



**European Bank**  
for Reconstruction and Development

# DOMICILIATION OF EBRD CLIENTS

Approved on 17 December 2013

## Preamble

As an international financial institution with a mandate to promote transition towards a functioning market economy in its countries of operations, EBRD supports international efforts to discourage tax evasion and other harmful tax practices. In its own operations, the EBRD supports the principle of taxation of economic activity in accordance with the tax laws and international tax treaties of its countries of operations. In this context it is important that local tax authorities have access to the relevant information to monitor compliance with these laws and treaties. This may become more difficult when third countries (or jurisdictions) are chosen as locations for establishment of entities involved in EBRD operations. Therefore when third jurisdictions are used, the EBRD makes use of internationally agreed processes and best practices designed to prevent misuse and to promote transparency and information exchange on tax matters.

As mandated by Article 13(i) of the Agreement Establishing the Bank, the EBRD applies “sound banking principles to all its operations”. One such principle is to “know your customer”, which requires that the Bank conduct appropriate due diligence on project sponsors and the projects themselves. In each case, the corporate governance structure, beneficial ownership, financial transparency and strength, compliance and integrity, including in relation to tax matters, are reviewed according to best practices. Naturally, similar assessments are also made in projects involving intermediate vehicles established in a jurisdiction different from a country of operations, with a view, among others, to obtaining a reasonable level of assurance that the intermediate structure is not set up or used for the purpose of tax evasion, money laundering and terrorism financing.

With its project finance and private sector focus, the Bank has had to deal with intermediate vehicles since its inception. This is because the use of such vehicles is not uncommon practice for private sector investors in international project finance and when engaged in cross-border investment. Where third jurisdictions are used, the Bank’s long standing practice has also been to satisfy itself that the reasons for using such structures are sound from a business viewpoint. Sound business reasons may include the need to establish a common investment vehicle in a stable and/or investor-friendly jurisdiction. Equally, while the Bank does not want to encourage the use of third jurisdictions, the choice of the jurisdiction may be influenced by the desire to avoid double taxation, as legally permitted by a network of bilateral treaties and national tax laws.

Where third jurisdictions are used, the Bank’s practice has been to assess whether or not there is a risk that the jurisdictions are associated with improper financial activities. This policy document respects and builds on these objectives and underscores the role of the Bank in supporting international efforts to combat such activities, in particular by making use of the peer group assessments of the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) as well as the work of the Financial Action Task Force (“FATF”) in countering money laundering and terrorism financing risks.

Prospective clients presenting to the Bank financing proposals that involve a third jurisdiction may be adversely affected by the operation of the policy, particularly where those jurisdictions are poorly rated by the Global Forum. Accordingly, where needed, Management will actively manage its pipeline of operations including by directing the attention of clients to the published findings and overall ratings of the Global Forum and by stressing the risks associated with the jurisdictions not achieving a better rating ahead of the Board consideration of the proposal.

## Definitions

- a) Ordinarily the Bank lends to, invests in, or guarantees obligations of, a **“project entity”** established in the country of operations where the project so financed is located. In some cases, however, the borrower, investee or guaranteed entity will be an **“intermediate entity”** established in a **“third jurisdiction”**, i.e., a country or territory different from a country of operations.
- b) In addition, a borrower, investee or guaranteed entity, wherever located, may be controlled by an entity, which **“controlling entity”** is established either in a country of operations or in a third jurisdiction. “Control” for this purpose means the power of an entity to govern the financial and operational policies of the entity of which it is a shareholder.

## 1. Sound business reasons

Whenever a project considered by the Bank involves an intermediate entity and/or a controlling entity established in a third jurisdiction or in a country of operations different from the country of operations where the project is located, the Bank shall satisfy itself that there are sound business reasons for (i) the use of such third jurisdiction or country of operations, and (ii) the selection of such third jurisdiction or country of operations.

Whether there are sound business reasons in a given project will depend on the surrounding circumstances. Such reasons might include (i) the desire to use a jurisdiction to attract capital from multiple sources, (ii) tax planning using lawful practices and double taxation treaties, provided that it does not involve the elimination or near elimination of taxation deriving from arrangements or methods inconsistent with the declarations, recommendations, or international standards agreed by the OECD or G20 regarding “aggressive tax planning” or base erosion and profit shifting, (iii) the existence of stable legal systems which facilitate contract enforcement and registration of security, (iv) the existence of clear laws regarding issues such as governance, liability and taxation, and (v) recognition of internationally accepted investment agreements, including shareholder agreements and put options, corporate forms that ensure limited liability of shareholders, and instruments such as preferred shares.

## 2. Principles regarding countries of operations

In accordance with its mandate to foster transition in all of its countries of operations, the Bank provides financing with respect to projects and clients located in such countries. Nonetheless,

- a) where a country of operations is a jurisdiction in respect of which the FATF has released a public statement formally calling for specified counter-measures by its members and others, the Board shall, promptly after any such public statement has been released, and based on a report from Management, review the situation arising out of the FATF’s call; the Board shall determine what appropriate action (including actions identified by the FATF as examples of counter-measures that could be undertaken) adapted to the circumstances of the country of operations and consistent with the Agreement Establishing the Bank should be taken by the Bank in respect of that country of operations.
- b) where a country of operations is a jurisdiction in respect of which the FATF has released a public statement formally calling its members to consider the risks arising from the deficiencies associated with that jurisdiction, any project that involves a project entity, an intermediate entity or a controlling entity established in that jurisdiction shall be referred to the Bank’s Office of the Chief Compliance Officer and shall undergo heightened due diligence, in order to satisfy the Board of Directors that the entities established in that jurisdiction are not being used as vehicles for money-laundering or terrorism financing.

- c) where a country of operations is a jurisdiction in respect of which the FATF has released a public document identifying jurisdictions with strategic AML/CFT deficiencies that have developed an action plan with the FATF and provided a written high-level political commitment to address the identified deficiencies, any project that involves a project entity, an intermediate entity or a controlling entity established in that jurisdiction shall be referred to the Bank's Office of the Chief Compliance Officer and shall undergo usual or heightened due diligence, as may be deemed appropriate by Management.

### **3. Principles regarding entities established in a third jurisdiction**

Whenever a project considered by the Bank involves an intermediate entity and/or a controlling entity established in a third jurisdiction:

#### **Substantial implementation of the tax standard**

- a) The Bank shall not provide financing where the third jurisdiction has not substantially implemented the internationally agreed tax standard endorsed by the UN Committee of Experts on International Cooperation in Tax Matters in 2008.

Whether a third jurisdiction has or has not substantially implemented the internationally agreed tax standard is to be determined by reference to the last Progress Report on the Jurisdictions Surveyed by the Global Forum in Implementing the Internationally Agreed Tax Standard. If however a third jurisdiction is not covered by the Report, the question of whether that jurisdiction has or has not substantially implemented the internationally agreed tax standard shall be resolved after consultation with the secretariat of the Global Forum.

#### **Effective implementation of the tax standard**

- b) The Bank shall not provide financing where the third jurisdiction is not effectively implementing the internationally agreed tax standard.

Whether a third jurisdiction is or is not effectively implementing its commitment to the internationally agreed tax standard is to be determined by reference to the work of the peer review process of the Global Forum. More particularly,

- i) a third jurisdiction for which no phase 1 review has been undertaken or completed but which has substantially implemented the internationally agreed tax standard shall be deemed to be effectively implementing its commitment to the internationally agreed tax standard.
- ii) a third jurisdiction for which a phase 1 review has been completed but where the Global Forum has determined that a phase 2 review will not take place until additional steps have been taken by the jurisdiction and found sufficient and satisfactory by the Global Forum, shall be deemed not to be effectively implementing its commitment to the internationally agreed tax standard.
- iii) a third jurisdiction for which a phase 2 review has been completed and for which an overall rating of "compliant" or "largely compliant" has been issued by the Global Forum shall be deemed to be effectively implementing its commitment to the internationally agreed tax standard.
- iv) a third jurisdiction for which a phase 2 review has been completed and for which an overall rating of "partially compliant" or "non-compliant" has been issued by the Global Forum shall be deemed not to be effectively implementing its commitment to the internationally agreed tax standard.

If the work of the peer review process of the Global Forum does not extend to a third jurisdiction, the question of whether that jurisdiction is effectively implementing its commitment to the internationally agreed tax standard shall be resolved after consultation with the secretariat of the Global Forum.

### **Fight against money laundering and terrorism financing**

- c) The Bank shall not provide financing where the third jurisdiction is a jurisdiction in respect of which the FATF has released a public statement formally calling for specified counter-measures by its members and others.
- d) The Bank may provide financing where the third jurisdiction is a jurisdiction in respect of which the FATF has released a public statement formally calling its members to consider the risks arising from the deficiencies associated with such jurisdiction, but only if the project has been referred to the Bank's Office of the Chief Compliance Officer and has undergone heightened due diligence, in order to satisfy the Board of Directors that the intermediate or controlling entity established in that jurisdiction is not being used as a vehicle for money-laundering or terrorism financing.
- e) The Bank may provide financing where the third jurisdiction is a jurisdiction in respect of which the FATF has released a public document identifying jurisdictions with strategic AML/CFT deficiencies that have developed an action plan with the FATF and provided a written high-level political commitment to address the identified deficiencies, but only if the project has been referred to the Bank's Office of the Chief Compliance Officer and has undergone usual or heightened due diligence, as may be deemed appropriate by Management.

## **4. Suspension of Sections 3 (b)(ii) and (iv)**

- a) For any third jurisdiction to which Section 3(b)(ii) applies:
  - i) Unless the Board of Directors decides otherwise, the operation of that Section shall be suspended for a period of eight months starting from the date of the publication of the report of the Global Forum, provided that such jurisdiction has made, no later than three months after the date of such publication, a commitment to correct the deficiencies identified in the report of the Global Forum. Such commitment shall be evidenced by an express undertaking to the Bank or a public expression of intent to execute concrete plans for legislative or other governmental and/or administrative action to address any such deficiencies within a reasonable timeframe. Such commitment will be communicated to the Board of Directors.

If the jurisdiction has not made such commitment within three months after the date of the publication of the report of the Global Forum, such suspension period will come to an end.

- ii) If, within the suspension period referred to in (i), the third jurisdiction has filed a request for a supplementary report with the Global Forum and the Global Forum's peer review group has determined that such a review is warranted, the suspension period will be extended until the date when the draft supplementary report approved by the Global Forum's peer review group is submitted to Global Forum's members and observers.

If, within the suspension period referred to in (i), the third jurisdiction has not filed a request for a supplementary report with the Global Forum or the Global Forum's peer review group has not determined that such a review is warranted, such suspension period will come to an end.

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- iii) If a draft supplementary report has been approved by the Global Forum's peer review group and submitted to Global Forum's members and observers, and if such report concludes that the third jurisdiction should proceed to a Phase 2 review, the suspension period referred to in (ii) will be extended until the publication of the report as adopted by the Global Forum.

If such report concludes that the third jurisdiction should not proceed to a Phase 2 review, such suspension period will come to an end.

- iv) No further suspension period shall be granted under this Section 4(a) with respect to any third jurisdiction that has not been authorised by the Global Forum to proceed to a Phase 2 review at the end of any suspension period referred to above.

### b) For any third jurisdiction to which Section 3(b)(iv) applies:

- i) Unless the Board of Directors decides otherwise, the operation of that Section shall be suspended for a period of fourteen months starting from the date of the publication of the overall rating of the Global Forum, provided that such jurisdiction has made, no later than three months after the date of such publication, a commitment to correct the deficiencies identified in the report of the Global Forum. Such commitment shall be evidenced by an express undertaking to the Bank or a public expression of intent to execute concrete plans for legislative or other governmental and/or administrative action to address any such deficiencies within a reasonable timeframe. Such commitment will be communicated to the Board of Directors.

If the jurisdiction has not made such commitment within three months after the date of the publication of the overall rating of the Global Forum, such suspension period will come to an end.

- ii) If, within the suspension period referred to in (i), the third jurisdiction has filed a request for a supplementary report with a view to obtaining a revised overall rating with the Global Forum and the Global Forum's peer review group has determined that an additional review is warranted, the suspension period will be extended until the date when the draft supplementary report approved by the Global Forum's peer review group is submitted to Global Forum's members and observers.

If, within the suspension period referred to in (i), the third jurisdiction has not filed a request for a supplementary report with the Global Forum or the Global Forum's peer review group has not determined that such a review is warranted, such suspension period will come to an end.

- iii) If a draft supplementary report has been approved by the Global Forum's peer review group and submitted to Global Forum's members and observers, and if such report concludes that the third jurisdiction should be issued with a revised overall rating of "largely compliant" or "compliant", the suspension period referred to in (ii) will be extended until the publication of the overall rating as adopted by the Global Forum.

If such report concludes that the third jurisdiction should not be issued with a revised overall rating of "largely compliant" or "compliant", such suspension period will come to an end.

- iv) No further suspension period shall be granted under this Section 4(b) with respect to any third jurisdiction that has not been issued with a revised overall rating of "largely compliant" or "compliant" by the Global Forum at the end of any suspension period referred to above.

## **5. Exemption where controlling entity is established in its home jurisdiction**

The beneficiary of a Bank's loan, equity investment and/or guarantee may be an entity established in the country of operations where the project is located while the controlling entity is established in a third jurisdiction. Such is the case, for instance, when a foreign strategic investor has acquired or – concurrently with the Bank's operation – is acquiring a majority interest in the project entity.

Situations where the controlling entity is established in its home jurisdiction shall not be reviewed under Sections 1 and 3(a) and (b) of this policy if the controlling entity is established

- i) in the same jurisdiction as the entities or individuals who ultimately control it, or
- ii) in the jurisdiction where its capital stock has its primary listing.

If however the controlling entity chooses to invest through a holding company established in another third jurisdiction then the situation must be reviewed under this policy. Likewise, where the controlling entity is itself controlled by entities and individuals established in a different jurisdiction, the situation shall be reviewed under Sections 1 and 3(a) and (b) of this policy.

Furthermore, where the controlling entity's home jurisdiction appears on a public statement or document released by the FATF, the situation shall be reviewed under Sections 3(c), (d) or (e) of this policy.

## **6. Exemption in case of relocation of affected entity**

Notwithstanding Section 3, the Bank may provide financing where, as a condition of providing such financing, it secures a contractual undertaking (the breach of which would entitle the Bank to exercise legal remedies) to change the place of incorporation of the intermediate or controlling entity within a reasonable time of signing the principal financing documents, which documents would set out a specific timetable within which the change is to take place. In such a case, the choice of jurisdiction should be consistent with the principles set out in Section 3.

## **7. Information of the Board of Directors**

- a) Where Section 2(b) or Section 3(d) applies, the President's Recommendation and the Board Report shall confirm that the project was referred to the Bank's Office of the Chief Compliance Officer and underwent heightened due diligence.
- b) Where Section 2(c) or Section 3(e) applies, the President's Recommendation and the Board Report shall confirm that the project was referred to the Bank's Office of the Chief Compliance Officer and underwent usual or heightened due diligence as was deemed appropriate by Management.
- c) Where Section 4 applies, the President's Recommendation and the Board Report shall confirm that the conditions set forth in such Section are met. The annex to the Board Report submitted for each project shall also set out whether the use of a third jurisdiction or the selection of such third jurisdiction is related to the deficiencies identified by the Global Forum and will disclose any relevant information made available by the Global Forum secretariat to the Bank which may have a bearing on the matter.

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- d) Where Sections 1, 3 or 6 applies, the Board Report shall contain an annex setting out the sound business reasons, such as those referred to in Section 1, for (i) the use of such third jurisdiction or country of operations, and (ii) the selection of third such jurisdiction or country of operations. Except in the case of repeat or follow-on projects with the same client, the information will be based on detailed replies from the client, including supporting documents, supplied in response to a questionnaire prepared by Management for this purpose. In determining whether the reasons provided by clients for the use of a third jurisdiction or country of operations and the selection of such third jurisdiction or country of operations are sound business reasons, and in articulating such reasons in the project document, staff will have access to a guidance note prepared by Management for this purpose;
- e) Where Section 3 or 6 applies, the Board Report shall contain an annex
  - i) confirming that the third jurisdiction is acceptable under Sections 3(a) and (b) *or*, that there is a contractual undertaking to change the place of incorporation of the intermediate or controlling entity within a specified time of signing the principal financing documents; and
  - ii) confirming that the third jurisdiction is acceptable under Section 3 (c), *or*, that there is a contractual undertaking to change the place of incorporation of the intermediate or controlling entity within a specified time of signing the principal financing documents.
- f) Where Section 5 applies, the Board Report shall provide any information necessary to substantiate such a conclusion.
- g) Where, in accordance with Section 6, the Bank has required, as a condition of providing financing, a contractual undertaking to change the place of incorporation of the entity within a specified time from the signing the principal financing documents, the annex to the Board Report shall also provide information about such contractual undertaking and the reasons for requiring it, specifying the jurisdiction where the new or transferred entity will be located.
- h) Where the loan, equity investment or guarantee is an operation approved under authority delegated by the Board of Directors, information that would otherwise have been contained in the Board Report shall be disclosed to the Board of Directors in accordance with established reporting procedures.

## 8. Miscellaneous provisions

- a) This policy shall become effective immediately upon its approval by the Board of Directors. However, Section 7(d) of the policy shall only apply to operations which have passed Concept Review on or after 1 July 2014 in order to allow for the finalisation by Management of the form of questionnaire following the conclusion of a pilot phase. During this period, where the existence of “sound business reasons” is to be made out in project documents, this shall be demonstrated in the same manner as applies under the previous version of the policy approved on 27 July 2010.
- b) This policy shall be reviewed as and when appropriate, in particular when international efforts to combat tax evasion, money laundering and terrorism financing have progressed to a stage where material changes to the policy can be reasonably envisaged in light of significant developments at the international level.
- c) This policy shall be published on the website of the Bank.