

APPENDIX III (PRINCIPLES FOR NON-TRIAL RESOLUTIONS)

Principles for the Implementation and Use of Non-trial Resolutions of Foreign Bribery Cases

These Principles are addressed to Departments of Justice, Ministries of Justice, Enforcement Officials and to those government agencies empowered to impose civil penalties against organizations and persons. Non-trial resolutions can promote both the prevention of bribery and the apprehension and punishment of those who pay bribes. A Non-trial Resolution is an agreement or settlement adopted between law enforcement authorities and alleged wrongdoers regarding violations of anti-corruption laws resulting in sanctions or other legal measures. A Non-trial Resolution can take the form of an early termination of a criminal process or the imposition of a civil penalty. These Principles recognize that many countries use Non-trial Resolutions, that Non-trial Resolutions have widely different descriptions, and that the jurisprudence, law and regulatory frameworks in countries vary.

1. Non-trial Resolutions designed and implemented with the purpose of deterring bribery enhance law enforcement, promote compliance and are consistent with the requirement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997 that sanctions should be effective, proportionate and dissuasive. Non-trial Resolutions should not however be used as a means of reducing law enforcement or diminishing any Member country's commitment to the elimination of bribery. Non-trial Resolutions are one law enforcement tool, not a substitute for the committed and vigorous prosecution of organizations and individuals that engage in bribery.
2. Non-trial Resolutions are a privilege of government to offer, not a fundamental right of an accused, but Non-trial Resolutions that offer predictable sanctions and leniency for self-disclosure and cooperation are effective in deterring bribery and are compatible with the criminal, administrative and civil law traditions and practices of all Member countries. Member countries should publicize standards for Non-trial Resolutions and their methods of determining constituent sanctions.
3. Non-trial Resolutions may range across a spectrum from decisions not to charge a putative defendant to formal admissions of guilt by defendants or the imposition of non-criminal or civil penalties. Non-trial Resolutions and their component sanctions should be proportionate to the gravity of the offenses alleged while taking into account such mitigating factors as voluntary disclosure and effective and timely cooperation. Effective deterrence does not require an admission of guilt, but does require a recognition of responsibility for wrongdoing that has occurred.
4. Wherever reasonably appropriate the investigation, negotiation, penalties and remediation constituting Non-trial Resolutions should be coordinated among countries with jurisdiction over claims against suspected offenders. This coordination should promote efficient investigations and prompt Non-trial Resolutions and should ensure that aggregate sanctions across all countries are both appropriate given the nature of the offenses charged and fairly allocated among the countries participating in the enforcement actions, taking into account the primacy of jurisdiction.

5. While in many jurisdictions organizations can be prosecuted or held liable for foreign bribery, bribery is effected by individuals working for those organizations. Those individuals should be held accountable. Their civil and procedural rights must be observed, and not compromised for the sake of achieving a prompt Non-trial Resolution.
6. Non-trial Resolutions should be subject to checks and balances to ensure fairness and conformity with the rule of law. Such control can be exercised by an independent judiciary, another branch of government independent of the state actor that is a party to the Non-trial Resolution, or through a robust internal review process.
7. The process of concluding Non-trial Resolutions should where appropriate provide for consideration of potential remedies for injured parties without compromising the goals of law enforcement.
8. Member countries should collect, share and disclose information and metrics concerning enforcement practices regarding Non-trial Resolutions, particularly through the Working Group on Bribery.