Italy

Public Prosecutors’ Office

1. Structure
Prosecutions in Italy are conducted by the Public Prosecutors’ Office (PPO). Both judges and prosecutors are considered magistrates under the Constitution. Public prosecutors are also independent of other prosecutors, despite a hierarchical structure within the PPO. The PPO is headed by the Prosecutor General and is divided into numerous local offices, each of which covers a specific geographic region and a specific court. Each local office is staffed by prosecutors and a Chief Prosecutor, who is responsible for the general administration of the office. Cases are assigned to prosecutors on a random basis. Once assigned to a case, a prosecutor has total autonomy from the government and other prosecutors. He/she may be removed from the case only in accordance with strict rules set down by the CSM. Each prosecutor can also prioritize his/her case load. However, since each prosecutor makes these decisions individually, it is conceivable that prosecutors may take inconsistent approaches to foreign bribery prosecutions.

According to Italian officials, pursuant to directives from the CSM, all PPOs are further subdivided into working groups which specialize in particular crimes. For example, the PPO in Rome has a working group staffed with 40 public prosecutors who specialize in offences against the public administration (including bribery). However, there are no working groups in Italy which specialize only in foreign bribery, nor is there a centralized body that co-ordinates or oversees all foreign bribery cases.

2. Function
Under Italian law, the competence of a public prosecutor to investigate and prosecute a crime is based on territoriality. As noted above, the PPO is divided into local offices, each of which covers a specific geographical region. Prosecutors from a particular PPO are only competent to investigate and prosecute crimes that are connected to the region in which that PPO is located.

The government is reforming the judiciary by separating the Public Prosecutors’ Office from the judiciary.

This principle may result in multiple simultaneous proceedings against the same person(s) for the same crime. Many crimes (including foreign bribery) have connections to more than one physical location. For instance, a company of significant size may have offices throughout Italy. Crimes committed by such a
company are arguably connected to every place in which these offices are located, and therefore PPOs in each of these locations are competent to investigate. A “conflict of competence” results when multiple prosecutors from different PPOs exercise their competence to investigate the same crime.

**Police Forces**

1. Function
Italy has a number of police forces, each with different and overlapping jurisdiction. For the offence of foreign bribery, the most important forces are the Guardia di Finanza, the Arma dei Carabinieri and the Polizia di Stato (State Police).

Established under the Ministry of Finance, the Guardia is a national police force. It specializes in financial crimes including bribery, money laundering and tax offences and has expertise in dealing with issues that frequently arise in such investigations, such as forensic accounting. The Carabinieri and the State Police answer to the Ministry of Defence and Ministry of the Interior respectively. They are national police forces responsible for the maintenance of general public order and they have jurisdiction to investigate all types of crimes including economic ones. None of these forces have units specializing in foreign bribery (although the Carabinieri has special units dealing with bribery generally). There are also other police forces which specialize in other types of crimes. For example, the Direzione Investigativa Antimafia (DIA) specializes in organized crime and consists of police officers from the Guardia, the Carabinieri and the State Police.

2. Resources
[http://www.oecd.org/document/24/0,2340,en_2649_201185_1933144_1_1_1_1,00.html](http://www.oecd.org/document/24/0,2340,en_2649_201185_1933144_1_1_1_1,00.html)

**The Corte Dei Conti**

The Corte dei conti was set up in 1862 in order to control the public administration and prevent and avoid wastes of money and unsound management.

To accomplish this important function, the Corte was established as a “magistrature” according to the will of Camillo Benso, Earl of Cavour, the prime minister of the day, who affirmed “there is the absolute need to concentrate the a priori and a posteriori audit in irremovable magistrates”.

The principal guidelines of the Corte dei conti’s structure, organization and tasks were consolidated by the royal decree 12 July 1934, n.1214, still in force.
Since the Constitution of the Republic came into force (1948), deep changes took place in the organization and in the functions of the Public Administration as a whole (increasing in the number of public bodies, establishment of independent administrative authorities, privatisations of functions and public enterprises) involving, at the same time, the financial and the expenditure structures (for example the introduction of the financial law, the budget reforms in 1978, in 1988, and recently, in 1997 by law n.94). These changes also had great repercussions in the tasks of the Corte dei conti which was – and is nowadays – involved in a continuous activity to comply with an increasing request of both efficient audits and exercise of jurisdiction, in order to improve the transparency of the administration, assure the sound management of the State resources and increase the quality of services provided to citizens by public administrations.

1. The Italian Corte dei conti is an Institution with the role of safeguarding public finance and guaranteeing the respect of jurisdictional order.

The Corte pursues these two aims through two functions: the audit function and the jurisdictional function.

According to Article 100 of the Italian Constitution the Corte is responsible for “a priori” audit of the legality of Government acts, and also for “a posteriori” audit of the State Budget’s management.

It participates, in the cases and in the manners foreseen by the law, in the supervision of the financial administration of those bodies to which the State contributes funds on a routine basis. It reports directly to the Chambers of Parliament on its findings. The Corte is neither an organ of the Parliament nor of the Government. Article 100 of the Constitution places it in the particular position of organ of constitutional relevance.

2. In the audit field, in order to better enact Art. 100 of the Constitution, Art. 3 par. 1 of the Law n. 20 of January 14th, 1994 establishes that the Corte dei conti should carry out an “a priori” audit, exclusively on the most significant Government acts expressly listed in the article. They are, essentially general planning acts of the administration; acts audited “a priori” for the consequences they produce on the following implementation acts. The “a priori” audit of these acts is performed so as to avoid that illegal administrative procedures catch on as a results of the illegitimacy of the general act. The provisions of art. 3 par. 4 of Law n. 20 must be considered the most important part of the whole reform. They introduce the new methodology of auditing, entrusting the Institution with the task of carrying out “a posteriori” audits on the management of the budget and the capital assets of Departments and on EC funds.

This audit includes investigations aimed at sectors or subjects not only focussing on the legality aspects, but also taking into account effectiveness (results), efficiency (time and methods) and economy (costs). For this purpose the legislator entrusted the Corte dei conti with the task of setting on a yearly basis audit programmes and criteria.
Paragraph 4 of the already mentioned article 3 entrusts the Corte also with the task of verifying the functioning of internal audit in each Department.

The Corte reports, at least once a year, to Parliament and to Regional Councils on the results of audit carried out. There is no obligation to discuss the reports in Parliament. Through the reports the Parliament is informed so that it can adopt measures that fall under its authority.

The Parliament shows great consideration for the Corte’s reports, on account of its independence.

In the jurisdictional field the Corte’ duties are:

a) judgement of responsibility, which concern economic responsibility for damages caused to the State or other public bodies by their own civil servants.

b) judgements of accounts, which regard a special responsibility for accounts, connected with the management of public money or property;

c) judgements on pension matters, concerning civil, military and war pensions.

The new regulation regarding the jurisdictional function of the Italian Corte dei conti (Law n. 19/1994) provides for jurisdictional Chambers of the Corte are set up each in each region with seat in the capital of the region.

Appeals are allowed against the sentences of the regional jurisdictional Chambers to the central jurisdictional Chambers.

Regional Prosecutor General offices have been set up as a result of the decentralization of the jurisdictional Chambers.

3. The choice to entrust the Italian Corte dei conti with audit and jurisdictional functions is an important one.

This is because it has the great advantage of facilitating a mutual exchange and use data and information to achieve the goals which law ascribes to each of the two functions.

Upon completing his verification of the results of the action of public administrators and officials, the magistrate responsible for auditing informs the Prosecutor General Office on facts and behaviours which had led to damages to the public administration.

Furthermore, the Prosecutor General Office informs the judges responsible for auditing of any suspicions of the existence of damaging facts, which cannot be clearly identified on the basis of the documentation acquired during the investigation.

This way, the auditing judges can plan to make any ascertainment needed.
So, we have a situation of crossed collaboration: jurisdiction stimulates auditing and auditing stimulates jurisdiction.

**Resource**

http://www.corteconti.it/English-co/The-italia/history.doc_cvt.htm