

## Attachment A: crimes

### A) CRIMES COMMITTED IN RELATIONSHIPS WITH PUBLIC ADMINISTRATION BASED ON Legislative Decree NO. 231/2001

In order to further knowledge and awareness of the essential elements of individual crimes punishable pursuant to Legislative Decree no. 231/2001, a brief description is given below of the crimes set forth in articles 24 and 25 of Legislative Decree no. 231/2001.

#### **Misappropriation of State or European Communities Funds (article 316-bis Criminal Code)**

This crime consists in varying the destination of contributions, subsidies or financing obtained from the State, other public bodies or the European Communities to be used in achievement of works or the performance of activities in the public interest. The crime is committed even if only a part of the funds are misappropriated, and even if the correctly used part has served to complete the works or initiative for which the entire sum was intended. The criminal act exists regardless of the method used to obtain funding and is considered as having been committed only subsequently to the funds themselves being obtained.

#### **Unlawful appropriation of funds to the detriment of the State (article 316-ter Criminal Code)**

This crime takes is perpetrated when the company – through anyone (including a person extraneous to the company itself) – who obtains for themselves or for others funding from the State, other public bodies of the European Communities, through conduct that consists in any type of use (for example, presentation) of declarations (written or oral) or other materially and/or ideologically false documentation by omitting to provide the information required.

This crime occurs subsequent to the funds being obtained (the circumstance which typically characterises the crime itself). This instance constitutes a “special case” compared with the wider definition of serious fraud due to the fact that funds are appropriated, pursuant to article 640-bis Criminal Code. The provision in question is applied (in other words article 316-ter Criminal Code) every time the specific circumstances taken into consideration for this type of crime occur; the more common (and more serious) instance of fraud is considered as taking place, on the other hand, only when the fraudulent means used to obtain funds fall outside the remit of those contemplated by article 316-ter, but in any case derive from the notion of “deceiving by artificial means”, as referred to in article 640-bis Criminal Code.

The crime in question (article 316-ter Criminal Code) is also considered as a special case in relation to article 640, para. 2, no. 1, Criminal Code (serious fraud to the detriment of the State), with respect to which the element that makes it “special” no longer depends on the deception used but the type of profit obtained to the detriment of the defrauded public body. In more general cases, the profit just referred to does not consist in the appropriation of public funds but in a general advantage of any other nature.

#### **Fraud to the detriment of the State or other public body (article 640, para. 2, no. 1, Criminal Code)**

The legislative reference framework for general cases of fraud (article 640 Criminal Code), is aggravated by the fact that the economic detriment from the deceptive activity of the culprit impinges on the State or another public body.

The conduct consists substantially in any type of falsehood (including unduly remaining silent about the circumstances that have been made public) and which induce a person to make an error of judgement about something, and consequently, agree to something they would not otherwise have agreed to had they known the truth. In order to commit this crime, in addition to conduct, there must also be profiting from the circumstance (regardless of this being the swindler or other) and detriment to the State or public body.

#### **Serious fraud to obtain public funds (article 640-bis Criminal Code)**

This crime occurs when the circumstances foreseen by article 640 Criminal Code (in other words, fraud) relates to contributions, financing, loans on favourable terms or other funding of the same type, and in any case, named, granted or issued by the State, other public bodies or the European Communities.

### **Computer fraud to the detriment of the State and other public bodies (article 640-ter Criminal Code)**

This instance of criminal behaviour takes place when an individual, who, by altering in any way the functioning of a computer or telecommunications system or intervening unlawfully in any manner in relation to data, information or programmes contained in a computer or telecommunications system or relevant to the same, unjustly obtains profit for himself or others to the detriment of others.

This crime contains constituent elements that are almost identical to those of fraud, except that the fraudulent activity does not have as its object a person, but a computer system due to its manipulation.

The crime targets interventions that consist in using computer systems for other aims than they were intended or in arbitrarily manipulating its contents.

The fraudulent act consists in the intention to alter the functioning of systems or intervening in relation to data, programmes, information, with the expectation of unjustly profiting from the damage causes to others, without necessarily wanting to mislead or trick them.

Since the aggravating circumstance also encompasses the abuse of the position of system operator, there is no abstract definition of a perpetrator, but legitimacy depends on the reasons for which the service is provided.

The crime occurs when unjust profit created to the detriment of the State or other public body.

Examples of this crime include fraud that takes place through telecommunications connections or transmission of data on computer systems of civil services or public bodies or regulatory authorities.

### **Corruption due to public acts or those contrary to public duties (articles 318, 319 and 319-bis Criminal Code)**

The case foreseen by article 318 Criminal Code (corruption due to public acts) occurs when a public official receives for himself or a third party, payment of a sum of money or other form of profit that he is not entitled to, or accepts a promise of the same, in return for the performance of an official act. The notion of public official is that defined by article 357 of the Criminal Code. In this instance, it relates to acts that are not contrary to official duties. The crime can also be committed when a public official received payment for an official act that he has already performed.

The cases foreseen by article 319 Criminal Code occur, on the other hand, when a public official receives for himself or a third party, payment of a sum of money or other form of profit that he is not entitled to, or accepts a promise of the same, for omitting or delaying or having omitted or delayed the performance of an act by his office, or for performing or having performed an act that is contrary to his official duties.

The aggravating circumstance is considered to exist if the circumstances referred to in article 319 Criminal Code have the aim of obtaining public employment or salaries or pensions or the conclusion of agreement to which the administrative office to which the public official in question belongs is an interested party (article 319-bis Criminal Code).

The criminal conduct of the public official can therefore manifest itself both as an act that complies with official duties (for example: speeding up a file, the performance of which falls within his competences) and, above all, performing an act that is contrary to his official duties (for example: a public official accepting sums of money to guarantee the award of a tender).

### **Corruption in relation to judicial acts (article 319-ter Criminal Code)**

This case occurs if the circumstances set forth in articles 318 and 319 Criminal Code are committed by a public official to favour or damage a party in a civil, penal or administrative lawsuit. The legislation applies indiscriminately to all public officials and not only magistrates.

### **Corruption of a person entrusted with the performance of a public service (article 320 Criminal Code)**

The provisions of article 319 Criminal Code apply even if the act is committed by a person responsible for the performance of a public service; the circumstances referred to in article 318 Criminal Code also apply to a person responsible for the performance of a public service, as defined by article 358 Criminal Code, but only if such person is a civil servant.

### **Penalties for bribers (article 321 Criminal Code)**

The penalties laid down in the first paragraph of article 318, article 319, article 319-bis, article 319-ter and article 320 for the aforementioned instances envisaged by articles 318 and 319, also apply, thanks to a provision of this article, to any person who gives or promises to a public official or person assigned to perform a public service, money or any other form of profit. In other words, any person who bribes another, commits a crime independently of the one committed by the public official (or person assigned to perform a public service) who has allowed himself to be bribed in one of the ways referred to and therefore adopted conduct falling within the ambit of the aforementioned articles.

### **Incitement to corruption (article 322 Criminal Code)**

This case of unlawful conduct occurs when a private individual is indicted for conduct that corresponds with the definition set forth in article 321 Criminal Code (and therefore carries out corrupting activities), but the public official concerned (or person assigned to perform a public service) refuses the illegitimate offer made to him.

**Extortion (article 317 Criminal Code)**

This instance applies when a “public official or person assigned to perform a public service [...] abuses his position or powers, and obliges or induces a person to give or illegitimately promise, him or a third party, money or other form of profit”.

The difference between extortion and corruption consists in the existence of circumstances amounting to the subjugation of a private individual to the unlawful conduct of the public official.

**Extortion, corruption and incitement to corruption by members of the organs of the European Communities and civil servants of the European Communities and foreign States (article 322-bis Criminal Code)**

The provisions of articles 317-320 and article 322, third and fourth paragraphs Criminal Code, also apply to members of the European Communities Institutions, as well as civil servants of the same and the whole Community administrative structure, including persons attached to the Community with specific functions or offers of the bodies established on the basis of its Treaties. The aforesaid provisions equally apply to persons who carry out activities equivalent to those performed public officials or those assigned to perform public services in the Italian domestic system in Member States of the European Union. Accordingly, mention should be made of the fact that article 322-bis Criminal Code also incriminates – and this is of importance to private individuals who enter into relationships with the above-mentioned parties - any person who carries out activities set forth in articles 321 and 322 Criminal Code (in other words corrupting activities) against the former, and not only the passive parties of corruption. Moreover, article 322-bis Criminal Code also incriminate any offer or promise of money or other form of profit “to any person who carries out functions or activities that are equivalent to those performed by public officials and persons assigned to perform public services in foreign States [other than those of the European Union] or public international organisations, if the illegitimate act has been committed to obtain unwarranted personal advantage or in favour of third parties in international economic operations” (article 322-bis 2.2).

**B) CORPORATE CRIMES UNDER Legislative Decree NO. 231/2001**

A brief description is given below of the cases of corporate crime referred to in article 25-ter (Corporate Crimes) of the Decree.

**False accounting (article 2621 Civil Code, as amended by article 30, para. 1, Act no. 262/2005) and false accounting to the detriment of the company, shareholders or creditors (article 2622 Civil Code, as amended by article 30, para. 2, Act no. 262/2005)**

The conduct:

- consists in presenting untruthful information while it is still subject to assessment, or omitting to communicate information as required by law regarding the economic and financial situation and assets statement of the company or group that it belongs to;
- has to have intention of deceiving shareholders or the public with the aim of illegitimately obtaining profit for personal advantage or the advantage of others.

The crime can only be committed by directors, general directors or directors responsible for the preparation of accounting documents, auditors and liquidators (in other words the so-called “white collar crimes” (“reati propri”)), as well as those who aid and abet the crimes committed by the former, as set forth by article 110 Criminal Code. The communications have to be made to “the shareholders of the public”; communications sent to individuals or made internally and those made to public control authorities are excluded from the remit of the definition.

The information sent or omitted has to be such as to considerably alter the economic and financial situation and assets statement presented of the company or group it belongs to, and it has to objectively mislead the addressees of the communication about the said situation.

The remit of the definition also covers false or omitted information relating to the personal property owned or managed by the company on behalf of third parties.

Punishment is excluded, on the contrary, if the said false information or omissions presented do not considerably alter the economic and financial situation and assets statement of the company or the group it belongs to. Moreover, punishment is excluded if the false information or omissions result in the assessment of the current statement of financial performance, gross of taxes, is not greater than 5 percent, or results in a variation of the net assets that is not greater than 1 percent.

In any case, the act is not punishable (and exceeding the margins loses its relevance), it is estimated that the individual figures do not exceed the correct value by more than 10 percent.

With reference to the provisions of article 2622 Civil Code, mention should also be made of the fact that:

- the unlawful conduct consists in creating and additional element of pecuniary damage caused to the company, its shareholders or creditors;

- the penalty is increased if the act causes serious damage to small investors. The damage is considered serious if it relates to more than 0.1 thousandth of the population based on the last ISTAT (National Statistics Institute) census, or if the ensuing destruction or reduction of the share value is more than 0.1 thousandth of the Gross Domestic Product;
- the crime is punishable if an action is brought by the injured party. An action may also be brought by the injured party, if the act results in the commission of further crime, including if aggravated, of detriment to the assets of parties other than the shareholders and creditors, unless the crime is committed to the detriment of the State, public bodies or the European Communities. If the company falls within the definition of the provisions of Part IV, Title III, Heading II, of Legislative Decree no. 58/1998 (hereinafter TUF) ,it is an indictable offence.

#### **Fraudulent statements (article 173-bis TUF)**

Article 34 (Fraudulent statements), para. 2, Act no. 262/2005 has repealed Article 2623 Civil Code, which formerly punished the crime in question, and the criminal act – formerly indictable under the repealed legislation - is currently foreseen and punishable under article 173-bis TUF.

Moreover, with reference to the crimes included in the definition of administrative liability pursuant to the Decree, article 25-bis of the aforesaid Decree still refers to the repealed civil law legislation, while omitting to make any reference to the crime introduced by Act no. 262/2005. The legislative changes therefore would seem to annul administrative liability of companies for the purposes of article 25-ter Decree with regard to the crime of fraudulent statements.

The unlawful conduct consists in declaring false information in any of the statements required for the purposes of calling investments or being listed on stock exchanges (regulated markets), or in documents that are published when the company is offered for public sale or exchange, and which mislead the addressees of the statements; concealment of data or information in the aforementioned statements so as to mislead addressees of the same.

#### **Fraudulent reports or communications by audit companies (article 2624 Civil Code)**

The crime consists in making false declarations or concealing information by the audit managers, as regards the economic and financial situation and assets of the company, corporation or any party subject to audit.

Mention should be made of the fact that:

- the offence can be committed by managers of the audit companies (white collar crime), and also members of the board and control bodies, as well as employees of the audited company that may have aided and abetted the commission of the crime;
- there has to be awareness of the deceitfulness as well as the intention to deceive addressees of the communications;
- the unlawful conduct has to mislead the addressees of the communications;
- the unlawful conduct has to have the aim of obtaining unjust profit for personal gain or to the advantage of others;
- the penalty is more serious if the conduct has caused detriment to the assets of the addressees of the communications.

#### **Obstructing auditing activities (article 2625 Civil Code)**

This crime consists in preventing or obstructing, by concealing documents or other artifice, the performance of control or audit activities that are legally conferred upon shareholders, or other company bodies or audit companies. It should be noted that:

- the offence can only be committed by directors;
- an injured party may take action, if the unlawful conduct has caused detriment to the shareholders, which is punishable under criminal law.

#### **Establishment of fictitious capital (article 2632 Civil Code)**

This crime occurs when: company capital is established or fictitiously increased by allocating company shares or quotas for sums that are lower than the par value; mutual subscription of shares or quotas; significant overvaluation of non-cash contributions, receivables or otherwise the assets of the company under reorganisation.

This crime can only be committed by contributing directors or shareholders.

#### **Fraudulent return of contributions (article 2626 Civil Code)**

Without prejudice to the cases of legitimate reduction in share capital, the typical conduct found in relation to this offence consists in returning or feigning to return, contributions to shareholders or releasing same from the obligation to make contributions. This crime can only be committed by directors.

#### **Illegal distribution of profits or reserves (article 2627 Civil Code)**

This offence consists of distributing profits (or advance payments of profits) which have not actually been obtained or allocated by law to reserves or otherwise distributing reserves, (even if not set up with profits) which by law cannot be distributed. It should be noted that:

- the crime can only be committed by directors;
- the crime may be extinguished by return of profits or reconstitution of the reserves before the time-limit for the approval of the financial statements.

#### **Unlawful operations in respect of shares or quotas or the parent company (article 2628 Civil Code)**

Without prejudice to the cases permitted by law, this offence consists in acquiring or subscribing to shares or quotas issued by the Company (or by the parent Company) causing losses to be made to the share capital or reserves which by law may not be distributed. It should be considered that:

- the offence may be committed by directors;
- the offence may be extinguished if the share capital or the reserves are recreated before the time-limit laid down for approval of the financial statements relating to the operating period during which the offence is committed.

#### **Operations causing detriment to creditors (article 2629 Civil Code)**

This offence consists in implementing, in breach of provisions of law safeguarding creditors, reductions in share capital or mergers with other companies, insofar as it causes detriment to the creditors. It should be considered that:

- the offence can be committed by directors;;
- indemnification of losses to creditors before the judgment extinguishes the offence.

#### **Failure to notify of conflict of interest (article 2629-bis Civil Code)**

This crime, which was introduced by article 31, Act no. 262/2005, consists in the violation of the obligations provided for under article 2391, first paragraph of the Civil Code, on the part of the director or member of the Management Committee, which provides that the Directors must inform the other Directors and the Statutory Auditors of any interest, on their own behalf or on behalf of a third party, in a given operation of the company, if the aforementioned breach gives rise to loss or damage for the Company or third parties. This offence is only activated for purposes of Legislative Decree no. 231/2001, if it is committed in the interests or to the advantage of the Company.

This is a white collar crime: it can therefore only be perpetrated by board members of companies listed on Italian or Community regulated markets or with significant securities distributed among the public (for the purposes of article 116 Finance Code, credit companies, financial companies, insurance companies and endowment funds)

The fraudulent conducts consists in the director knowing about and deliberately failing to disclose certain interests that he, on his own behalf or on behalf of third parties, has in a transaction of the company, or not specifying the nature, terms, origin and extent of those interests, including not withdrawing from the transaction where he is the managing director, and further still not disclosing his interest at the first possible shareholders meeting where if he is the sole director.

#### **Fraudulent distribution of Company assets by liquidators (article 2633 Civil Code)**

This offence consists in distributing Company assets amongst shareholders before payment of Company creditors is made or allocation of such sums as are required to satisfy Company creditors, thereby causing damage to creditors. It should be considered that:

- this offence may be committed solely by the directors.
- indemnification of losses to creditors before judgment extinguishes the offence

#### **Unlawful influence over the shareholders' meeting (article 2636 Civil Code)**

The typical unlawful conduct arises where the majority in the shareholders' meeting is determined by sham or fraudulent acts, in order to obtain for oneself or for others, an unfair profit.

### **Market manipulation (article 2637 Civil Code)**

It is considered an offence to disseminate false information, or otherwise carry out simulated operations or other such stratagems as are likely to bring about a significant change to the price of non-listed financial instruments or for which no request has been submitted for admission to trading on a regulated market, or otherwise have a significant impact on the trust that the public places in a banks' or bank Groups' economic stability.

This is considered a common offence, which can be committed by "whosoever" engages in criminal conduct.

### **Placing obstacles in the way of Public Regulatory Authorities performing their functions (article 2638 Civil Code)**

The criminal conduct consists in making communications required by law to public regulatory authorities (in order to hinder the latter performing its functions) of material facts which are untruthful, even though being evaluated, relating to the economic, asset-related and financial situation of the persons or entities being regulated; or by concealing, with other fraudulent means, facts which ought to have been notified and which concern the same economic, asset-related or financial situation. The notion of criminal conduct also consists in any failure to make notifications, including by omitting to send due communications, thus deliberately placing obstacles in the way of the Public Regulatory Authorities performing their functions. It should be considered that:

- this offence may be committed by general directors, directors involved in preparing accounting documents, auditors and liquidator of the company or corporations and other parties subject by law to the public regulatory authorities or bound to perform obligations for them;
- liability may also be extended to cases in which the information concerns assets in the possession of or
- administered by the Company on behalf of others.

## **C) MARKET ABUSE CRIMES PUNISHABLE PURSUANT TO Legislative Decree NO. 231/2001**

The following section sets forth the specific crime defined by article 25-sexies of the Decree, and administrative offences, as set forth in article 187-quinquies of Legislative Decree no. 58/1998 (hereinafter the Finance Code), that are caused by the so-called market abuse.

### **Insider trading (Art. 184 TUF)**

This crime is committed by:

1. anyone who, coming (directly) into possession of privileged information due to being a member of the corporate, management or control bodies of the corporation or participation in its capital, or while performing work, a profession, or a function including public, or of a department:
  - a) purchases, sells or performs other operations, directly or indirectly, on his own behalf or of a third party, on financial instruments using the same information – in other words, trading;
  - b) communicates such information to others, outside his ordinary work tasks, profession, responsibility or department which he is assigned with;
  - c) recommends or induces others, based on the information, to carry out the operations referred to in a);
2. Anyone who, as a result of having acquired insider information for the purpose of preparing or carrying out criminal activities, performs one of the actions referred to in point 1).  
Where the maximum penalty appears to be inadequate, the fine may be increased by up to three times, or up to ten times the benefit or profit obtained by commission of the crime, due to the degree of offensiveness of the act, the personal position of the culprit, or the extent of the benefit of profit obtained from such operations.

The fraudulent act consists in the deliberate intent to use the insider information by carrying out transactions in relation to financial instruments or recommending or inducing other to carry out the same operation, or further still, communicating such information to others outside the sphere of normal work activities.

The crime occurs when the insider information is used, which is identified by performing transactions, directly or indirectly, in relation to financial instruments, by recommending or inducing other to carry out such transactions, by sending information to others and in doing performing actions outside the limits of their normal work activities.

### **Market Manipulation (Art. 185 TUF)**

This crime is committed by anyone who circulates false information or simulates transactions or uses other devices to provoke significant alteration in the price of financial instruments.

Where the maximum penalty appears to be inadequate, the fine may be increased by up to three times, or up to ten times the benefit or profit obtained by commission of the crime, due to the degree of offensiveness of the act, the personal position of the culprit, or the extent of the benefit of profit obtained from such operations.

The fraudulent act consists in the deliberate intent to circulate false information or simulate transactions or other devices that provoke a significant alteration in the price of financial instruments.

The crime occurs with the circulation of false information and the simulation of transactions or other devices that provoke a significant alteration in the price of financial instruments.

### **Market abuse offences**

The following part provides a brief description of the market abuses constituting administrative offences, as specified in article 187-quinquies TUF, which result in the administrative liability of the company:

Abuse of privileged information (article 187-bis TUF)

Without prejudice to the criminal penalties for cases in which the facts amount to a crime, an administrative offence is committed by anyone, who:

1) coming into possession of insider information as a result of his position as a member of the corporate, management or control bodies of the issuing company, participation in the share capital of the issuing company, or on account of his work position, profession or function, including public or department:

a) acquires, sells or carries out other transactions, directly or indirectly, on his own behalf or on behalf of a third party, in relation to financial instruments by using the said information;

b) communicates such information to others, outside his normal work, function, professional or, departmental activities;

c) recommends or induces others, on the basis of the same, to carry out any of the transactions set forth in letter a);

2) being in possession of insider information for the purpose of preparing or carrying out illicit activities, and carries out any of the actions referred to in point 1);

3) being in possession of insider information, and understands or should reasonably be expected to understand the privileged character of the same, carries out the acts described in point 1).

The administrative pecuniary penalties appear inadequate,

Where the maximum penalty appears to be inadequate, the fine may be increased by up to three times, or up to ten times the benefit or profit obtained by commission of the crime, due to the degree of offensiveness of the act, the personal position of the culprit, or the extent of the benefit of profit obtained from such operations.

The unlawful conduct foreseen by the provision essentially highlights that described in the provision defining similar criminal conduct. In contrast to the latter, however, the administrative offence is punishable if committed by anyone, including by chance, who comes into possession of insider information, and understands or should reasonably be expected to understand the privileged character of the same (the so-called secondary insider).

For the purposes of this provision, attempted abuse is considered as equivalent to perpetration of the same.

### **Market Manipulation (article 187-ter TUF)**

Without prejudice to the criminal penalties for cases in which the facts amount to a crime, an administrative offence is committed by anyone, who:

1) uses communications tools, including the Internet or any other means, to disclose information, rumours or false or misleading information or that is likely to give false or misleading indicators about financial instruments.

The information disclosed by journalists in carrying out their professional activities has to be assessed taking account of the self-regulatory standards for their profession, unless such parties, directly or indirectly, gain advantage or profit from the disclosure of the information itself;

2) anyone who:

a) concludes transactions or sales orders by providing or are considered as provided false or misleading information as regards their offer, application or price of financial instruments;

b) concludes transactions or sales orders enabling the market price of one or more financial instruments to be fixed at an anomalous or artificial level, through the action of one or more persons acting in concert;

c) concludes transactions or sales orders using stratagems or any other type of deceit or device;

d) uses any other artificial means to give false or misleading information about an offer, application or price of financial instruments.

In relation to the offences describe in point 2, letters a) and b), administrative penalties do not apply if a person can demonstrate that he has acted for legitimate reasons and in compliance common practices in the market in question.

Where the maximum penalty appears to be inadequate, the fine may be increased by up to three times, or up to ten times the benefit or profit obtained by commission of the crime, due to the degree of offensiveness of the act, the personal position of the culprit, or the extent of the benefit of profit obtained from such operations or their effects on the market.

## D) CRIMES FORESEEN BY THE ACT No. 146, 16 MARCH 2006, (SO-CALLED “TRANSNATIONAL CRIMES”)

The following section defines the crimes committed by individuals in connection with the Company (directors and persons subject to the direction or supervision of directors, for the purposes of article 5 of the Decree), whose responsibility falls within the system of liability applicable to the Company in accordance with the terms of Act no. 146, 16 March 2006. This Act ratifies and executes the Convention and Protocols of the United Nations against transnational organized crime, adopted by the general Assembly on 15 November 2000 and 31 May 2001”. With reference to the crimes resulting in the administrative liability of the corporation, article 10 of the Act no. 146/2006 foresees the following instances:

### **Association to commit crimes (Art. 416 Italian Criminal Code)**

This offence is envisaged when three or more persons associate for the purpose of committing crimes. Article 416 Criminal Code punishes anyone who promotes or forms or organises such an association. Merely participating in the association is also a crime. The leaders are also subject to the same penalty as applies to the perpetrators. The penalty is increased if the number of persons associating is ten or more. Article 416, para. 1, Criminal Code, prior to defining the individual instances of conduct, in other word, promotion, forming, directing, organising or simply participating, subject punishable conduct to the time in which (i.e. “when”) the “three or more persons” effectively “associated” to commit offences.

### **Mafia-type Association (Art. 416-bis Italian Criminal Code)**

This offense is said to exist when its perpetrators take advantage of the intimidating power of association and the resulting condition of subjugation and silence surround the perpetration of the criminal offences, to manage or control at all levels, whether directly or indirectly, economic activities, licenses, authorisations, tenders, public procurement contracts, to obtain unlawful profits or advantages for themselves or for others, or with a view to preventing or obstructing voting, or procuring votes for themselves or others during elections.

### **Association to commit crime with the aim of smuggling foreign tobacco (article 291-quater Presidential Decree no. 43/73)**

Associating to commit crime with the aim of smuggling foreign tobacco is said to exist when three or more persons associate for the purpose of committing crimes foreseen by article 291-bis Criminal Code (which punishes anyone who introduces, sells, transports, purchases or keeps on the Italian State more than ten standard kilograms of foreign contraband tobacco). Anyone who promotes, directs, organises or finances such association, can only be punished by three to eight years imprisonment.

### **Association to commit crime with the aim of trafficking narcotic drugs or psychotropic substances (article 74 Presidential Decree no. 309/90)**

Associating to commit crime with the aim of trafficking narcotic drugs or psychotropic substances is said to exist when three or more persons associate for the purpose of committing crimes foreseen by article 73 of the said Presidential Decree no. 309/90 (production, trafficking, illicitly possessing narcotic drugs and psychotropic substances). Anyone who forms, directs, organises or finances such association, and therefore acting individually, can only be punished by not less than twenty years imprisonment.

### **Provisions against illegal immigration (article 12, paragraphs 3, 3-bis, 3-ter, 5 Legislative Decree no. 286/98)**

Article 12 of the Consolidated Text under Legislative Decree no. 286/98 foresees first and foremost the crime of aiding and abetting illegal immigration, which is committed by anyone who “in violation of the provisions of this consolidated text carries out acts aimed at securing the entry of a foreigner into the territory of the Italian State”. The second crime, as set forth in article 12, and commonly known as aiding and abetting illegal emigration, is committed by anyone who “carries out (...) acts aimed at securing illegal entry into another State, in relation to which the person in question is not a citizen and has not right of permanent residence there”.

The Legislator foresees a higher penalty where the acts of aiding and abetting illegal immigration or aiding and abetting illegal emigration are carried out “with the aim of profiting from the same, including indirectly”.

Para. 3-bis of article 12 provides for an increase of the penalties set forth in the first and third paragraphs if:

- “the fact relates to the entry or illegal stay in the Italian State of five or more persons;
- in order to secure entry or illegal stay, the person’s life of safety has been endangered;

- in order to secure entry or illegal stay, the person has been subject to inhuman and degrading treatment;
- the fact is committed by three or more persons who have aided and abetted each other or by using international transport services or counterfeit or altered or in any case illegally obtained documents”.

Para. 3-ter of article 12 also foresees and increase in penalties “if the facts set forth in the third paragraph have been committed with the aim of recruiting persons for prostitution or in any case for their sexual abuse or relate to the entry of minors to be used in illicit activities with the aim of aiding and abetting their exploitation”.

The fifth paragraph of article 12 lays down a further case of crime, which is more commonly known as “overstaying”, which is committed by anyone who “in order to benefit unjustly from the illegality of a person’s legal status or in the context of activities punished by the provisions of this article, aids and abets the overstaying of the latter in the territory of the Italian State in violation of the provisions of this consolidated text”.

**Obstructing the course of justice: inducement not to make statements (Art. 377-bis Criminal Code)**

Article 377-bis Criminal Code punishes anyone who uses violence, threats or “offers or promises of money or other benefit” to induce not to make statements, or make false statements any person who is called before judicial authorities to make statements in connection with criminal proceedings, if such have the right to remain silent.

Induction can be identified in the structure of the offence set forth in article 377-bis Criminal Code as violence, threat or the offer or promise of money or other benefit.

**Obstructing the course of justice: aiding and abetting an offender (article 378 Criminal Code)**

Where a person has committed a crime that is punishable by life imprisonment or a prison sentence, with the exception of anyone who has aided and abetted the same, Article 378 Criminal Code punishes anyone who assists another person in avoiding investigations carried out by the authorities or the evasion of the same. The provisions of this article apply even if the assisted person has not been charged with or has not committed the offence.

In order for the crime to have been committed, the conduct which amounts to aiding and abetting must at least be potentially damaging to police investigations.

**E) CRIMES AGAINST THE PERSON DEFINED BY Legislative Decree NO. 231/2001**

The following section described the specific types of crimes, as defined by article 25-quinquies Legislative Decree no. 231/2001:

**Subjugating a person to slavery (article 600 Criminal Code)**

This crime is committed by “anyone who exercises powers over another person that can be equated to proprietary rights over another, and who reduces that person to a state of complete and continued subjection, forcing the person to provide work or sexual favours, to beg or to perform services that amount to exploitation, and is punishable by a prison term of eight to twenty years.

Subjugating a person or keeping them in a state of subjection takes place when the conduct is enforced by violence, threats, deception, abuse of power or taking advantage of physical or psychological inferiority, or through the promise of money or other benefits by whoever has powers over the person.

The penalty is increased by a third to a half if the facts referred to in the first paragraph are committed against minors (less than eighteen years old) and aimed at exploitation of prostitution or subjecting the victim to donorship of organs”.

**Child prostitution (article 600-bis Criminal Code)**

This crime is committed by inducing a person into prostitution who is less than eighteen years old or by aiding and abetting the exploitation of prostitution.

**Child pornography (article 600-ter Criminal Code)**

This crime is committed by anyone who:

- a) uses minors below the age of eighteen to create pornographic exhibitions or produce pornographic material or otherwise induce minors to take part in pornographic exhibitions;
- b) anyone who sells the above pornographic material referred to in point a).

c) in addition to the definitions provided in a) or b) and by whatever means, distributes, disseminates, discloses, or advertises the pornography referred to in a), including by electronic means, or who distributes or discloses information with the aim of sexually soliciting or exploiting minors;

d) in addition to the situations described above in points a), b), and c), knowingly offers or gives (even free of charge) pornographic material obtained by exploitation of minors, as specified in point a).

Possessing pornographic material produced by sexually exploiting minors is also a crime (article 600-quater, Criminal Code). In addition to the situations foreseen by article 600-ter Criminal Code, anyone who knowingly obtains or possesses pornography created using minors of less than eighteen years commits a crime.

#### **Virtual Pornography (article 600-quater, 1, Criminal Code)**

The provisions of articles 600-ter and 600-quater crime is also committed when the pornographic material is displayed virtually, using images or part of images of minors less than eighteen years. However, the penalty is reduced by one third.

An image is considered virtual if it is realized with graphic techniques not completely associated with real situations, but the results of which make them look like real situations”.

#### **Tourism aimed at exploiting child prostitution (article 600-quinquies Criminal Code)**

This crime is committed by anyone that organises or advertises travel with the aim of exploiting child prostitution or which include such activities.

#### **Exploitation of persons (article 601 Criminal Code)**

This crime is committed by anyone exploiting another person pursuant to the conditions described in article 600 Criminal Code, with the aim of committing offence as set forth in the first paragraph of the same article, inducing such by deception, or forcing a person to comply through violence, threats, abuse of authority or taking advantage of physical or psychological inferiority, or through the promise of money or other benefits to the person he exercises power over, to enter or stay or leave the country or move location within it, which is punishable by imprisonment for a term of eight to twenty years. The penalty is increased by a third to a half if the facts referred to in this paragraph are committed against minors (less than eighteen years old) and aimed at exploitation of prostitution or subjecting the victim to donorship of organs”.

#### **Trading in Slaves (article 602 Criminal Code)**

This crime is committed by “anyone who, in addition to the cases defined by article 601 Criminal Code, purchases, sells or transfers a person who finds himself in any of the situations described in article 600, which is punishable by a prison term of eight to twenty years.

The penalty is increased by a third to a half if the facts referred to in this paragraph are committed against minors (less than eighteen years old) and aimed at exploitation of prostitution or subjecting the victim to donorship of organs”.

## **F) ) CRIMES RELATING TO HEALTH AND SAFETY AT WORK**

Act No. 123, 3 August 2007, has introduced article 25-septies to Legislative Decree no. 231/2001, thereby extending corporate liability to cover the crimes of manslaughter and serious and very serious injury, committed in violation of the accident prevention legislation and the legislation for the protection of health and hygiene at work. On 1 April 2008, the Council of Ministers approved Legislative Decree no. 81/2008, by virtue of the delegated power entrusted to them under article 1, Act no. 123, 3 August 2007 relating to the protection of health and safety in the workplace.

The following section provides a brief description of the “prerequisites” determining the administrative liability of the company.

#### **Manslaughter (article 589 Criminal Code)**

The crime in question is said to exist when death is caused to a person in violation of the provisions of the prevention of accidents at work legislation.

#### **Serious or very serious injury (article 590, para. 3 Criminal Code)**

The crime in question is committed when it causes serious or very serious injury to a person due to the negligence of another person in violation of the prevention of accidents at work legislation.

The crime, which is limited to facts relating to violations of legislation concerning the prevention of accidents at work or relating to hygiene at work, or those which caused a work-related illness, is automatically liable to prosecution.

For the purposes of article 583 Criminal Code, personal injury is understood as:

- serious:
  - if the injury is an illness is life-threatening or leaves a person unable to work for a period over 40 days;
  - if it results in permanent debility of sensory perception or of an organ;
- very serious if the fact causes:
  - an illness that is certainly or probably incurable;
  - loss of sensory perception;
  - the loss of a limb or mutilation making the limb unusable, or the loss of use of an internal organ or the ability to procreate, or permanent loss or grave impediments to speech;
  - scarring or permanent disfiguration of the face..

## G) COMPUTER CRIMES AND THE ILLEGAL TREATMENT OF DATA FOR THE PURPOSES OF ARTICLE 24-bis, Legislative Decree NO. 231/2001

Act no. 48, 18 March 2008, on the "Ratification and execution of the Council of Europe Convention on Cyber-Crime, signed in Budapest on 23 November 2001, and legislation approximating the laws of the domestic legal system" has extended the remit of crimes engendering corporate liability. Accordingly, article 7 of the aforementioned measure inserted article 24-bis into the Decree, relating to "computer crimes and the illegal treatment of data", which provides for the administrative liability of corporations for crimes in the following circumstances:

### Computer documents (article 491 - bis Criminal Code).

"If any of the acts of fraud foreseen by this section relate to a computer document, whether public or private, and which constitutes valid proof, the provisions of this sections apply both to public deeds and private deeds".

Fraudulent use of documents is punishable by criminal law, and includes the following:

- Material fraud committed by a public official in official deeds (article 476 Criminal Code): "If, during the performance of his functions, a public official partially or entirely executes a fraudulent deed, or for that matter alters a truthful deed, he can be punished by a prison term of one to six years. If the fraud relates to all or part of a deed that is relied upon until the time of its contestation, then a prison term can be inflicted of three to ten years".
- Material fraud committed by a public official in issuing certificates or administrative authorisations (article 477 Criminal Code): "If, during the performance of his functions, a public official forges or alters certificates or administrative authorisations, or, through such counterfeiting or alterations, makes it appear that the conditions for their validity have been met, he can be punished by a prison term of six months to three years".
- Material fraud committed by a public official in issuing authentic copies of public or private deed and certificates of the contents of such acts (article 478 Criminal Code): "If, during the performance of his functions, on the assumption that a public or private deed actually exists, simulates a copy of the same and issues it as a legally binding document, or issues a copy of a public deed or private act that differs from the original, he is liable to punishment by a term of imprisonment from one to four years. If the fraud relates to all or part of a deed that is relied upon until the time of its contestation, then the penalty is a prison term of one to three years".
- Ideological fraud committed by a public official in public deeds (article 479 Criminal Code): "If, while receiving or drawing up a deed during the performance of his function, a public official falsely testifies that he has executed a deed, or that it took place in his presence, or testifies that he has heard statements that were not made before him, or in any case falsely testifies to circumstance in a deed, the truthfulness of which will be relied upon, he will be liable to serve a penalty as established by article 476".
- Ideological fraud committed by a public official in issuing certificates or administrative authorisations (article 480 Criminal Code): "If, during the performance of his functions, a public official makes a false testimony in certificates or administrative authorisations, the truthfulness of which is relied upon, he can be punished by a prison term of three months to two years".
- Ideological fraud relating to certificates committed by persons performing an essential public service (article 481 Criminal Code): "Anyone who, during the exercise of their health care profession or forensic profession, or other essential public service, gives false testimony in an certificate, the truthfulness of which is relied up in the act itself, is liable to imprisonment for a term of one year or liable to pay a fine of € 51.00 to € 516.00. These penalties are applicable contemporaneously if the acts is committed for profit".
- Material fraud committed by a private individual (article 482 Criminal Code): "If any of the circumstance foreseen in articles 476, 477 and 478 are committed by a private individual or a public official outside the regular exercise of his duties, in an official deed, and the truthfulness of which is relied upon, the penalties applied are those established for the aforesaid articles, respectively, reduced by one third".
- Ideological fraud committed by a private individual in an official deed (article 483 Criminal Code): "Anyone who gives false testimony before a public official, the truthfulness of which is relied upon, can be punished by a prison term of up to two years. If the fraud relates to false declarations regarding personal status, the prison term cannot be less than three months".
- Fraudulent registration and notifications (article 484 Criminal Code): "Anyone who is required by law to make registrations that are liable to inspection by Public Safety Authorities, or make notifications to the said Authority in relation to its own industrial, commercial or professional operations, and writes or has false information written, is liable to be punished by up to six months' imprisonment or a fine of up to € 309.00";
- Fraudulent private deeds (article 485 Criminal Code): "Anyone who, for the purpose of procuring personal gain or advantage to others, or causing detriment to others, draws up a private deed that is totally or partly false, or alters a truthful private deed, can be punished (provided he makes use of the same or allows others to use it) by a prison term of six months to three years. Alterations also include false additions to a truthful deed after this has been definitively drawn up".
- Fraudulent blank signature. Private deed (article 486 Criminal Code): "Anyone who, for the purpose of procuring personal gain or advantage to others, or causing detriment to others, abuses a blank signature in his possession in relation to which he is

obliged or has the option of filling in, and writes or has written a private deed producing legal consequences that differ from those required or authorised, shall be punished (if he uses the sheet of paper or allows it to be used by others) by a prison term of six months to three years. A blank signature is considered as a sheet of paper on which the undersigned party has left any part to be filled out in blank".

- Fraudulent blank signature. Public deed (article 487 Criminal Code): "Any public official, who abuses a blank signature in his possession on account of his position and in relation to which he is obliged or authorised to fill out, shall be subject to the penalties set forth in article 479 and 480, respectively".
- Other fraudulent activities concerning blank signatures. Applicability to material fraud (article 488 Criminal Code): "For cases of blank signature fraud other than those foreseen by the two aforementioned articles, the provision of material fraud apply either relating to public deeds or private deed, respectively".
- Use of fraudulent acts (article 489 Criminal Code): "Anyone who without having aided and abetted the commission of a fraudulent act, but uses it is liable to the penalties established in the aforementioned articles, reduced by thirty percent. If such relates to private deeds, the perpetrator of the fact is only punishable if he has acts with the aim of procuring for himself or personal again or advantage to others, or causing detriment to others".
- Elimination, destruction or concealing of truthful deeds (article 490 Criminal Code): "Anyone who totally or partly destroys, conceals truthful public deeds or private deeds is liable to the respective penalties established under articles 476, 477, 482 and 485, depending on the precise nature of the acts committed. In such cases, the provision at the beginning of the previous article applies".
- Authentic copies that substitute missing original copies (article 492 Criminal Code): "For the intents and purposes of the previous provisions, "public deeds" and "private deeds" shall also include both original deeds and authentic copies of the same, if they by law they can substitute missing original copies".
- Fraud committed by civil servants assigned to perform a public service (article 493 Criminal Code): "The provisions of the previous articles relating to fraud committed by public officials also apply to civil servants of the State or another public body, who are assigned to perform a public service with regard to deeds they draw up in relation to the performance of their functions".

#### **Abusive access to a computer or telecommunications system (article 615- ter Criminal Code)**

This offence is committed by anyone who abusively gains access to a computer system or telecommunications system protected by safety measures or retains access despite the express or implied will of any person who is entitled to deny such access.

#### **Retaining or abusive dissemination of access codes to computer or electronic systems (art. 615 quater Criminal Code)**

The offence can be committed by anyone who abusively seeks profit for themselves or others or causes detriment to others by obtaining, disseminating, communicating or delivering codes, key words or other means that give access to computer or electronic systems protected by security measures, or in any case, by giving indications or instructions that allow such to occur.

#### **Distributing equipment, devices and computer programmes aimed at damaging and interrupting computer or telecommunications systems (article 615 - quinquies Criminal Code)**

This offence is committed by anyone who intends to illegally damage a computer or telecommunications system, information, data, or the programmes it contains or relevant to it, or by aiding and abetting the interruption, whether total or partial, or altering its functioning, as well as by obtaining, producing, reproducing, importing, disseminating, delivering or in any case making available other equipment, devices and computer programmes.

#### **Phone tapping, prevention or interruption of computerized or electronic forms of communication (art. 617 - quater Criminal Code)**

The criminal offence can be committed by anyone, and consists in the fraudulent phone tapping or prevention or interruption of communications relating to a computerized or electronic system or for that matter between such systems. Except where such offences constitute more serious crimes, the same penalty applies to anyone who disseminates any form of information as referred to in the previous paragraph to the public, whether in part or in its entirety.

**Installation of equipment aimed at intercepting, preventing or interrupting computer communications or telecommunications (article 617 - quinquies Criminal Code)** Compie il delitto chiunque, fuori dai casi consentiti dalla legge, installa apparecchiature atte ad intercettare, impedire o interrompere comunicazioni relative ad un sistema informatico o telematico ovvero intercorrenti tra più sistemi.

#### **Damaging information, data and data programs (article 635 - bis Criminal Code)**

Except in cases where the circumstances constitute a more serious crime, this offence may be committed by anyone causes data or another person's computer programmes to be destroyed, deteriorate, be cancelled, altered and information eliminated.

#### **Damaging information, data and computer programmes used by the State or Public Body or in any case of public utilities (article 635 - ter Criminal Code)**

Except in cases where the circumstances constitute a more serious crime, this offence can be committed by anyone whose acts aim to destroy, deteriorate, cancel, alter or eliminate information, data or programmes used by the State or other public body or relevant to it, or in any case public utilities.

**Damaging computer and telecommunications systems (article 635 - quater Criminal Code)**

Except in cases where the circumstances constitute a more serious crime, this offence can be committed by anyone who perpetrates any of the acts referred to in article 635-bis Criminal Code, or who by introducing or transmitting data, information or programmes, destroys, damages, or makes another person's computer or telecommunications systems unusable or creates a serious obstacle to their functioning.

**Damaging computer and telecommunications systems of public utilities (article 635 - quinquies Criminal Code)**

This offence is said to exist if the circumstances described in article 635-quater Criminal Code at destroying, damaging, or making the computer or telecommunications systems of public utilities unusable or creating a serious obstacle to their functioning.

**Computer fraud by the party offering certification of electronic signatures (article 640 - quinquies Criminal Code)**

This offence is committed by any party offering the certification of electronic signatures, who in order to procure unjust profit for himself or advantage to others, or cause detriment to others, violates the obligations provided for by law in relation to the issue of a qualified certificate.

## H) RECEIVING, LAUNDERING AND USING MONEY, GOODS AND BENEFITS OF ILLICIT ORIGIN FOR THE PURPOSES OF ARTICLE 25-octies DEL Legislative Decree No. 231/2001

Article 25-octies of the Decree sets forth the crimes engendering the administrative liability of corporations, as follows:

**Receiving (article 648 Criminal Code)**

Article 648 incriminates anyone who, - with the exception of aiding and abetting the crime - acquires, receives or hides money or goods deriving from any crime whatsoever to obtain profit for themselves or others, or who at any rate become involved in acquiring, receiving or hiding of the same".

Acquiring is defined as the effects of a negotiation process whereby the agent obtains the possession of the goods, either freely or for valuable consideration.

The term receiving, on the other hand, seems to indicate any form of obtaining possession of the goods deriving from crime, including temporarily or merely by handling them.

Hiding relates to concealing the goods deriving from the crime, after receiving them.

Receiving can also take place by involvement in the acquiring, receiving or concealing of the good. This conduct is present at every stage of mediation, which is not to be equated to its civil law interpretation (as has been stated by case law), between the author of the main crime and the acquiring third party. The last paragraph of article 648 Criminal Code extends punishment "even to cases where the author of the crime, from whom money or the goods derive, cannot be charged with the crime, or is not punishable, because an essential procedural element of the crime is lacking".

The reason behind punishment of receiving is to prevent the repeated damage being caused to patrimonial interests which initiates with the perpetration of the crime itself. A further objective of such incrimination is to avoid the commission of the major crime, by imposing limits on the freedom of circulation of goods deriving from the crimes themselves.

**Money-laundering (article 648-bis Italian Criminal Code)**

This crime is committed when "anyone, with the exception of cases of aiding and abetting the commission of the crime, substitutes or transfers money, goods or other services deriving from an intentional/malicious offence, or who carries out other operations in this regard, so as to impede the identification of their illegal origin". The crime in question exists even if the author of the crime, in relation to which the money or goods owe their origin, cannot be charged or punished, or where an essential procedural element of the offence is lacking. Prior to this condition, an intentional offence has to be been perpetrated, in the aiding and abetting of which the money-launderer has not played any role

The penalty is increased if the illegal act is committed within the framework of professional activity and reduced if the money, goods or other benefits deriving from the offence for which the maximum penalty of imprisonment is less than five years.

The provision also applies to cases where the author of the crime, in relation to which the money or goods are derived, cannot be charged or punished, or where an essential procedural element for the offence is lacking.

**Using money, goods or benefits of illicit origin (Art. 648-ter Criminal Code)**

The crime is committed by "anyone who, with the exception of the cases of aiding and abetting commission of the crime and the cases foreseen by articles 648 (Receiving) and 648-bis (Money-laundering), uses money, assets or other proceeds of illegal origin in economic or financial activities".

In this case too, the crime is aggravated by exercising a professional activity and its remit is extended to cover the parties referred to in the final paragraph of article 648, but the penalty can also be reduced if the illicit act is of particularly minor gravity.

Specific reference to the term “using” is more commonly accepted than “investing” which presupposes that such use has a specific aim(s), and which is contained within the definition of “using nonetheless”. Reference to the concept of “activity” to indicate a sector of investment (economic or financial) on the contrary allows sporadic or occasional uses of money or other benefit to be excluded.

The specificity of the crime with respect to money-laundering lies in that its intent is to ensure that the illicit origin of the money, goods or other benefit disappears, by using the said resources in economic and financial activities.

The legislator’s intention is to incriminate indirect activities, which, in contrast to money-laundering, do not immediately replace the goods derived from the crime, but in any case contribute to the “laundering” of illegitimate capital.

## I) ASSOCIATION WITH THE AIM OF COMMITTING ACTS OF TERRORISM OR SUBVERSION OF DEMOCRACY FOR THE PURPOSES OF Legislative Decree NO. 231/2001

Article 3, Act no. 7, 11 January 2003, introduced Article 25-quater of Legislative Decree no. 231/2001.

The crimes defined by the legislation include “crimes of association with the aim of committing acts of terrorism or subverting democracy, as foreseen by the Criminal Code and special Acts”, as well as crimes other than those referred to above, “which in any case constitute a violation of article 2 of the International Convention for the Suppressing of the Financing of Terrorism, signed in New York on 9 December 1999”.

The main crimes of the provision are articulated as follows:

- article 270-bis Criminal Code (Association with the aim of committing acts of terrorism or subverting democracy), which punishes anyone that promotes, establishes, organises, directs or finances associations that support carrying out violent acts with terrorist or subversive aims;
- article 270-ter Criminal Code (Assistance to members), which punishes anyone who gives refuge to or provides board and hospitality, means of transport, tools of communication to any person participating in associations that have terrorist or subversive aims.