EDFI GUIDELINES FOR OFFSHORE FINANCIAL CENTRES[1] [2]

EDFI has established a permanent working group ("Working Group") to develop and maintain shared guidelines ("Guidelines") for transactions involving EDFIs and entities domiciled in offshore financial centres ("OFCs")[3].

The Working Group constantly reviews the Guidelines to ensure that they are fit for purpose and reflect evolving best practice.

The recommendations of the Working Group are summarised in the Executive Summary below.

Executive Summary

Definition of OFCs for the purposes of this Paper

There is no single accepted definition of the term "OFCs", but EDFI considers the following to be the key characteristics of jurisdictions, which are typically regarded as OFCs[4]:

- large numbers of financial institutions engaged primarily in business with non-residents;
- external assets and liabilities disproportionate to domestic financial intermediation designed to finance domestic economies;
- low taxation of non-residents with limited or no activities "onshore"; and
- stable commercial, legal and regulatory infrastructures, which facilitate cross-border investments.

Development rationale for transactions by EDFIs involving OFCs

- OFCs typically provide stable legal and regulatory infrastructures, which accommodate the requirements of institutional investors seeking to invest in the private sector in developing countries. Many developing countries, in contrast, do not;
- OFCs typically accommodate a wide range of financial structures (including (combinations of) mezzanine, equity and debt) suitable for investment in the private sector in developing countries;
- OFCs generally allow the tax neutral pooling of capital, which is then used for investment in the private sector in developing countries. An investor in a pooled

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[1] As at 1 April 2011

[2] Individual DFIs may however choose to take a more restrictive position towards OFCs

[3] International finance institutions such as EBRD, EIB and IFC have developed guidelines of their own in relation to the use of OFCs

[4] Derived from various sources

investment vehicle should be placed in no worse a position than if it had invested in the underlying investment directly. If such pooling were to be uneconomical or inefficient, institutional investors would be discouraged from investing in the private sector in developing countries.

- The use of special purpose investment vehicles ("SPVs") domiciled in OFCs permits developing countries to access international capital markets.

If EDFIs were to be restricted from using OFCs when structuring investments in the private sector in developing countries, their ability to (i) play a catalytic role in attracting institutional capital into those countries; and (ii) ensure that their capital (and the institutional capital invested alongside it) is invested in accordance with sound environmental, social and governance policies would be considerably limited.

Criteria for determining whether an OFC is appropriate for EDFI investment

EDFIs should not be associated with harmful practices, such as tax evasion, money laundering and non-transparency.

By following the activities and reports of supervisory institutions such as the Organisation for Economic Co-operation and Development ("OECD"), the Global Forum on Transparency and Exchange of Information for Tax Purposes[5] ("Global Forum") and the Financial Action Task Force ("FATF"[6]) closely, EDFI will apply the following criteria to determine what is an acceptable OFC for EDFI investment purposes:

- Committed Jurisdiction: the OFC should have (i) substantially implemented the Global Forum's Standards of Transparency and Exchange of information for Tax Purposes; and (ii) complied with or demonstrated clear progress towards satisfying OECD, Global Forum and FATF values in respect of the matters below.
- Transparency: the OFC should be transparent in relation to the formation and beneficial ownership of SPVs. Each EDFI will check transparency as part of its own investment due diligence;
- Exchange of information: the OFC must have entered into bilateral tax information exchange agreements consistent with the standards set by the OECD model (TIEA) or double tax conventions including a provision consistent with Article 26 of the OECD Model Tax Convention on Income and Capital. If this is not the case, EDFIs will undertake enhanced due diligence on the OFC before determining its appropriateness for an EDFI investment;

[5] The Global Forum is the multilateral framework within which work in relation to transparency and exchange of information for tax purposes has been carried out by both OECD and non-OECD economies since 2000.

[6] The FATF is an inter-governmental body created in 1989 under the helm of the OECD whose purpose is the development and promotion of policies both at national and international levels, to combat money laundering and terrorist financing. OECD encourages OFCs to introduce and apply rules that provide transparency on activities and beneficial owners to ensure that those jurisdictions are not only used for tax evasion. Over the past ten years, OECD has investigated OFCs regularly and reported on the status quo.

- Financial sector integrity: the OFCs' implementation and enforcement of regulations to prevent fiscal and financial abuses should be checked as part of each EDFI's own investment due diligence; and
- Capital flight: if an OFC is found to be involved in illicit capital flight from developing countries (notwithstanding its presence on any published list), EDFIs will undertake enhanced due diligence as to the appropriateness of continuing to recognise such OFC as an acceptable OFC for EDFI investment purposes.

The EDFIs (through the Working Group) constantly review relevant information and share experiences, with the aim of further harmonising the EDFI approach to investing in, or via, OFCs over time.

Supporting tools to mitigate risk of non-compliance with transparency, anti-money laundering and tax regulations

The EDFIs will create a due diligence and a legal documentation checklist, which will be used by EDFIs for best practices purposes. The checklists will cover both direct investments and indirect, intermediated investments (for example, investments through private equity or debt funds).

Maintenance

The Working Group is permanent and will continue until further notice. It will be responsible for providing and reviewing new information in relation to the Guidelines and revising the Guidelines from time to time. The Working Group may approach EBRD, EIB and IFC from time to time.

Conclusion

EDFIs commonly use OFCs when structuring investments in the private sector in developing countries. It is the Working Group's view that it is in the best interests of developing countries for EDFIs to continue using OFCs in their investment structures provided that the OFCs used meet the criteria set out in the Guidelines.