles that pose a hazard to the health and public safety (art. 1, paragraphs 1 and 2, art. 2, paragraphs 1 and 2, art. 6 para 4 and art. 3 bis, paragraph 1 of Law 150/1992),
- 13) violation of the provisions relating to production, consumption, import, export, possession and trade of ozone depleting substances (art. 3 paragraph 6 of Law December 28, 1993 n. 549 "Measures to protect the ozone layer and the environment"),
- 14) intentional or negligent pollution caused by ships (art. 8 , paragraph 1 and paragraph 2, art. 9, paragraph 1 and paragraph 2 of Legislative Decree no. 202/2007).

Crimes against the industry and trade:

- 1) Forgery, alteration or use of trademarks or trademarks or patents, models and drawings (art. 473 c.p.),
- 2) Obstructing of industry and trade activities (art. 513 c.p.),
- 3) Unlawful competition with threat or violence' (art. 513-bis c.p.),
- 4) Fraud against national industries (art. 514 c.p.),
- 5) Fraud in the exercise of trade (art. 515 c.p.),
- 6) Sale of non-genuine foodstuffs as genuine (art. 516 c.p.),
- 7) Sale of industrial products with misleading signs (art. 517 c.p.),
- 8) Manufacture and trade of goods made by usurping industrial property rights (art. 517-ter c.p.),

- 9) Counterfeiting of geographical indications or designations of origin of agri-food products (art. 517-quater c.p.).

Racketeering crimes:

- 1) Mafia-type association including foreigners (art 416-bis c.p.),
- 2) Criminal association (art. 416 c.p.),
- 3) Political-mafia electoral exchange (art. 416-ter c.p.),
- 4) Kidnapping for the purpose of extortion (art. 630 c.p.),
- 5) Association for the purpose of illegal trafficking in narcotic or psychotropic substances (art. 74 Presidential Decree no. 309/1990, paragraph 7-bis added by Legislative Decree no. 202/2016),
- 6) All offences if committed by availing oneself of the conditions provided for by art. 416-bis of the Criminal Code in order to facilitate the activities of the associations provided for by the same Article (L. 203/91),
- 7) Illegal manufacture, introduction into the State, offering for sale, transfer, possession and carrying in a public place or place open to the public of weapons of war or war-like weapons or parts of them, explosives, clandestine weapons as well as more common firing weapons excluding those envisaged by Article 2, paragraph 3, of Law No. 110 of 18 April 1975 (art. 407, paragraph 2, lett. a), number 5), c.p.).

Crimes concerning the employment of irregular third-country citizens (D. Lgs. n.109/2012)

The provision punishes the employer that takes in his employment, alternatively, foreign workers:

- a) which do not have a residence permit;
- b) whose permit has expired and which have not been asked, in the due terms, the renewal;
- c) whose permit has been revoked or canceled.

Private corruption” (article 2365 of the Italian Civil Code)

This provision punishes the conduct of directors, general managers, the executive in charge of preparing the corporate accounting documents, auditors and liquidators which, as a result of a bestowal or the promise of money or other benefits for themselves, perform or omit acts in violation of obligations inherent to their office or their duties of loyalty, causing a damage to the company.

Tax and fiscal Crimes (article 25-quinquiesdecies of the Decree):

- 1) Fraudulent declaration through the use of invoices or other documents for non-existent operations (art. 2 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 2) Fraudulent declaration through other devices (art. 3 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 3) Unfaithful declaration (art. 4 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 4) Omitted declaration (art. 5 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 5) Issue of invoices or other documents for non-existent transactions (art. 8 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 6) Concealment or destruction of accounting documents (art. 10 of Legislative Decree 74/2000 amended by art. 39 of Legislative Decree No. 124 of 26 October 2019),
- 7) Undue compensation (art. 10-quater of Legislative Decree 74/2000),
- 8) Fraudulent evasion of the payment of taxes (art. 11 of Legislative Decree 74/2000).