



Policy:

Use of Offshore Financial Centers in World Bank Group Private Sector Operations

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**Policy on the
Use of Offshore Financial Centers in
World Bank Group Private Sector Operations**
Application to IFC Operations

Introduction

1. *Purpose.* The World Bank Group is committed to advancing the international tax transparency agenda by addressing the potential risks posed to its Private Sector Operations and to the global financial system by jurisdictions with weak regulation, low or no tax, and a lack of transparency.

The World Bank Group response to these risks has two principal components. First, the World Bank Group wishes to help those member countries that want to improve their overall tax transparency through an offer of technical assistance. Second, the World Bank Group wishes to ensure that its Private Sector Operations are not used for tax evasion.

2. *Standard.* The tax transparency policy of World Bank Group Private Sector Operations is based on the standard for the exchange of information for tax purposes found in Article 26 of the UN Income and Capital Model Convention (the “**Transparency Standard**”). The three pillars of the UN standard are that a country must:
 - (i) require companies to collect and maintain tax information;
 - (ii) have the ability legally to obtain this information; and
 - (iii) be willing to share this information with treaty partners without a domestic tax interest requirement.

In September of 2009, the Global Forum on Transparency and the Exchange of Information for Tax Purposes (affiliated with but independent from the OECD, the “Global Forum”), launched a peer review process, as part of which countries will undergo detailed substantive assessment by the other members of the Global Forum (“**Peer Review Process**”) against the Transparency Standard. The Global Forum has subdivided the Transparency Standard derived from the UN model treaty into specific, detailed evaluation criteria (the Global Forum Terms of Reference or the “**Transparency Essential Elements**”) against which members are assessed.

The results of the Peer Review Process will allow countries to identify areas of reform, if any, in order to achieve a level of tax transparency that facilitates monitoring and oversight of the flow of funds. The Transparency Standard, the Transparency Essential Elements, and the results of the Peer Review Process will be used in order to implement the policy set forth in this paper.

IFC Operations

3. *Due Diligence.* As a foundational step, unchanged by this policy, IFC will continue to apply heightened transactional due diligence to all investment transactions involving an Intermediate Jurisdiction. IFC will only undertake an investment after it has satisfied itself that the structure of the transaction is legitimate and not designed to be used for tax evasion, tax abuse or other illegitimate purpose.
4. *Definitions and Scope.* For purposes of the policy described below:
 - (a) An “IFC Investment” is any loan made by IFC, equity or quasi-equity investment, any guarantee issued by IFC, any risk sharing facility or trade finance facility in which IFC is a guarantor or participant, any transaction, facility or structured product for carbon finance in which IFC is a counterparty, and any sponsor or other guarantee of which IFC is beneficiary.
 - (b) An “IFC Investee Company” is any contractual counterparty of an IFC Investment, including an IFC borrower or guarantor, a company in which IFC has invested equity (including an investment fund), or the beneficiary or obligor of an IFC guarantee or risk sharing facility.
 - (c) For IFC investment operations, “Intermediate Jurisdiction” means a jurisdiction that is not the host country of the proposed investment, and is also not the jurisdiction of a sponsor or shareholder that owns at least 20% of the investee company, meaning: (i) in the case of a natural person, the jurisdiction of physical residence, and (ii) in the case of a legal person, the jurisdiction in which business operations physically take place. A legal entity the shares of which are publicly listed will be deemed to reside in the listing jurisdiction.
 - (d) Control will be determined in the context of the specific transaction structure, before taking into account IFC’s investment, and means the ownership by vote or value of 50% or more of the enterprise (or less than 50%, if the facts and circumstances of the investment indicate de facto control), and, in the context of an investment fund, any control exercised by a general partner or manager.
 - (e) For any investment project, whether a jurisdiction has met international norms for tax transparency as set forth in paragraph 5 will be determined as of the date of the mandate letter or appraisal letter for such project. The restrictions set forth in paragraph 5 will apply to any such project for which the mandate letter or appraisal letter is dated after the end of the relevant transition period as set out in paragraph 6, unless such deficiencies are remedied as documented in a published assessment of the Peer Review Process. For investments for which there is no mandate letter or

appraisal letter, such status will be determined as of the date on which the PDS-Concept was approved.¹

(f) A jurisdiction will be deemed to meet international norms until the results of the Peer Review Process indicate otherwise. Thus, jurisdictions for which a Phase 1 Peer Review Report has not yet been published; and jurisdictions that have been passed onto Phase 2 after the publishing of a Phase 1 Peer Review Report, but that have not received a final assessment, would not trigger restrictions under this policy.

(g) The restrictions set forth in paragraph 5 do not apply to direct investments into projects physically located in a country.

5. *Policy.* In addition to the due diligence described in paragraph 3, IFC will use the published assessments of the Peer Review Process (“Peer Review Reports”) of the Global Forum as an additional key element of its heightened due diligence. IFC will not submit to the Board for approval any new IFC Investment in any IFC Investee Company organized in an Intermediate Jurisdiction, or controlled by an entity organized in an Intermediate Jurisdiction, that has not met international norms for tax transparency by reference to the published results of the Peer Review Process. An Intermediate Jurisdiction will be deemed not to have met international norms for tax transparency if:

(i) a Phase 1 review has been completed and, based on a report publicly issued as part of the Peer Review Process, the Phase 2 review is deferred because the jurisdiction does not have in place crucial elements for achieving full and effective exchange of information; or

(ii) a Phase 2 review has been completed and, based on a report publicly issued as part of the Peer Review Process, the overall assessment of the jurisdiction is “partially compliant” or “non-compliant;”²

A jurisdiction for which Phase 2 review is initially deferred, but which is then approved for Phase 2 review based on a published Supplementary Peer Review Report will be considered to meet the norm set forth in subparagraph (i) above as of the date of such report; and similarly, a jurisdiction which initially received an overall assessment of “partially compliant” or “non-compliant,” but which subsequently receives an overall assessment of “compliant” or “largely compliant” based on a published Supplementary Peer Review Report will be considered to meet the norm set forth in subparagraph (ii) above as of the date of such report.

¹ The application of this policy to the exercise of pre-emptive rights to purchase shares in respect of an existing investment will be determined based on the original mandate letter, appraisal letter or PDS-Concept.

² By contrast, Jurisdictions assessed as “compliant” or “largely compliant” by a report publicly issued by the Peer Review Process will be deemed to have met international norms for tax transparency.

6. *Transition Period.* An Intermediate Jurisdiction that has been deemed not to meet international norms for tax transparency as a result of the findings of the Peer Review Process will have a transition period as set out below to take the necessary actions to meet such norms:

(a) Subject to satisfying the condition set out in subparagraph 6(c) an Intermediate Jurisdiction to which subparagraph 5(i) applies as to its Phase 1 Peer Review will be given a transition period (the “Phase 1 Transition Period”) of 8 months from the date of the published Phase 1 Peer Review Report to address the deficiencies noted in such report. For Intermediate Jurisdictions whose Phase 1 Peer Review Report is dated before December 31, 2013, the Phase 1 Transition Period will commence on June 26, 2014. However no transition period will be granted to any Intermediate Jurisdiction which receives the results of a Supplementary Report that is dated before June 26, 2014. If during the Phase 1 Transition Period, the Intermediate Jurisdiction files a request with the Global Forum for a Supplementary Report and the Global Forum’s Peer Review Group agrees to prepare such a report, then the Phase 1 Transition Period will be extended to the date of the publication of the Supplementary Report relating to the Phase 1 Peer Review.

(b) Subject to satisfying the condition set out in subparagraph 6(c) an Intermediate Jurisdiction to which subparagraph 5(ii) applies as to its Phase 2 Peer Review will be given a transition period (the Phase 2 Transition Period”) of 14 months from the date of the publication of its overall Phase 2 rating by the Global Forum to address the deficiencies noted in its Phase 2 Peer Review report. If during the Phase 2 Transition Period, the Intermediate Jurisdiction files a request with the Global Forum for a Supplementary Report and the Global Forum’s Peer Review Group agrees to prepare such a report, then the Phase 2 Transition Period will be extended to the date of the publication of the Supplementary Report relating to the Phase 2 Peer Review.

(c) Within 3 months of the date of the published Phase 1 Peer Review Report or publication of the overall Phase 2 rating, as the case may be, the Intermediate Jurisdiction must make a commitment to correct the deficiencies noted in the relevant Peer Review report. This commitment must be evidenced either by an express undertaking to the World Bank Group or a public statement expressing its intention to meet international norms of tax transparency by carrying out concrete plans for legislation, executive, administrative or other government action to address any such deficiencies within a reasonable time frame. For Intermediate Jurisdictions whose Phase 1 Peer Review Report is dated before December 31, 2013 or whose overall Phase 2 Peer Review rating was published before December 31, 2013, the commitment must be made by August 31, 2014.

If the Intermediate Jurisdiction does not make the required commitment within 3 months of the date of the relevant published Peer Review Report, the overall Phase 2

rating or August 31, 2014 as applicable, the Phase 1 or Phase 2 Transition Period will end immediately.

7. The transition periods set out in paragraph 6 are intended to give jurisdictions enough time to take the necessary actions to address the deficiencies identified in the relevant Peer Review Report so that they can be deemed to meet international norms for tax transparency. However, in exceptional circumstances, the transition periods may not be applicable to a jurisdiction which has been found not to meet such norms. In such circumstances, the Board may in its sole discretion grant a request by IFC for a waiver of the application of paragraph 5 to any transaction which involves such jurisdiction as an Intermediate Jurisdiction.

Any IFC Investment that is to be approved pursuant to a waiver to be granted by the Board will be submitted to discussion of the full Board. The Board Paper will include the exceptional basis for the waiver. Any restructuring or project modification that, had it been a new IFC Investment, would have involved an application of this paragraph 7, will be reported in the Monthly Operations Report.

8. *Non-Member of Global Forum.* If, in a given proposed transaction, an Intermediate Jurisdiction is not a member of the Global Forum and is not subject of any Peer Review Process report,³ then IFC management will evaluate whether, for the purpose of such transaction, such jurisdiction meets international norms for tax transparency with reference to the Transparency Standard and the Transparency Essential Elements, based upon information available to it, in consultation with IBRD and MIGA. The fact that a jurisdiction is not a member of the Global Forum does not create a presumption that the jurisdiction does or does not meet international norms for tax transparency for purposes of this policy. Any IFC Investment that is to be approved pursuant to this paragraph will be submitted to discussion of the full Board.
9. *Note Regarding Treasury Operations.* World Bank Group treasury operations include both the IBRD Treasury (TRE) and IFC Treasury (CFI) (together “Treasury”). Treasury will implement the tax transparency policy and objectives set forth in this paper specifically as follows. In the management of World Bank Group Portfolios (as defined below), Treasury will not purchase or acquire any security or other financial instrument issued by an entity domiciled in an Intermediate Jurisdiction that, at the time of purchase or acquisition of the security by Treasury, does not meet international norms for tax transparency by reference to the results of the Peer Review Process, as described above. For purposes of Treasury, an instrument or security will be deemed to be issued by an entity domiciled in an Intermediate Jurisdiction where the jurisdiction of the issuer is other than the country where the principal economic activity that is being financed or funded by such issuance takes place. “World Bank Group Portfolios” mean the assets (portfolios) of the World Bank Group entity for which the investment policy was set, and the investment authorization approved, by

³ The Global Forum may under certain circumstances evaluate non-members.

the Board of the relevant World Bank Group entity.⁴ Treasury believes that application of the tax transparency policy to its activities is appropriate; however, should the substantive tax transparency standards or the Peer Review Process be materially revised in the future, Treasury may reevaluate this matter and consult with the Board, as appropriate.

10. For avoidance of any doubt, the restrictions will not apply to (i) any investment in, or acquisition of, securities or other instruments the proceeds of which are put to use for projects physically located in a country, even where such jurisdiction does not meet international norms for tax transparency, as described above, and (ii) any investment in, or acquisition of, public equity securities and related instruments. Similarly, no restrictions will apply to the issuance by the World Bank or IFC of debt, any derivative transactions in connection therewith, or any capital market client related activities, in any jurisdiction.
11. *Implementation; Communication; Updates to the Board.* This policy will be effective immediately. As part of the implementation of this policy, the World Bank Group will develop a strategy to communicate the details of this policy to allow stakeholders, including private sector investors and clients, to make informed decisions. Management will report back to the Board within not more than 12 months regarding its experience in implementing this policy, in the context of ongoing international developments in this area.

⁴ Specifically, these portfolios are: IBRD Portfolio: the Resolution No 2008-0015 Amending Resolution 2008-0001 General Investment Authorization (M2008-0068), IDA Portfolio: the Resolution No IDA 2008-0009 Amending Resolution No IDA 2001-1 General Investment Authorization (M2008-0068), MIGA Portfolio: Resolution No MIGA2010-0001 Amending Resolution MIGA2004-0001 General Investment Authorization, and IFC Portfolio: Resolution No IFC 2007-0057 General Investment Authorization.