

FCPA Update

A Global Anti-Corruption Newsletter



Also in this issue:

9 International Bar Association and OECD Consider Globalization of "Structured Settlements" for Corruption Offenses

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2018's Corruption Perceptions Index Finds Little Progress Against Corruption Globally

On January 29, 2019, Transparency International released its 2018 Corruption Perceptions Index ("CPI"), assessing perceived corruption in 180 countries and analyzing each of the six major regions of the world. The latest version of this annual survey – a key reference for compliance professionals and regulators – suggests there has been stagnation and even deterioration of anti-corruption efforts globally. Since 2012, only twenty countries have significantly improved their CPI scores, and sixteen have suffered significant declines. More than two-thirds of the countries surveyed scored below 50.

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The 2018 CPI also notes a correlation between “corruption and the health of democracies,” noting the dangerous rise of “leaders with authoritarian or populist tendencies.”¹ On the CPI scale from zero (highly corrupt) to 100 (very clean):

- Full democracies averaged 75;
- “Flawed” democracies averaged 49;
- Hybrid regimes, which contain some elements of autocratic tendencies, averaged 35; and
- Autocratic regimes averaged just 30.

As examples of this link, Transparency International highlighted Hungary and Turkey, with CPI scores that decreased by eight and nine points, respectively, over the last five years. Turkey was “downgraded from ‘partly free’ to ‘not free’, while Hungary received its lowest score for political rights since the fall of communism in 1989.”² Transparency International also emphasized the deteriorating perception of the United States, which fell out of the top 20 countries on the CPI for the first time since 2011. Transparency International attributed this to “threats to its system of checks and balances as well as an erosion of ethical norms at the highest levels of power.”³

Regional Breakdown of Scores and Rankings

The CPI offers an “annual snapshot of the relative degree of corruption by ranking countries and territories from all over the globe,”⁴ drawing on “13 surveys and expert assessments to measure public sector corruption in 180 countries and territories.”⁵

Americas

The CPI makes for grim reading for the Americas, where Transparency International commented that the region “continues to fail in making any serious inroads against corruption.”⁶ Transparency International attributed this stagnation – the third consecutive year that the region’s average CPI score was 44 – to a rise in challenges to democratic systems in the region by “populist and authoritarian leaders.”⁷

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1. Transparency International, “Corruption Perceptions Index 2018 Shows Anti-Corruption Efforts Stalled in Most Countries,” https://www.transparency.org/news/pressrelease/corruption_perceptions_index_2018.
 2. *Id.*
 3. *Id.*
 4. Transparency International, “Corruption Perceptions Index 2018,” <https://www.transparency.org/cpi2018> [hereinafter “CPI 2018”].
 5. *Id.*
 6. CPI 2018, Region Analysis, “Americas: Weakening Democracy and Rise in Populism Hinder Anti-Corruption Efforts,” <https://www.transparency.org/news/feature/cpi-2018-regional-analysis-americas>.
 7. *Id.*

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Transparency International identified four heads of state in the region as embodying this concerning trend: President Donald Trump (United States); President Jair Bolsonaro (Brazil); President James Morales (Guatemala); and President Nicolas Maduro (Venezuela). According to the organization, the tenures of these presidents have been defined by, among other things, undemocratic behavior, the undermining of free and independent media, and an increase in conflicts of interest and private influence in the political sphere. Transparency International voiced particular concern for the United States and Brazil, suggesting that the two largest economies have elected populist leaders who have shown limited regard for public institutions and political checks and balances. The United States lost four points since the prior year to earn a score of 71, its lowest score in seven years, and Brazil scored only 35, declining from a score of 37 the prior year. Several other countries in the region also faced struggles in their battle against corruption. Chile, Mexico, and Nicaragua all saw sharp declines in their CPI scores due to corruption scandals that implicated several Mexican Governors and the Chilean police force, and incursions into what Transparency International termed “basic political rights,” such as freedom of expression and freedom of the press.

“The 2018 CPI also notes a correlation between ‘corruption and the health of democracies,’ noting the dangerous rise of ‘leaders with authoritarian or populist tendencies.’”

The 2018 CPI was not all bad news for the Americas. Canada retained its position as a consistent top performer, scoring 81 out of 100, ranking it ninth globally. And two Central American countries (Ecuador and El Salvador) and Argentina registered modest gains over their 2017 CPI scores.⁸ Transparency International pointed out that these three countries have continued to advance investigations and prosecutions against high-profile individuals, including former presidents.

Asia Pacific

The Asia Pacific region is a tale of highs and lows. It has both some of the highest scoring countries (New Zealand, Singapore, Australia), as well as some of the lowest scoring countries (North Korea, Bangladesh, Pakistan, Vietnam). Overall,

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8. *Id.*

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the region made little progress in reducing corruption, with an average CPI score of 44. However, a number of countries did improve. South Korea (45th) improved its CPI score by three points to 57 as it emerged from corruption scandals that had embroiled top businessmen and a former president. Transparency International also noted that in a number of countries in the region – such as Malaysia (ranked 61st out of 180 countries globally), Pakistan (117th), and India (78th) – massive public mobilization against corruption has “resulted in new governments that promise extensive anti-corruption reforms.”⁹

Several countries saw significant declines in their CPI scores. Bangladesh (149th) and Vietnam (117th) saw their CPI scores decline, due to what Transparency International viewed as heavy-handed central governments and a lack of strong and independent democratic institutions to serve as checks and balances.

New Zealand (ranked second globally) was the top scoring country in the region with a score of 87. Singapore (third), Australia (13th), and Hong Kong (18th) also scored well. North Korea (176th), with a score of 14, was the lowest ranked country in the region.

Eastern Europe and Central Asia

The CPI was also largely negative for the 19 countries that comprise Eastern Europe and Central Asia. With an average score of 35, the region was the second lowest scoring region in the index. Only three countries in the region scored above the global average of 43, and only one exceeded a score of 45.

No country in the region improved on their CPI score by more than two points. Transparency International was especially discouraged by the declines seen in four of the seven European Union candidate and potential candidate countries. For example, the score for Albania, ranked 99th globally, dropped for the first time in more than five years due to failed attempts to introduce anti-corruption reforms. Other countries that performed poorly include Azerbaijan (152nd), Russia (138th), Kosovo (93rd), and Serbia (87th). All of these countries introduced new restrictions on access to information, cracked down on independent media, and continued to lack established political checks and balances.

The highest scorer in the region was Georgia (41st), with a score of 58. The next highest scorer was Montenegro (67th), though its score fell one point to 45. The lowest scorers in the region were Uzbekistan (158th) and Turkmenistan (161st), with scores of 23 and 20, respectively.

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9. *Id.*

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Middle East and North Africa

Although some of the eighteen countries in the Middle East and North Africa region made progress, the 2018 CPI had little good news overall for the region. Transparency International observed that at democratization have so far proved an “impossible mission.”¹⁰ With an average score of 39, the region trailed the Americas and Asia Pacific regions, but outperformed Eastern Europe and Central Asia.

Both Morocco (73rd) and Egypt (105th) improved their rankings, with scores of 43 and 35, respectively. Morocco's improvements were particular noteworthy: it recently passed legislation that allowed citizens greater access to information, thus enabling it to join the Open Government Partnership, an initiative of nearly 100 national and subnational governments that is dedicated to making governments “more inclusive, responsive and accountable.”¹¹ However, Transparency International stressed that “both countries have much room for improvement.”¹²

Many countries in the region had significantly worse outlooks. Syria (178th) and Yemen (176th) both ranked in the bottom five of all countries surveyed globally. Yemen's score has decreased five points over four years, highlighting the “direct relationship between war, serious breaches in human rights and corruption.”¹³ Syria, whose CPA score has plummeted 13 points over the last eight years to just 13 in 2018, has been savaged by violent conflict, government instability, and a “complete lack of political rights and checks and balances.”¹⁴

The highest scorer in the region was the UAE (23rd) with a score of 70. Qatar (33rd) and Israel (34th), with scores of 62 and 61, respectively, also scored significantly higher than other countries in the region. Apart from Syria, the lowest scorers in the region were Yemen (176th) and Libya (170th), with scores of 14 and 17, respectively.

Sub-Saharan Africa

Sub-Saharan Africa was the worst performing region in the 2018 CPI, with an average score of 32. Only eight of the 49 countries in the region scored more than the global average of 43. Transparency International noted that despite African leaders declaring 2018 the African Year of Anti-Corruption, Sub-Saharan Africa remains a “region of stark political and socio-economic and many longstanding challenges.”¹⁵

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10. CPI 2018, Region Analysis, “Middle East & North Africa: Corruption Continues as Institutions and Political Rights Weaken,” <https://www.transparency.org/news/feature/regional-analysis-MENA> [hereinafter “Middle East & North Africa”].

11. Open Government Partnership, “About OGP,” <https://www.opengovpartnership.org/about/about-ogp>.

12. Middle East & North Africa.

13. *Id.*

14. *Id.*

15. CPI 2018, Region Analysis, “Sub-Saharan Africa: Undemocratic Regimes Undermine Anti-Corruption Efforts,” <https://www.transparency.org/news/feature/cpi2018-subsaharan-africa-regional-analysis>.

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A few countries in the region have fought back against corruption. Côte d'Ivoire (105th) and Senegal (67th) recorded consecutive years of significant improvement in their CPI scores. Côte d'Ivoire has improved eight points since 2013, scoring 35 in 2018, and Senegal has seen similar improvements, rising nine points since 2012, to score 45 in 2018. Transparency International attributes these improvements to "legal, policy, and institutional reforms,"¹⁶ as well as a political class motivated to combat corruption. There were also comparatively encouraging signs from Angola (165th) and South Africa (73rd), which have taken steps to address corruption including by introducing anti-corruption committees, increasing access to information, and passing anti-corruption laws.

Several countries saw sharp declines in their CPI scores, including Burundi (170th), Congo (165th), Mozambique (158th), Liberia (120th), and Ghana (78th). Transparency International noted that most of these countries had "few political rights, limited press freedoms and a weak rule of law."¹⁷ Mozambique also has seen an increase in attacks on independent journalists and is currently in the midst of "one of Africa's biggest corruption scandals," which led to indictments in January of several of its former government officials by the U.S Department of Justice.¹⁸

The highest scorer in the region was Seychelles (28th), with a score of 66. Botswana (34th) also performed relatively well, with a score 2018 CPI score of 61. Somalia (180th) finished last globally, with a 2018 CPI score of 10, and South Sudan (178th) scored 13.

Western Europe and the European Union

Perhaps the brightest spot in the 2018 CPI is Europe, where the 31 countries that comprise the region of Western Europe and the European Union averaged a CPI score of 66 – the highest performing region in the 2018 CPI by a considerable extent. The region also produced 14 of the 20 highest scoring countries and only one country (Bulgaria) ranked below the global average of 43. Transparency International expressed hope that "EU's commitment to promoting human rights and good governance around the world may strengthen interregional anti-corruption efforts."¹⁹

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16. *Id.*

17. *Id.*

18. *Id.*

19. CPI 2018, Region Analysis, "Western Europe And EU: Stagnating Anti-Corruption Efforts and Weakening Democratic Institutions," <https://www.transparency.org/news/feature/cpi2018-western-europe-eu-regional-analysis>.

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There were still signs of corruption-enabling behavior in countries across the region, such as Hungary (64th), Malta (51st), and Greece (67th). Hungary passed legislation that imposed restrictions on “foreign funded NGOs,”²⁰ introduced a tax on NGOs that “support immigration,” and criminalized such support. Malta continues to grapple with “scandals involving the Panama Papers and the collapse of Pilatus bank, as well as its ‘Golden Visa’ scheme, which sells Maltese citizenship to wealthy overseas investors.” The assassination of Daphne Caruana Galizia, a journalist who was reporting on corruption, continues to cast a shadow over the state. Greece, rocked by a string of scandals in 2018, saw its CPI score fall three points to 45, though this is still a nine-point increase from its 2012 score. The EU suffered a scandal when an independent report from the Council of Europe identified members of the EU Parliamentary Assembly as beneficiaries of the Azerbaijani Laundromat money-laundering scheme.²¹

“While the CPI scores and rankings are very useful measures of public sector corruption, they remain just one set of assessments among a plethora of resources”

Denmark was ranked first of all 180 countries in the survey, with a score of 88, though Transparency International noted that, in light of the recent Danske Bank scandals, even the best have room to improve. Finland, Sweden, and Switzerland were among countries tied for third, with scores of 85. Norway (seventh), Netherlands (eighth), and Luxembourg (ninth) also placed in the top ten globally, with scores of 84, 82, and 81, respectively.

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20. *Id.*

21. See Report of the Independent Investigation Body on the Allegations of Corruption Within the Parliamentary Assembly (April 15, 2018), <http://assembly.coe.int/Communication/IBAC/IBAC-GIAC-Report-EN.pdf>.

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Conclusion

Corruption affects all countries. No country has ever attained a perfect CPI score, and that continues in 2018. This year's CPI draws a clear link between robust democracies and successful anti-corruption efforts, leading Transparency International to call on governments to boost anti-corruption efforts by "maintaining checks and balances over political power," closing the "implementation gap between anti-corruption legislation, practice and enforcement," supporting a free and independent media, and enhancing "political engagement and public oversight over government spending."²² While the CPI scores and rankings are very useful measures of public sector corruption, they remain just one set of assessments among a plethora of resources and should be "considered alongside developments in legislation, regulation, enforcement, and business practices."²³

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22. Transparency International, "Corruption Perceptions Index 2018 Shows Anti-Corruption Efforts Stalled in Most Countries," https://www.transparency.org/news/pressrelease/corruption_perceptions_index_2018.

23. Andrew M. Levine, Farhana Choudhury, and William C. Mattessich, "2016 Corruption Perceptions Index Shows More Decline than Improvement," FCPA Update, Vol. 8, No. 7 (Feb. 2017), https://www.debevoise.com/~media/files/insights/publications/2017/02/fcpa_update_february_2017.pdf.

International Bar Association and OECD Consider Globalization of “Structured Settlements” for Corruption Offenses

In the United States, corporations commonly resolve criminal and other regulatory matters through deferred prosecution and non-prosecution agreements. DOJ has formalized the requirements and benefits of such resolutions, including in its 2017 Corporate Enforcement Policy,¹ itself an update of earlier guidance and practice.² Such structured resolutions have become the norm in FCPA cases, in part to encourage and reward self-reporting, cooperation, and remediation, and in part to mitigate the potentially severe consequences of a bribery conviction. Recently, a growing number of countries have adopted their own formal deferred prosecution regimes for bribery, including the United Kingdom,³ France (*convention judiciaire d'intérêt public*),⁴ and Singapore.⁵

In December 2018, the International Bar Association's Anti-Corruption Committee issued an expansive report on the state of such “structured settlements” around the world (the “IBA Report”). As discussed below, this landmark report surveyed 66 countries, finding that over 85% of them have some form of negotiated resolution for corporate crimes.⁶ These resolutions take different forms. According to the IBA Report, all involve “an agreed resolution between law enforcement

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1. United States Attorneys' Manual §9-47.120; “Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act” (Nov. 29, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign>.
2. See generally Kara Brockmeyer, Andrew M. Levine, Andreas A. Glimenakis, Ryan M. Kusmin, and Jil Simon, “U.S. Department of Justice Announces a Revised FCPA Corporate Enforcement Policy,” FCPA Update, Vol. 9, No. 5 (Dec. 2017), <https://www.debevoise.com/insights/publications/2017/12/fcpa-update-dec-2017-vol-9-no-5>.
3. Crime and Courts Act § 45 (2013); see also Lord Goldsmith QC, Karolos Seeger, Matthew H. Getz, and Robin Lööf, “Deferred Prosecution Agreements Enter Into Force in the UK,” Client Update (Feb. 24, 2014), https://www.debevoise.com/insights/publications/2014/02/deferred-prosecution-agreements-enter-into-force___.
4. *Loi No. 2016-1691 du 9 décembre 2016 relative à la transparence à la lutte contre la corruption et à la modernisation de la vie économique* [also known as the *Loi Sapin II*], Art. 22, J.O. No. 287 (Dec. 10, 2016); see also Debevoise & Plimpton LLP Client Update, “France Announces First-Ever Deferred Prosecution Agreement” (Dec. 11, 2017), <https://www.debevoise.com/insights/publications/2017/12/france-announces-first-ever-deferred-agreement>.
5. Singapore Criminal Justice Reform Act of 2018, Law No. 19 of 2018 § 35 (March 19, 2018); see also “The Year 2018 in Review: Continued Globalization of Anti-Corruption Enforcement,” FCPA Update, Vol. 10, No. 6 (Jan. 2019), <https://www.debevoise.com/insights/publications/2019/01/fcpa-update-january-2019>.
6. Abiola Makinwa and Tina Sørdeide (eds.), “Structured Settlements for Corruption Offences: Towards Global Standards?” (Dec. 2018), <http://www.oecd.org/corruption/anti-bribery/IBA-Structured-Settlements-Report-2018.pdf> (hereinafter “IBA Report”). Debevoise & Plimpton LLP partner Andrew M. Levine served as a committee officer on the editorial board of the IBA Report, and he and counsel Erich O. Grosz contributed to the Report.

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authorities and alleged wrongdoers regarding alleged violations of anti-corruption laws resulting in sanctions or other legal measures.”⁷

A parallel effort is underway involving the OECD Working Group on Bribery, the preeminent global anti-corruption body. A group of academics, practitioners, and former law enforcement and regulators from around the world have prepared a draft set of principles and related materials for members of the group to consider (“Recommendation 6 Draft Principles”).⁸

Both the IBA Report and the OECD’s initiative represent important contributions to discussions regarding the investigation and policing of international anti-corruption enforcement. At the same time, as the IBA Report recognizes, additional work remains.⁹ Of particular note, with more countries considering and adopting forms for negotiated resolutions of corporate crimes, ensuring appropriate compatibility of such resolutions is critical. This includes considering how best to avoid the unfortunate event of duplicative penalties for the same underlying conduct.

The IBA Report

The IBA Report surveys 66 jurisdictions and includes commentary by various members of the IBA Anti-Corruption Committee’s Sub-Committee on Structured Settlements. As noted above, of the 66 jurisdictions surveyed, 85% have adopted some form of cooperative settlement process to resolve corporate offenses.¹⁰ In other words, such negotiated resolutions are no longer limited to the United States or a handful of other countries.

Jurisdictions that provide for structured settlements include both those in which corporate criminal liability exists and those in which corporations are punished for infractions through administrative means.¹¹ However, as the IBA Committee’s Regional Officer for Europe notes, some of these structured settlement systems are merely theoretical in the anti-corruption context, as many countries surveyed have not concluded a single foreign bribery case.¹²

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7. *Id.* at 15.

8. Copies of these documents and associated documents may be found at <https://www.nhh.no/en/research-centres/corporate-compliance-and-enforcement/guidelines-for-non-trial-resolutions>. Debevoise & Plimpton LLP partners Bruce E. Yannett and Kara Brockmeyer are members of the Recommendation 6 Network.

9. IBA Report at 25.

10. *Id.* at 15.

11. *Id.* at 18.

12. *Id.* at 29.

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Types of Structured Settlements

The IBA Report distinguishes between what it called *de jure* and *de facto* settlements. As defined in the IBA Report, a *de jure* settlement involves a true replacement for a criminal trial, and a *de facto* settlement merely permits some type of guilty plea that shortens the criminal process.

According to the IBA Report, thirty-one countries follow some type of *de jure* model, designed to reward self-reporting and cooperation by way of an out-of-court settlement constituting “a true alternative to criminal prosecution.”¹³ In some countries, such as the United States, United Kingdom, France, and Singapore, the requirements for obtaining a structured settlement, as well as the associated benefits, are provided in law or some form of explicit guidance.¹⁴ Elsewhere, such as Norway, Germany, and Malaysia, *de jure* structured settlements are available on an informal basis, without clear guidance as to when such structured settlements are available.¹⁵

“Of particular note, with more countries considering and adopting forms for negotiated resolutions of corporate crimes, ensuring appropriate compatibility of such resolutions is critical. This includes considering how best to avoid the unfortunate event of duplicative penalties for the same underlying conduct.”

According to the IBA Report, 24 countries do not have a true structured settlement framework, but have some type of *de facto* settlement model, which rewards an admission of wrongdoing with a plea or charge bargain.¹⁶ As explained in the IBA Report, the “factors that influence prosecutorial discretion in *de facto* settlement models relate primarily to the speediness of the trial”¹⁷ rather than encouraging proactive self-policing, self-reporting, and cooperation, which are goals of the *de jure* model.

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13. *Id.* at 16.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

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Rule of Law Considerations

Because *de facto* structured settlements take place within the existing criminal court system of a country, whatever rule of law considerations apply to that country’s court system likewise apply to *de facto* structured settlements.

In contrast, because *de jure* settlements replace criminal trials and involve significant prosecutorial discretion, they give rise to the possibility of arbitrary exercise of discretion, which of course is antithetical to the rule of law.¹⁸ Consequently, the IBA Report also examines judicial oversight, transparency, and perceived predictability in the *de jure* context.

- **Judicial Oversight:** In most countries (but not all), structured settlements must be filed with a court (and, as the U.S. Survey Response indicates,¹⁹ the role of the court can depend on the type of structured settlement involved). The IBA Report finds that there is no judicial oversight regarding the initiation or negotiation of structured settlements. Notably, this discretion tends to be more pronounced in countries ranked as having strong rule of law and those ranked as less corrupt in the Transparency International Corruption Perceptions Index.²⁰
- **Transparency:** As *de jure* structured settlements are alternatives to the criminal justice practice, the editors of the IBA Report suggest that they should be administered in a transparent manner, as with *de facto* settlements (*i.e.*, guilty pleas) “usually a matter of public record.”²¹ The IBA Report finds that this is often not the case. Approximately half of the countries surveyed provide for publication of information about structured settlements, subject to temporary confidentiality so as not to interfere with ongoing proceedings. The other approximately half of surveyed countries reported limited or non-existent publication of such information.
- **Predictability:** The IBA Report finds that, in most countries having *de jure* structured settlement systems, practitioners view structured settlements as “reasonably predictable,” but only in only one country, Costa Rica, are such settlements perceived as “highly predictable.”²² In a number of countries, structured settlements are not viewed as predictable and in others the system is too recent to form a perception.²³

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18. *Id.* at 20.

19. *Id.* at 407.

20. *Id.* at 26.

21. *Id.* at 21.

22. *Id.* at 22.

23. *Id.*

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The IBA Report also includes comments from committee members about their own countries and regions, and in response to the question of whether there should be common standards for structured settlements. As the Chair points out, this is particularly pertinent “in the context of the transacting environment in which foreign bribery occurs,” which is multijurisdictional and “characterized by ... diverse criminal justice systems.”²⁴

While standardized global procedures may be unlikely, some IBA reporters suggest the possibility of guiding principles or mutual recognition treaties.²⁵ Reasons for adopting some kind of global standards include the risk of international double jeopardy²⁶ and the possibility of inadvertently magnifying penalties,²⁷ as well as, conversely, the need to avoid forum shopping in structured settlements.²⁸ The IBA Report also stresses the need to consider victims of bribery,²⁹ while noting that direct victims are often hard to find³⁰ and reminding readers that “the state, through its officials, is often a principal actor in ... grand scale foreign bribery. . . .”³¹

Common Standards and Principles: The IBA Report and OECD Principles

In 2015, in conjunction with searching for global standards, the OECD Secretary General convened a High Level Advisory Group on Anti-Corruption and Integrity to help the OECD identify ways to strengthen its work combating corruption and fostering integrity in the public and private spheres. In March 2017, the group presented a report and recommendations to the OECD.³² Recommendation 6 of the report recommended that the OECD Working Group on Bribery create and publish a set of model guidelines for criminal and civil settlements.³³

Following the presentation of this report, a group of academics, lawyers, corporate officers, NGOs, and others formed the Recommendation 6 Network to draft a set of materials that the OECD Working Group on Bribery could consider in their discussions regarding the difficult issue of negotiated resolutions of

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24. *Id.* at 24.

25. *Id.* at 24, 35.

26. *Id.* at 26.

27. *Id.* at 38.

28. *Id.* at 29.

29. *Id.* at 25, 30.

30. *Id.* at 28.

31. *Id.* at 24.

32. High-Level Advisory Group (2017), Report to the OECD Secretary-General on Combating Corruption and Fostering Integrity, <http://www.oecd.org/corruption/HLAG-Corruption-Integrity-SG-Report-March-2017.pdf>.

33. *Id.* at 8.

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foreign bribery cases. The group delivered those materials to the OECD Working Group on Bribery in October 2018.

The aim of the materials was to provide a common framework that all OECD countries could use when evaluating and implementing guidelines for negotiated resolutions of foreign corruption cases. The materials contain eight principles that could guide such resolutions:

1. Non-trial resolutions should involve sanctions that are “effective, proportionate and dissuasive,” as required by the OECD Anti-Bribery Convention, and should not be used as a way to reduce or diminish any country’s commitment to the vigorous prosecution of organizations and individuals who engage in bribery;
2. Non-trial resolutions should be considered a privilege offered by the government to provide predictable sanctions and leniency for cooperation and self-disclosure, not a fundamental right, and standards for such resolutions and concomitant sanctions should be publicized in order to ensure predictability;
3. Non-trial resolutions and concomitant sanctions should be proportionate to the gravity of the offense, taking into account mitigating factors such as cooperation and self-reporting;
4. Wherever reasonably possible, non-trial resolutions should be coordinated and penalties fairly apportioned among countries with jurisdiction over the offenses;
5. Corporate resolutions cannot take the place of individual charges and individuals should be held accountable when they break the law, without compromising their rights for the sake of a speedy non-trial resolution;
6. Non-trial resolutions should be subject to judicial or other independent oversight, or a robust internal review process;
7. Non-trial resolutions should, where appropriate, provide for consideration of potential remedies for injured parties; and
8. Information and metrics on non-trial resolutions should be collected and shared among member countries.

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Additional Work and Considerations Regarding International Coordination and Cooperation

The IBA Report and the survey underlying it provide important information regarding non-trial resolutions of international bribery cases, both in theory and in practice, in many jurisdictions across the globe. The information contained therein will be useful both to regulators, practitioners, and scholars as they practice in (or study) the increasingly coordinated world of anti-corruption enforcement.

Likewise, the draft OECD Principles for Non-Trial Resolutions – which are largely consistent with the findings of the IBA Report – provide a framework for future discussions of the issue. As the IBA Report notes, *de jure* structured settlement processes in many countries are new, having been adopted in the last five years.³⁴ Even so, we have already seen a rise in enforcement in countries that have adopted such frameworks.³⁵

As more practical experience with such mechanisms develops, it will be important to monitor the equities of their implementation, including the complexities posed by their proliferation. Although a uniform approach across all jurisdictions seems unlikely, some degree of compatibility and coordination undoubtedly is essential.

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34. IBA Report at 22.

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