



# Italy - Global bribery offenses guide

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## 1. What is the legal framework governing bribery in Italy?

The main legislation for anti-bribery and anti-corruption in Italy is provided for by the Italian Criminal Code (ICC), Legislative Decree no. 231/2001 on corporate criminal liability (231 Decree) and other specific anti-corruption legislation (e.g. Law no. 190/2012, the newly adopted *Spazzacorrotti* Law no. 3/2019, etc.). In addition, some criminal offences are provided for by the Italian Civil Code (ICIC).

## 2. What constitutes a bribe?

Pursuant to ICC, a bribe may consist of an undue financial or other advantage that may be offered, given or received etc., by or to a public official with the intention of inducing or rewarding either the performance of the latter's own public duty or the improper performance of a relevant public function or activity.

The term advantages in relation to bribery has a broad meaning and can include any sort of benefit for the recipient, either material or moral, monetary or in kind.

The ICC does not provide for any monetary criteria or thresholds of value for the money or benefits to amount to the criminal offence, when offered, received or given to a public official. Therefore, even a small amount of money or a benefit of very low value may be considered a bribe.

## 3. What are the principal offences under this legal framework?

The ICC punishes any public official who unduly receives for himself/herself or for the benefit of others, money or other advantages, or accepts a promise thereof, to:

- i. perform his/her own duties or exercising his/her own powers (Section 318 ICC); or
- ii. perform or have performed an act contrary to his/her official duties, or omit or delay an act by his/her own office (Section 319 ICC).

In both the above-mentioned hypotheses, the offence is considered committed only if the undue money or other advantages or their promise is accepted by a public official. If the offer or promise is not accepted, the different criminal offence of "aiding and abetting bribery" (Section 322 ICC) is considered committed.

Not only the public official involved, but also the corruptor is subject to the sanctions provided for by the law in the above-mentioned cases (Section 321 ICC).

The ICC also punishes the conduct of any public official who, by abusing his/her own position or powers, either (a)

forces or (b) induces someone to unduly give or promise money or other advantages to him/her or a third party (Sections 317 and 319-quater ICC). In scenario (b), whoever gives or promises the above is also punished.

Other criminal offences are: bribery in judicial acts (i.e. bribery aimed at favoring or damaging a party in a civil, criminal or administrative proceeding, Section 319-ter ICC); foreign bribery (i.e. bribery involving public officials of foreign states, as well as officials of certain European and International institutions or judicial authorities, Section 322-bis ICC); and private bribery (i.e. bribery involving directors, general managers, accounting officers, auditors or liquidators of private companies, Section 2635 ICIC).

#### 4. What is the jurisdictional reach of the legal framework?

Bribery of an Italian public official committed by a person of any nationality or citizenship, anywhere in the world, is subject to Italian legislation (Section 7 ICC).

Bribery of foreign public officials, as well as officials of certain European and International institutions or judicial authorities, that is committed by an Italian citizen is also a crime (Section 322-bis ICC).

Private bribery is subject to Italian legislation when: (i) at least a segment of the prohibited conduct takes place in Italy; or, (ii) if the criminal offence is committed abroad by an Italian citizen, in the presence of certain circumstances (for example, at the request of the Italian Minister of Justice).

#### 5. Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Private individuals and public officials can be prosecuted for bribery offences under Italian law.

As to legal entities, corporate criminal liability pursuant to 231 Decree applies in case a manager or an employee (or even an agent or a consultant) of a company is criminally liable under any of the crimes above, provided that the criminal offence is committed in the interest or for the advantage of the company. Therefore, the latter could be held liable unless they prove the existence of certain circumstances (*see point 10 below*).

#### 6. Can a parent company be liable for its subsidiary's involvement in bribery?

It cannot be excluded that a holding company may be deemed liable for bribery offences committed within its subsidiaries. The legal concept of "responsibility rise" was developed through case law in a few cases.

In particular, the involvement of the holding company for acts committed within the subsidiary pursuant to the 231 Decree was recognized in cases when the holding company had an interest in/obtained an advantage from the behaviors of the managers/employees of the subsidiary and one or more of its chief executive officers/employees aided or abetted in the criminal offence. In any case, this is not to be assumed and will depend on the circumstances of each case.

#### 7. Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Facilitation payments are not expressly defined by the ICC and are not expressly prohibited, but they may integrate an undue advantage offered or provided to the public official, which would cause them to fall under the scope of bribery offences provided for by the ICC.

#### 8. Does the legal framework restrict political and charitable contributions?

Political contributions by companies may be sanctioned by means of a specific criminal offence in case of breach of the specific requirements and limitations provided by the law.

However, a political or charitable contribution could be regarded as a bribe if unduly offered, given or received with the intention of inducing a public official to perform his/her own public duty or for the improper performance of his/her public function or activity, or as a reward for having done so.

## 9. Does the legal framework place restrictions on hospitality?

Hospitality/promotional expenditures are not expressly mentioned by the ICC and therefore the payment for gifts, travel expenses, meals or entertainment (or the offer/promise thereof) for the benefit of public officials is not specifically prohibited.

However, in light of the above-mentioned definition of a bribe, it is likely that this kind of expenditure in favor of public officials could be seen as an advantage falling under the scope of bribery offences provided for by the ICC.

## 10. Are there any defenses for bribery offences?

There are no statutory defenses specifically provided for bribery offences committed by individuals.

In addition, a defendant may of course argue that the offence is not made out, for example, because the alleged bribed person was not a public official, or the advantage granted to the public official did not influence his/her behavior.

A special non-punishment clause will be applied to individuals who commit bribery offences if they voluntarily disclose the facts before becoming aware of their involvement in an investigation being carried out within four months from the commission of the crime. The individual in such circumstances must also provide useful and concrete information to facilitate evidence-gathering activities and identify other offenders.

It is a defense for a company charged with the offence of bribery committed by a manager/employee under the 231 Decree to prove that:

- i. the management adopted and effectively implemented a specific compliance program (i.e. a Model of Organization, Management and Control, "231 Model") suitable to prevent the commission of criminal offences equal to those actually committed;
- ii. the management of the company appointed an independent and autonomous Supervisory Body for vigilance over the compliance program;
- iii. the Supervisory Body adequately fulfilled its duties; and
- iv. either the manager who committed the crime fraudulently eluded the provisions of the 231 Model, or the employee who committed the crime did not respect management's directives.

## 11. What are the key regulatory or enforcement bodies with regard to bribery?

Investigations into allegations of bribery and corruption are carried out by the Public Prosecutor's Office, assisted by the police.

Specific powers are attributed to the Italian Anti-corruption Authority (ANAC), as to ensure effective coordination and exchange of information with the Italian Prosecutor's Offices investigating cases of bribery and corruption, as well as to enable the ANAC to supervise relevant public tenders, having also in this regard inspection and sanctioning powers.

## 12. What are the legal consequences of being found guilty of bribery offences?

Individuals charged with bribery crimes face up to 20 years' imprisonment (in case of aggravated bribery in judicial acts), depending on the bribery offence concerned (according to the recent increase of sanctions pursuant to *Spazzacorrotti* law).

Individuals convicted with more than two years' imprisonment for corruption crimes also face the permanent prohibition of holding public office, as well as a perpetual ban from concluding contracts with Public Administration.

The debarment from contracting with the Public Administration can now be applied to individuals, as a precautionary measure, also before the issuance of the judgment, according to the recent reform of the legislation made by

*Spazzacorrotti* law.

In the case of conviction for bribery, the confiscation of the price (i.e. the amount of money promised, offered or paid for the commission of the crime) or of the profit (i.e. the advantage deriving from the commission of the crime) of the bribery, or the confiscation of goods belonging to the offender that are of equal value to the said price or profit, is ordered (Section 322-ter ICC).

Companies convicted of bribery offences may face:

- i. pecuniary penalties up to a maximum of more than EUR 1 million for bribery crimes (depending on the criminal offence concerned);
- ii. disqualifying sanctions, ranging from four to seven years in the case of crimes committed by top managers and from two to four years in cases of crimes committed by employees – applicable also before the start of the trial – as follows:
  - a) a ban on carrying out the company's business activity;
  - b) suspension or withdrawal of authorizations, licenses or concessions functional to the commission of the crime;
  - c) a ban on concluding contracts with the Public Administration;
  - d) exclusion from (or withdrawal of) contributions, assistance and financing; and
  - e) a ban on advertising goods or services.
- iii. confiscation of the price or proceeds of the crime, as well as of corporate assets; and
- iv. the publication of the conviction.

The above-mentioned disqualifying sanctions can be reduced up to a maximum of two years if the company, before the first-instance decision, acted in order to prevent further consequences of the crime, or actively cooperates with the Authorities in order to secure evidence and ensure the identification of liable individuals or the seizure/confiscation of the money or advantage(s) transferred and eliminated the gaps in its organizational structure through the effective adoption and implementation of a proper compliance program, pursuant to the 231 Decree.

### 13. Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

If certain conditions are met, a plea bargain (so-called *patteggiamento*) with Italian prosecuting authorities is allowed for by Italian law (Section 444 Italian Code of Criminal Procedure, ICCP).

In particular, *patteggiamento* is a special proceeding whereby the defendant, in agreement with the Public Prosecutor, does not admit guilt, but offers to accept the punishment, at the same time requesting the judge to impose a sanction reduced by up to one-third compared with the one provided for by the law for the criminal offence concerned.

Even though a judgment issued upon a *patteggiamento* is not a guilty verdict, pursuant to ICCP it is equivalent to a conviction. Indeed, certain effects of *patteggiamento* are the same as those of convictions, e.g., imposition of a criminal sanction (even though in a reduced amount), as established in the plea bargain agreement, possible confiscation of property, etc.

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