

# **Covid-19 emergency and companies: 231 Model as a prevention tool**



# Focus on...

The Covid-19 emergency certainly represents the greatest global health crisis in the 21st century and will lead to important changes, not only in our lives, but also in the economic and juridical systems of any country.

An important aspect to be considered, among the other ones, is the impact that this epidemic will have on those systems provided under Legislative Decree no. 231/2001, where the organization, management and control model (MOGC) implemented by the Company represents the reference tool for a prevention policy.

Specifically, pursuant to art. 42 of Law Decree no. 18 dated 17.3.2020, the Covid-19 infection contracted “during the working activity” represents a work accident basing on the Italian Act on occupational safety and health (Legislative Decree no. 81/08). This means that the risk of infection represents a new high-intensity biological risk and requires the implementation of proper measures to also prevent crimes under art. 25 septies of Legislative Decree no. 231/01, since the Company’s liability could derive from the breach of regulations on occupational safety and health. Therefore, if the company does not promptly implement the necessary measures to ensure social distancing – i.e. smart working when possible, shift working, elimination of physical meetings among colleagues, unnecessary displacements, reconfiguration of spaces for prevention purposes – it could also be liable for involuntary manslaughter, as it could have

continued its activity and saved the costs required to make the necessary changes to avoid the epidemic.

However, there are further repercussions, since there is the risk that Covid-19 could spread within companies without them to have the proper measures to prevent infection, or that Covid-19 becomes the condition for the commission of further crimes listed under Legislative Decree no. 231/2001, again giving rise to criminal liability on the company. But what are the crimes that could arise from the exploitation of the current critical situation?

**Illicit receipt of funds, fraud to the prejudice of the State or a public entity or aimed at receiving public funds, computer fraud to the prejudice of the State of a public entity - Art. 24 D.Lgs. 231/2001:**

these kind of crimes could increase in the relationships with the State or Public Administrations, e.g. breaching the rules to benefit from temporary State layoff funds.

**Cyber-crimes and illicit data processing - Art. 24-bis D.Lgs. 231/2001:**

smart working totally carried out through electronic tools can create an occasion to commit digital and computer crimes.

**Industrial and commercial crimes - Art. 25-bis1 D.Lgs. 231/2001:**

these can arise due to the need for specific categories of goods, which must have specific features (i.e. fraud in trade).

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<sup>1</sup> *Involuntary manslaughter, or serious or very serious injuries committed due to the breach of the regulations on occupational safety and health.*

<sup>2</sup> *However, it must be considered that, since the company is liable for the crime only if such crime is committed in the interest or for the benefit of the company itself, the principles established by case law on occupational safety crimes can be applied to the specific case.*

**Corporate crimes and market abuse - Arts. 25-ter and 25-sexies D.Lgs. 231/2001:**

these can be relevant for the purposes of true corporate information, both for listed and for non-listed companies.

**Tax crimes - Art. 25-quinquiesdecies**

**D.Lgs. 231/2001:** the company shall carry out a careful evaluation of risks, since some deductions and allowances could be requested lacking the necessary requirements.

Considered the above, the health emergency caused by the spread of Covid-19 forces those Italian companies that have already implemented a 231 organization model to further review the adequacy of their administrative liability control systems under Legislative Decree no. 231/2001, so they would need to:

- Update and monitor the entire company's internal control systems;
- Carry out an audit activity, e.g. on occupational safety and health, on cyber security, on relationships with Public Administrations, etc.;
- Ensure a constant flow of information between the workers' health and safety representative (RLS), the Supervisory Board, and management and control bodies (i.e. BoD, Sole Director, Board of Statutory Auditors, internal audit committee);
- Ensure proper flows of information to and from business functions in charge of containing the spread of the virus (i.e. Head of the HR department, Head of the legal department, etc.), people in charge of risk management (e.g. employer, company doctor, Health and Safety Officer (RSPP), people in charge of first-aid intervention, etc.), as well as the committee - if any - in charge of the application and assessment of corporate protocols for the prevention of virus spread in working environments.

In this emergency phase, the Supervisory Board plays an essential role, as it is responsible for assessing the adequacy of organizational models, supervising their observance and ensuring that these are updated and that a proper training on risks and on established protocol is granted.

The Supervisory Board must be promptly informed on the initiatives and relevant prevention measures adopted (and/or that are about to be adopted) in order to mitigate the risks related to Coronavirus and must promptly inform the Board of Directors of any identified critical issue, in order to favour an immediate action.

If a company has not yet implemented a system under Legislative Decree no. 231/2001, it is strongly recommended, more than ever in this phase, to implement an Organization, management and control model and to appoint a Supervisory Board, because the implementation of organizational rules, control protocols and codes of conduct help avoiding - or at least reducing - the risk of committing crimes, as well as safeguarding employees also from the biological risk they are exposed to during their working activity.

Our professionals would be pleased to provide you with any further information you may need.

Please refer to Clever Desk on our website - [bgt-grantthornton.it](http://bgt-grantthornton.it) - for further details on any issues concerning COVID-19.

