

# IBRD/IFC/MIGA/IDA Policy

## Use of Intermediate Jurisdictions in World Bank Group Private Sector Operations

### **Bank Access to Information Policy Designation**

Public

### **Catalogue Number**

SEC5.06-POL.127

### **Issued**

January 18, 2023

### **Effective**

January 23, 2023

### **Content**

Policy governing the use of intermediate jurisdictions in World Bank Group Private Sector Operations.

### **Applicable to**

IBRD, IFC, MIGA, IDA

### **Issuer**

Boards of IBRD, IDA, IFC and MIGA

### **Sponsor**

Vice President and Chief Risk, Legal and Admin Officer, MIGCS; Vice President and General Counsel, CLSVP; Vice President, OPSVP

## SECTION I – PURPOSE AND APPLICATION

1. This Policy sets out Principles governing the use of Intermediate Jurisdictions (IJs) in the Private Sector Operations of each WBG Institution.
2. These Principles are aligned with recognized international standards referred to in Sections II and III of this Policy (the “recognized international standards”) and reflect:
  - a. the importance of cross-border investments for private sector development,
  - b. the legitimate purposes served by IJs in facilitating cross-border investments,
  - c. the risk that IJs that do not operate consistently with recognized international standards can be used for illegitimate purposes, such as tax evasion or the concealment of Illicit Financial Flows (IFFs), and
  - d. the importance of tax revenues to Domestic Resource Mobilization (DRM) that can be adversely impacted by potential investment structures that do not meet international standards for appropriate tax structuring.
3. The Principles set out in this Policy are intended to:
  - a. mitigate the risk of IFFs, tax evasion, or abusive tax planning in WBG Private Sector Operations,
  - b. guard against certain potential tax-related legal, credit and reputational risks in WBG Private Sector Operations,
  - c. differentiate between the use of IJs that operate consistently with, or working towards operating consistently with, recognized international standards and those that do not.
4. The WBG works with member countries, clients, and partners at the global, country, and corporate level to foster international tax and transparency and AML/CFT standards. This work includes: (i) the WBG’s global engagement with multilateral institutions and standard-setters; (ii) the provision of technical assistance by the Bank to member countries to improve their overall tax transparency (including AEOI), their international tax framework to tackle base erosion and profit shifting (including complying with the BEPS minimum standards), and their AML/CFT framework; and (iii) the promotion by IFC and MIGA to private sector clients of appropriate tax practices, including responsible tax principles that articulate corporate values in dealing with tax related issues.
5. This Policy applies to IFC, MIGA, and the Bank (together, WBG Institutions).
6. The WBG Institutions support private sector development and foreign direct investment in different ways and, accordingly, the implementation of these Principles varies per their respective constituent instruments and according to the respective business models of each institution. This Policy is implemented by each WBG Institution through directives, procedures and guidance tailored to each WBG Institution’s Private Sector Operations (collectively, the Implementing Documentation).

## SECTION II – DEFINITIONS

As used in this Policy, capitalized terms or acronyms have the following meanings:

1. **AEOI:** automatic exchange of information regarding the financial accounts of non-residents pursuant to standards reviewed and monitored by the Global Forum.
2. **Bank:** IBRD and/or IDA (whether acting in its own capacity or in the capacity as administrator of trust funds funded by donors).
3. **Base Erosion and Profit Shifting (BEPS):** tax planning strategies used by enterprises to exploit gaps and mismatches in tax rules between jurisdictions to artificially shift profits from one jurisdiction to lower or no-tax jurisdictions.
4. **BEPS Inclusive Framework (BEPS IF):** the framework established by the OECD by which participating jurisdictions commit to four (4) minimum standards on BEPS-related issues: harmful tax practices, treaty abuse, country-by-country reporting (CBCR) and dispute resolution mechanisms.
5. **Board:** the Boards of Executive Directors of International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA); and the Boards of Directors of International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).
6. **Committed IJ:** a jurisdiction that is committed to AEOI and the BEPS IF, or Equivalent Standards.
7. **Control Structure:** a transaction structure in which a shareholder has direct or indirect ownership by vote or value of 50% or more of the enterprise or less than 50% if the facts and circumstances indicate de facto control.
8. **Domestic Resource Mobilization (DRM):** the process through which jurisdictions raise, allocate, and spend their own funds to finance public services including, but not limited to, the generation of revenue from domestic taxation and other activities.
9. **Equivalent Standards:** standards aimed at the objectives of tax transparency or the four (4) BEPS-related minimum standards and that require satisfactorily rigorous systems to meet those objectives. For example, the United States has agreements in place pursuant to the Foreign Account Tax Compliance Act (FATCA) that provide for exchange of financial account information with appropriate exchange partners and is a member of BEPS IF and therefore the United States (including its territories) satisfies Equivalent Standards.
10. **Exchange of Information on Request (EOIR):** cross-border exchange of tax-relevant information on request, pursuant to standards reviewed and monitored by the Global Forum. Jurisdictions are rated by the Global Forum as Compliant, Largely Compliant, Partially Compliant or Non-Compliant with the EOIR standards through a peer review process.
11. **Financial Action Task Force (FATF):** an intergovernmental policymaking body which sets international standards on anti-money laundering (AML) and countering the financing of terrorism (CFT). It also monitors its member countries' progress in combating money laundering

and terrorist financing. Based on peer reviews of the AML/CFT standards, FATF regularly publishes a list of jurisdictions with serious weaknesses and potential gaps in their anti-money laundering and counter-terrorist financing frameworks.

12. **Global Forum:** a group of more than 160 jurisdictions that promotes, reviews and monitors member countries' implementation of standards for tax transparency, including EOIR and AEOI.
13. **Guarantee Holder:** the person or entity in whose favor a MIGA or Bank guarantee is issued.
14. **IJ or Intermediate Jurisdiction:** a jurisdiction of a holding company that is outside the host country of the project but is not the jurisdiction of the sponsor or, for MIGA and the Bank, the Guarantee Holder. It is "intermediate" – meaning (a) in the case of IFC, it sits in the structure between the jurisdiction of the project enterprise and jurisdiction of the ultimate beneficial owner(s), or (b) in the case of MIGA, it sits in the Control Structure between the project enterprise, the Guarantee Holder and the Guarantee Holder's ultimate beneficial owner(s), or (c) in the case of the Bank, it sits in the structure of the Guarantee Holder's proposed investment in the project.
15. **Illicit Financial Flows (IFFs):** funds illegally earned, transferred, or used that cross border.
16. **Implementing Documentation:** has the meaning set forth in Paragraph 6 of Section I above.
17. **Investment or Support:** includes loans, equity or quasi-equity investments, risk sharing facilities or guarantee support provided to Private Sector Operations by each WBG Institution in accordance with its policies, directives and procedures. It does not include advisory services.
18. **Non-Committed IJ:** a jurisdiction that is not committed to AEOI and the BEPS IF, or Equivalent Standards.
19. **Principles:** the core principles on the use of intermediate jurisdictions in WBG Private Sector Operations described in Section III of this Policy.
20. **Support Beneficiary:** for any WBG Investment or Support, includes the borrower, investee company, Guarantee Holder or controlling sponsor(s), as described in the applicable policies, directives and procedures of each WBG Institution.
21. **WBG Institution:** any one of IBRD, IDA (collectively the Bank), IFC and MIGA.
22. **WBG Private Sector Operations:** for the purposes of this Policy, with respect to IFC, this means any loan, equity or quasi-equity investment made by IFC, any guarantee issued by IFC, or any risk sharing facility or trade finance facility in which IFC is a guarantor or participant; for MIGA, this means any guarantee issued by MIGA or other finance facility in which MIGA is a guarantor; and for the Bank, this means private-sector project-based guarantee operations governed by the *Bank Policy, Investment Project Financing*.

## SECTION III – SCOPE

The following Principles apply to the use of IJs in WBG Private Sector Operations:

1. **Tax Due Diligence**

Each WBG Institution provides Investment or Support for a Private Sector Operation that uses an IJ in the project only when, following its tax due diligence, it is satisfied that the IJ structure is not designed to be used for tax evasion or abusive tax planning. The focus of tax due diligence is on taxes to be paid at the project enterprise level or in the host country. The Implementing Documentation of each WBG Institution describes each institution's tax due diligence approach to undertake this assessment, reflecting that institution's specific business model.

## 2. Alignment with International Standards

- a. The WBG recognizes as leading international practices the widely endorsed objectives and principles of the Global Forum (EOIR and AEOI), the BEPS Inclusive Framework (BEPS IF) and the Financial Action Task Force (FATF) recommendations for combating money laundering and terrorist financing.
- b. The WBG embeds EOIR as an eligibility criterion for providing WBG Investment or Support to Private Sector Operations that use IJs. If there is a Non-Compliant or Partially Compliant IJ in the project Control Structure, Management of the relevant WBG Institution will not submit the project to the Board for consideration, approval or further processing<sup>1</sup> unless: (i) the relevant IJ is in a "Transition Period" as provided in Paragraph 3 of this Section or (ii) the Support Beneficiary (or other relevant enterprise) agrees to redomicile the relevant entity to a Compliant or Largely Compliant IJ or to remove such entity from the project Control Structure as described in Paragraph 4 of this Section.
- c. The WBG Institutions follow the principles of the AEOI and BEPS IF as eligibility criteria for projects considered for WBG Investment or Support. The WBG expects that where project Control Structures use IJs, those IJs will be Committed IJs. In exceptional cases, if there is a Non-Committed IJ in the project Control Structure at the time of project preparation, the project is subject to tax due diligence carried out by the relevant WBG Institution in accordance with its Implementing Documentation. The project may be submitted to the Board for its consideration and approval on a full Board discussion basis, or proceed to further processing, if: (i) Management of the relevant WBG Institution determines that, based on tax due diligence and analysis, the use of a Non-Committed IJ does not present material risks of tax evasion, IFFs or material negative impacts on tax receipts in the project or host country; or (ii) the Support Beneficiary (or other relevant enterprise) agrees to redomicile the relevant IJ to a Committed IJ or to remove the IJ from the project Control Structure, as described in Paragraph 4 of this Section.
- d. The WBG institutions consider the FATF 'blacklist' as an exclusion criterion for projects considered for WBG Investment or Support. If there is an IJ on the FATF 'blacklist' in the project Control Structure (i.e., an IJ identified by FATF as being subject to "countermeasures" at the time of project preparation or underwriting), the project will not proceed for Board consideration or further processing unless the Support Beneficiary (or other relevant enterprise) agrees to redomicile the relevant entity to a an IJ that is not blacklisted or to remove that entity from the project Control Structure as provided in Paragraph 4 of this Section.

---

<sup>1</sup> The references to further processing in Paragraphs 2 and 4 of Section III refer to proceeding to signing of a Bank-financed Private Sector Operation, in which the Guarantee Holder is generally not identified until after Board approval of the operation. When the Guarantee Holder of a Bank-financed Private Sector Operation identified after Board approval of the operation includes the use of an IJ in its structure that is Non-Committed or has strategic deficiencies, but that the Bank has determined does not present material risks as described in Paragraphs 2c and 2e, the operation will be re-submitted to the Board for approval.

- e. If there is an IJ on the FATF 'grey list' in the project Control Structure (i.e., an IJ identified by FATF as having "strategic deficiencies" at the time of project preparation or underwriting) or FATF "black list" not covered by 2.d. (i.e. an IJ subject to a call to apply enhanced due diligence by FATF, but not subject to a call to apply countermeasures), the project is subject to integrity due diligence, carried out by the relevant WBG Institution in accordance with its Implementing Documentation. The project may be submitted for Board consideration or further processing if Management of the relevant WBG Institution determines that, based on integrity due diligence and analysis, the use of an IJ domiciled in a FATF grey-listed jurisdiction does not present a material risk of money laundering or terrorism financing relating to the project.

**3. Transition Period for the EOIR Standard.** An IJ is only considered Non-Compliant or Partially Compliant once a final determination regarding its EOIR rating has been made by the Global Forum. This principle is consistent with the Global Forum's approach that allows a jurisdiction to seek a Supplementary Review of its initial rating to allow it time to achieve EOIR norms. Therefore, an IJ that is Non-Compliant or Partially Compliant per a Global Forum EOIR report is permitted a Transition Period to meet such norms until the date its Supplementary Review report is issued by the Global Forum, if the following requirements are satisfied:

- a. Within 3 months from the date of the published report containing the initial rating, the IJ commits to correct the deficiencies identified by the review; and
- b. Within 14 months from the date of the published report containing the initial rating, the IJ files a request with the Global Forum for a Supplementary Peer Review report, and the Global Forum agrees to prepare such a report.

#### **4. Re-domiciliation or Removal**

A project may be submitted for Board consideration or further processing with a Non-Compliant, Partially Compliant or Non-Committed IJ based on plans to re-domicile or remove the IJ from the project Control Structure if those plans include: (i) a contractual undertaking by a Support Beneficiary (or other relevant enterprise) to remove the relevant IJ or to re-domicile the relevant entity to a Compliant or Largely Compliant and Committed IJ within a reasonable time frame (taking into account time required to obtain relevant regulatory approvals); and (ii) appropriate contractual remedies for any breach of the obligation to remove or re-domicile the IJ.

#### **5. Board Information**

Consistent with its Implementation Documentation and Access to Information Policy, each WBG Institution includes in its Board documents for Private Sector Operations that use IJs information about: (i) IJs used in the project, including the status of such IJs per their EOIR ratings, commitment to AEOI and the BEPS IF or Equivalent Standards, and above-mentioned FATF lists; (ii) its due diligence in accordance with its Implementation Documentation; and (iii) where applicable, relevant information on tax due diligence and analysis, or re-domiciliation or removal arrangements per Paragraph 2(c) and 4, respectively, of this Section. For the Bank, in whose Private Sector Operations the Guarantee Holder is generally not identified until after Board consideration of the operation, information about IJs is determined before the Guarantee Agreement is signed, and Management informs the Board of such information once available when an IJ is used.

#### **SECTION IV – EXCEPTION**

N/A

#### **SECTION V – WAIVER**

Provisions of this Policy may be waived by the Board.

#### **SECTION VI – OTHER PROVISIONS**

N/A

#### **SECTION VII – TEMPORARY PROVISIONS**

N/A

#### **SECTION VIII – EFFECTIVE DATE**

This Policy is effective as of the date of its cover page.

#### **SECTION IX – ISSUER**

The Issuers of this Policy are as stated on its cover.

#### **SECTION X – SPONSORS**

The Sponsors of this Policy are as stated on its cover.