

## CRIMINAL LIABILITIES OF COMPANIES IN ITALY COMPLIANCE NOTES

Companies may be **liable** for **certain crimes** committed by their **employees or directors**, when the crime is committed in their interest or advantage. This responsibility, governed by Legislative Decree No. 231 of 8<sup>th</sup> June 2001, is additional to that of the person who materially carried out the unlawful act.

The applicable penalties may be:

- **financial** penalties, from a minimum of € 25,000 to a maximum of about € 1,500,000, determined on the basis of the severity of the damage, the degree of responsibility and the activities carried out by the subject to eliminate or mitigate the consequences of the fact;
- **disqualification** penalties, in the following forms:
  - ban from business activities (up to 2 years);
  - suspension or withdrawal of authorizations, licenses or concessions;
  - exclusion or withdrawal from benefits, financing, contributions or subsidies;
  - prohibition to contract with the State or Governmental agencies;
  - prohibition to advertise goods and services;
  - confiscation of the profit of the crime;
  - publication of convictions.

The most serious and feared are the interdictive sanctions, which can reach to **the closure of the business**. Furthermore, when there are serious evidence clue and well-founded and specific circumstances that suggest that the illegal conduct can be repeated, interdictive sanctions can be adopted as a **precautionary measure, before the trial**.

The crimes are as follows, with reference to the articles of Decree 231/2001:

- offences in public disbursements, fraud to the detriment of the State, a public body or the European Union or for the attainment of public disbursements, computer fraud to the detriment of the State or a public body and fraud in public supplies (art. 24 of the Decree);
- cybercrimes (art. 24-bis);
- organized crime offenses (art. 24-ter);
- crimes committed in relations with the Public Administration (art. 25) (i.e. bribery)
- crimes concerning the forgery of coinages, banknotes and duty stamps; instruments or signs of recognition (art. 25-bis)
- crimes against industry and trade (art. 25-bis1);
- corporate crimes and private corruption (art. 25-ter)
- crimes for the purpose of terrorism or subversion of democratic order (art. 25-quater);
- female genital mutilation practices (art. 25-quater1);
- crimes against individual personality (art. 25-quinquies)
- market abuse (art. 25-sexies);
- offences of manslaughter and serious or very serious manslaughter committed in breach of safety regulations and on the protection of hygiene and health at work (art. 25-septies)
- offences of receiving, laundering and using money, goods or utilities of illicit origin, as well as self-laundering (art. 25-octies)
- crimes relating to payment instruments other than cash and fraudulent transfer of valuables (art. 25-octies.1);
- copyright infringement crimes (art. 25-novies)
- induction not to make statements or to make false statements to the judicial authority (art. 25-decies)
- environmental crimes (art. 25-undecies);
- employment of third-country irregular workers (art. 25-duodecies)
- racism and xenophobia (art. 25-terdecies)
- fraud in sports competitions, abusive gambling or betting (art. 25-quaterdecies)
- tax offences (art. 25-quinquesdecies)

- smuggling (art. 25-sexiesdecies)
- crimes against cultural heritage (art. 25-septiesdecies)
- laundering of cultural assets and devastation and looting of cultural assets (art. 25-duodevicies)
- ban on abandoning waste (art. 192 of Legislative Decree no. 152/2006)
- so-called transnational crimes under the United Nations Convention and Additional Protocols against Organized Crime (art. 10 of Law No. 146 of March 16, 2006).

The most frequent crimes are those against the Public Administration and those with violation of the safety regulations in the workplace.

In order **to obtain exemption from these responsibilities**, companies must:

- adopt an **Organization and Management Model**, suitable to prevent illegal behavior. The Model contains a set of internal rules, intended to prevent such behaviors;
- appoint a **Supervisory Body**, with autonomous power of initiative and control, with the task of overseeing the functioning and observance of the Model.

The Organization and Management Model must:

- identify activities in which crimes may be committed;
- provide for specific protocols to plan the training and implementation of decisions in relation to the offences to be prevented;
- identify ways of managing the financial resources appropriate to prevent the commission of crimes;
- provide for information obligations towards the Supervisory Body;
- introduce a disciplinary system capable of penalizing non-compliance.

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