

November 19, 2012

Practice Group:
Government
Enforcement

The Italian Anti-Corruption Reform - Recent News

By Giampaolo Salsi, Marco De Nadai

After a lengthy approval process, on October 31, 2012, the Italian Chamber of Deputies passed a long awaited anti-corruption bill (“**Anti-Corruption Law**”), aimed at improving transparency in the country’s public sector. The Anti-Corruption Law introduces new categories of corruption-related offences and strengthens those already contained in the Italian Criminal Code (“*Codice Penale*”). It also calls for the establishment of a new National Anti-Corruption Authority with investigative and remedial powers. Below is a summary of the changes brought about by this new law.

Establishment of a National Anti-Corruption Authority for the Public Administration

Pursuant to art. 6 of the United Nations Organization’s Anti-Bribery Convention of December 14, 2005, ratified in Italy by Law no. 116 of August 3, 2009, each State is required, in accordance with the fundamental principles of its legal system, to promote the creation of specific governmental bodies, as appropriate, for purposes of preventing corruption by such means as:

- i. enhancing the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability;
- ii. increasing and disseminating knowledge about the prevention of corruption crimes.

The governmental bodies in question must be provided with the necessary independence, in accordance with the fundamental principles of their legal systems, so as to be enabled to carry out their functions effectively and free from any undue influence. In addition, they need to be provided with material resources and specialized staff, as well as the level of training that such staff may require. In particular, in the step taken to enforce and implement the principles contained in the above mentioned United Nation Organization’s Anti-Bribery Convention, the Anti-Corruption Law directs the establishment of a new authority named “National Anti-Corruption Authority” which will monitor the application and effectiveness of relevant measures taken by the government.

In particular, pursuant to the Article 1 of the Anti-Corruption Law, the Authority will have duties to:

- i. cooperate with other local and/or international authorities or competent commissions;
- ii. approve the so-called “National Anticorruption Plan”, drafted by the Department of Public Function (“*Dipartimento della funzione pubblica*”), and setting out a comprehensive set of standards, measures and rules that all public offices are required to apply in order to strengthen their regulatory regimes against corruption;
- iii. analyze causes of illicit behaviors and indicate the measures to be implemented for preventing and fighting them;
- iv. issue opinions as to whether the behavior of public officials is generally compliant their duties;
- v. issue opinions regarding assignments of public offices; and

The Italian Anti-Corruption Reform– Recent News

- vi. report annually to the Parliament about its activity and results in the fight against corruption in the public sector.

In furtherance of these goals, the Authority is granted powers of investigation, as well as with the power to order remedies that it deems to be required.

Whistleblower Protection

Filling a gap in the Italian legislative panorama, the Anti-Corruption Law sets out specific protection for public officials who report corrupt behavior. Such government employees cannot be sanctioned, fired or otherwise discriminated against, even indirectly, for having reported misconduct. Furthermore, the whistleblower's identity cannot be disclosed without his or her express consent.

Identified Sensitive Activities or “Risk Areas”

The Anti-Corruption Law also identifies the following specific activities or functions that the legislature considered to present a particular risk of possible corruption:

- i. transportation of landfill material;
- ii. disposal of waste on behalf of third parties;
- iii. extraction, supply and transport of dirt or ground materials;
- iv. packing, supply and shipping of raw concrete and bitumes);
- v. rental of unmanned machinery / equipment;
- vi. supply of processed iron;
- vii. rental of manned machinery/equipment;
- viii. trucking on behalf of third parties;
- ix. guard house services; and
- x. other activities, services or businesses that may be indicated by a ministerial law decree, on a yearly basis or otherwise, as potentially risky in term of criminal influences.

Guidelines for Electoral Candidates

According to the new provisions, the Government will have to introduce, within one year from the enforcement of the Anti-Corruption Law, specific regulation providing rules and criteria to exclude from elections candidates who have been convicted of certain crimes. The exclusion will apply to elections for a broad array of public offices at national, regional and local levels, such as member of the European Parliament, member of the Chamber of Deputies or the Senate, member of any regional, provincial or municipal governmental body, as well as the position of president and member of local public offices including consortia, committees and councils. Candidates with convictions that involved imprisonment for more than two years for certain serious offences (e.g., *mafia*, terrorism), or individuals convicted of corruption or other offences and sentenced to more than three years of imprisonment, are ineligible to run for public office. The Government has committed to fast-track the enactment of the implementing regulation in this area.

Increased Penalties and Longer Prison Sentences for Corruption Offences

The Anti-Corruption Law provides for a general increase in the sentences imposed for several corruption-related offences. In particular, art. 317 (“*Bribery*”) increases imprisonment from 6 to

The Italian Anti-Corruption Reform– Recent News

12 years; art. 318 (“*Corruption in the exercise of a public function*”) extends imprisonment from 1 to 5 years; art. 319 (“*Corruption by act contrary to official duties*”) provides for sentences ranging from 4 to 8 years. In addition, art. 319-ter (“*Corruption in judicial proceedings*”) provides an increase from 4 to 10 years for acts referred to in art. 318 and 319 when they are committed to favor or harm a party in judicial proceedings, or, if the act results in an unjust conviction to imprisonment, the penalty is imprisonment from five to twenty years, depending on the length of the unjust conviction.

The crime of corruption has also been modified or expanded to include additional acts, practices or conduct.

Introduction of New Offences

Among the main features of the Anti-Corruption Law is the introduction of two new articles in the Criminal Code, covering new types of offences: art. 319-*quater* titled “*Improper induction to give or promise utility*”, and art. 346-*bis* titled “*Illicit trafficking of influence*”.

New art. 319-*quater* contemplates a new crime of “*Improper induction to give or promise utility*” which punishes a public official who, abuses his or her position or powers by inducing another person to give or promise to him or her or a third party, money or other benefits. Individuals convicted of this offence are subject to imprisonment for three to eight years.

New art. 346-*bis*, introduces the crime of “*Illicit trafficking of influence*”, and provides for the conviction and punishment of individuals who improperly leverage their personal relationship with a public official to obtain, for themselves or for others, undue money or other pecuniary advantage, as consideration for the illicit conduct of either the public official or anyone in charge of a public service with respect to their duties. Such conduct is punishable by imprisonment for one to three years. The same penalty applies to anyone who unduly gives or promises money or other pecuniary advantage with respect to dealings with a public official. The penalty is increased if the wrongdoer is a public official. Penalties are also increased if the acts are committed in the exercise of judicial activities.

Further, the Italian Civil Code also has been modified with the amendment of art. 2635 now entitled “*Corruption between private individuals*”. Under that civil article:

1. directors, general managers, officers responsible for preparing corporate accounting documents, auditors and liquidators who, as a consequence of the giving or the promise of money or some other thing of value, whether for themselves or for others, perform or omit acts in violation of their corporate duties, causing prejudice to the company, are subject to imprisonment for one to three years;
2. the penalty of imprisonment to one year to six months shall apply if the conduct is committed by someone who is subject to the the controlling influence/ management and control / management (“*direzione e coordinamento*”) of the person indicated under the point 1 above;
3. the same penalty applies to anyone who gives or promises any improper financial or other benefit to the above individuals in connection with those duties;
4. the above penalties are doubled in case of companies listed on Italian or other EU Member State regulated stock exchanges.

This offence can be prosecuted only upon the victim’s complaint, except the case in which the relevant conduct produced a distortion of competition. In that case, the offence shall be prosecuted by the public prosecutor.

The offences contemplated by art. 319-*quater* of the Criminal Code (“*Improper induction to give or promise utility*”) and art. 2635 of the Civil Code (“*Corruption between privates*”) also constitute “prerequisite offences” for purposes of Legislative Decree no. 231 of 8 June 2001, in

The Italian Anti-Corruption Reform– Recent News

the matter of so-called “administrative” liability of corporations, for crimes committed by their officers and employees.

It is anticipated that the above new rules will require companies to adopt adequate anti-corruption programs, in order to monitor sensitive areas and ensure compliance by the concerned corporate functions. Companies also can be expected to adopt appropriate recordkeeping practices, training programs and supervisory policies and procedures designed to prevent and/or monitor possible corruptive behavior or conduct by their personnel.

Transparency in the Public Administration.

In addition to the provisions described above, the Anti-Corruption Law provides for general criteria and rules in the management of the public sector, with particular emphasis on limiting the hiring of employees without public competitive examinations, transparency in administrative proceedings, ethical courses, a code of conduct for public employees, prohibitions with respect to the receipt of gifts by public employees, and incompatibility of public employees which in the last three years of service have exercised authoritative powers on behalf of public administration.

Conclusion

The Anti-Corruption Law represents an important step forward in Italy’s fight against corruption in the public sector. The new statute finally provides Italy with modern and comprehensive legislation in this area and it is intended to provide an important instrument in maintaining a level playing field for foreign investors and domestic companies.

Implementation will obviously play a fundamental role in ensuring the effectiveness and success of the reform, yet the enactment of the new rules seems to reflect significant movement in that direction.

Authors:

Giampaolo Salsi

Giampaolo.Salsi@klgates.com
+39.02.3030.2950

Marco De Nadai

Marco.Denadai@klgates.com
+39.02.3030.291

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