



BANQUE D'INVESTISSEMENT ET DE DEVELOPPEMENT DE LA CEDEAO  
ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT  
BANCO DE INVESTIMENTO E DE DESENVOLVIMENTO DA CEDEAO

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## **POLICY AND PROCEDURES REGARDING TAX AVOIDANCE AND NON-COOPERATIVE JURISDICTIONS**

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## **I. Introduction**

The ECOWAS Bank for Investment and Development (EBID) is committed to the highest standards of integrity in line with principles and standards defined in its policies and procedures and the ECOWAS Member States commitments in terms of tax transparency and exchange of information.<sup>1</sup>

The present Policy takes account of the AML/CFT standards as promoted by the Economic Community of West African States (ECOWAS), the Financial Action Task Force (FATF), the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), and the good governance principles promoted by the EU, OECD, the Group of Twenty (G20) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).

Criminal activities such as money laundering, terrorist financing and tax crimes, as well as non- criminal activities such as tax avoidance undermine the efforts to ensure sustainable development of the West African economies and the ability to collect

adequate public revenues. Illegal and other abusive tax practices may be facilitated by, inter alia, multijurisdictional corporate structures and recourse to jurisdictions which are considered non-aligned with internationally agreed standards.

EBID supports standard setting organisations in its efforts to combat tax crimes and tax avoidance, with the aim of creating a fairer and more stable business environment and a level playing field. Contracting counterparties to EBID are expected to align themselves with the international standards in the fields of AML-CFT as well as tax good governance, where applicable, taking into account business rationale and general business practices. Therefore, EBID requires to its contracting counterparties to disclose relevant tax good governance information.

Against this background and in order to mitigate the risk of misuse of EBID funds, and where relevant, funds from other sources, for the purpose of activities which are illegal or abusive in relation to applicable laws, the Bank continuously enhances the effectiveness of its compliance and control framework. The scope of the framework applicable to EBID operations is set out, inter alia, in this Policy, the Bank' AML-CFT Policy and Procedures, the Policy and Procedure on Integrity, Fraud Prevention and Anti-Corruption and the Code of Ethics, all to be read in conjunction.

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<sup>1</sup> <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>

The Bank supports efforts aimed at compliance of jurisdictions' regimes with international and regional tax good governance standards. While ensuring compliance of taxpayers with tax legislation is a responsibility of competent national authorities, the Bank will continue to play its role in supporting tax transparency, fair taxation and anti- BEPS standards.

EBID strives to enter into business relationships with contracting counterparties that are compliant with applicable laws and best market standards. The Bank therefore requires its contracting counterparties to comply with all applicable laws, including in the area of AML-CFT and taxation.

The presence of elements of tax avoidance concerns or of jurisdictions listed under the relevant policies for tax, money laundering or counterterrorism purposes are considered as higher risk indicators by the Bank and trigger enhanced due diligence. In accordance with the relevant policies EBID will not engage in such projects.

The Bank will require that when its funds are passed on to final beneficiaries via financial intermediaries, their allocation should be in line with the principles of this Policy.

**II. Main definitions**

For the purposes of this Policy:

1. **“AML-CFT”** means Anti-Money Laundering and Combatting the Financing of Terrorism;
2. **“AML Policy and Procedures”** means the EBID’ Framework Document on Anti- Money Laundering, Countering the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction and the Procedures for the Application of the Framework Document on Anti-Money Laundering, Countering the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction;
3. **“Beneficial Owner”** shall have the same meaning as ascribed to the term under the AML Policy and Procedures or, where applicable, relevant FATF and GIABA Recommendations as well as Global Forum’s standards;
4. **“BEPS”** means base erosion and profit shifting;
5. **“Contracting Counterparty(ies)”** means direct contractual counterparts of EBID that are either receiving or managing financial support under an EBID financing and investment operation;
6. **“Cross-border Operations”** means operations where (i) the jurisdiction where the Contracting Counterparty is incorporated or established and (ii) the jurisdiction where the operation is physically implemented are different;
7. **“EBID”** means ECOWAS Bank for Investment and Development;
8. **“ECOWAS”** means the Economic Community of West African States;
9. **“EBID NCJ Policy and Procedures”** or **“Policy and Procedures”** means the EBID Policy and Procedures on Tax Avoidance and non-Cooperative Jurisdictions;
10. **“FATF”** means Financial Action Task Force;
11. **“GIABA”** means de Intergovernmental Action Group on Anti-Money Laundering in West Africa;

**12. “Global Forum”** means the Global Forum on Transparency and Exchange of Information for Tax Purposes;

**13. “IFIs”** means International Financial Institutions;

**14. “Lead Organisations”** means organisations and standard setting bodies, including the ECOWAS, African Union, the United Nations, the International Monetary Fund, the Financial Stability Board, the FATF, GIABA, the OECD, the Global Forum, the G20, the Inclusive Framework on BEPS and any successor organisation, as the case may be;

**15. “NCJ”** means “**Non-Compliant Jurisdiction**”, i.e. a jurisdiction classified by one or more Lead Organisations for not having made sufficient progress towards satisfactory implementation of internationally agreed standards in connection with AML-CFT and/or tax transparency/tax good governance standards, as applicable and includes the following:

(a) “**Restricted Jurisdiction**” means a jurisdiction classified by one or more Lead Organisations as “non-compliant”, “partially compliant”, “non-cooperative” or having an equivalent poor rating in connection with the above mentioned international standards;

(b) “**Prohibited Jurisdiction**” means a jurisdiction classified by one or more Lead Organisations as presenting ongoing and substantial AML-CFT risks, having repeatedly failed to address and/or remedy (as the case may be) identified strategic deficiencies in its AML-CFT framework and for which call for action on members of the classifying Lead Organisation applies; or which is a Restricted Jurisdiction for both AML-CFT and tax purposes;

**16. “NCJ Link”** means any of the links below to an NCJ:

(a) **Location Link**, where the Contracting Counterparty is established or incorporated in an NCJ;

(b) **Ownership Link**, where the Contracting Counterparty is owned by a legal or natural person established or incorporated in an NCJ;

(c) **Control Link**, where the Contracting Counterparty is controlled by a legal or natural person established or incorporated in an NCJ;

- 17. “NCJ Operation”** means a lending (including equity investments), borrowing, treasury or guarantee operation with an NCJ Location Link;
- 18. “New or Renewed Operations”** means (i) any newly signed financing and investment operation or (ii) any signed financing and investment operation which is contractually amended in order to increase the financing amount or extend the scheduled tenor;
- 19. “OECD”** means the Organisation for Economic Cooperation and Development;
- 20. “Prohibited Conduct”** shall have the meaning as ascribed to the term under the EBID Policy and Procedures on Integrity and Prevention of Fraud and Anti-Corruption , as applicable;
- 21. “Reference Lists”** means ratings and/or lists compiled by the Lead Organisations assessing the level of adherence and/or implementation of internationally agreed standards in the field of AML-CFT and tax good governance, in particular in connection with Targeted Activities;
- 22. “Targeted Activities”** means (i) criminal activities such as money laundering, financing of terrorism, tax crimes (i.e. tax fraud and tax evasion) and (ii) tax avoidance practices;

### **III. Scope of the Policy**

This Policy applies to:

- a) all EBID operations, including but not limited to, operations defined in the Statement of General Policy on Loans, Guarantees and Investments and in the legal framework applicable to procurement and grant operations, among others.
- b) all borrowing and treasury activities with an NCJ Location Link, where the approach followed shall take into account the specificities of the activities.

### **IV. Principles**

EBID is fully aware that NCJs can raise serious integrity concerns and are particularly exposed to the risk of facilitating Targeted Activities. With a view to mitigating the risk that EBID’s financing and investment operations could be misused for Targeted

Activities, this Policy introduces an approach designed to put in place appropriate mechanisms to protect EBID against the integrity and reputation risk related to such misuse. The purpose is to ensure that EBID's operations do not support actions that contribute to tax avoidance and do not enter into operations with entities incorporated or established in non-cooperative jurisdictions for tax purposes.

All operations are assessed in line with the standards of the due diligence process promoted by the Bank's AML Policy and Procedures and this Policy. EBID carries out specific due diligence on operations as set out hereafter. Operations with NCJ Links shall be subject to enhanced monitoring.

Principles of efficient use of resources and proportionality require that this Policy, as well as any guidelines and measures foreseen hereunder (operational procedures), follow a risk-based approach in line with the recently revised AML-CFT policy and procedures.

The core principles of the present Policy are the following:

- a) Prohibition against entering into New or Renewed Operations with an NCJ Link to a Prohibited Jurisdiction or Location Link to a Restricted Jurisdiction
- b) Enhanced Vigilance in connection with all operations with NCJ Links; and
- c) Reporting obligations to the Board

**V. Policy Guidelines**

The Bank will follow the guidelines below in all its operations.

**A. Prohibition**

EBID will not enter into any New or Renewed Operation with any NCJ Link to Prohibited Jurisdictions or NCJ Location Link to Restricted Jurisdictions, subject to the below.

**1. Prohibited Jurisdictions**

- (a) The Bank may enter into a New or Renewed Operation with an NCJ Link to Prohibited Jurisdictions only if the operation is physically implemented in the relevant Prohibited Jurisdiction and it does not present any indication that it is used for Targeted Activities.
- (b) In any event, the Bank will not make investments supporting the financial sector (e.g. participation in the recapitalisation of banks, insurance companies or other financial intermediaries) in a Prohibited Jurisdiction, except where the relevant

entity serves as a financial intermediary for EBID's investments in the relevant Prohibited Jurisdiction.

## **2. Restricted Jurisdictions**

- (a) The Bank may enter into a New or Renewed Operation with a Location Link to a Restricted Jurisdiction only if the operation is physically implemented in the relevant Restricted Jurisdiction and it does not present any indication that it is used for Targeted Activities.
- (b) Physical implementation exceptions for both Prohibited and Restricted Jurisdictions are envisaged in order to avoid penalising the local population of countries where EBID works. In the application of such exception, the Bank will assess in accordance with Enhanced Vigilance rules below whether the risk (if any) that the operation could be misused for Targeted Activities can be mitigated. It should be noted that the physical implementation exception applies, unless specifically excluded in the applicable mandates.

### **B. Enhanced Vigilance**

All operations with NCJ Links shall be subject to enhanced due diligence, which may consider, on a risk-sensitive basis, relevant elements of the Anti-Tax Avoidance Toolbox in Appendix 1 hereto. For all operations with NCJ Links EBID shall perform checks to determine whether:

- (a) the levels of transparency and integrity of the relevant operation are satisfactory to the Bank. In particular the Contracting Counterparty/ies and their Beneficial Owners must be clearly identified, in line with the AML Policy and Procedures or the relevant FATF and GIABA Recommendations, as applicable;
- (b) the Contracting Counterparty/ies can provide plausible justifications for the NCJ Location Link; or
- (c) there is a risk that the operation is (or may be) misused for Targeted Activities.

On a risk-sensitive basis and in line with EBID policies, the Bank may decide to extend the above-mentioned checks to operations with Contracting Counterparties incorporated or established in jurisdictions which are generally cooperative but have not yet solved outstanding tax good governance deficiencies. In such cases, the checks shall focus on the identified deficiencies of the relevant jurisdictions.

### **C. Reporting obligations to the Board**

The Board shall be informed of the existence of any operation with an NCJ Link and identified risk indicators of Targeted Activities in connection to an operation.

Furthermore, extended information regarding identified integrity concerns will be provided in accordance with Section VI.B. of this Policy. Such information shall be included in the relevant Board report. In the event that an NCJ Link comes into existence only after the Board’s approval and before signature, the information shall be given to the Board as soon as practicable after the services of the Bank have become aware of the existence of such a link.

For operations where approval is delegated by the Board, the Board shall be informed pursuant to the normal reporting procedures for delegated activities.

**VI. Measures implemented by the Bank**

**A. Due diligence in relation to NCJ and Targeted Activities**

In implementing the Policy, the Bank carries out specific due diligence to satisfy itself that:

- 1. the Contracting Counterparties are not incorporated or established in an NCJ (unless the physical implementation exception referred to below applies);
- 2. operations do not constitute an investment supporting the financial sector of a Prohibited Jurisdiction, unless the relevant entity serves as a financial intermediary for the Bank’s investments in the relevant Prohibited Jurisdiction;
- 3. the Contracting Counterparty/ies and their Beneficial Owners are identified;
- 4. in case of operations with any NCJ Links the presence of NCJs is identified and information is collected in accordance with Section VI.B.

EBID may engage in an NCJ Operation when:

- 1. the Contracting Counterparty/ies’ and the operation’s physical implementation location are in the same jurisdiction; and
- 2. the risk (if any) of the operation being misused for Targeted Activities can be mitigated.

**B. Tax Disclosures**

For NCJ Operations and operations with controlling shareholders of the Contracting Counterparties incorporated or established in an NCJ, the Contracting Counterparties will be requested to:

- disclose the economic rationale of the structure and the specific economic requirements that make recourse to the relevant structure necessary; and
- provide a description of the tax regime applicable to the proceeds of the operation.

For operations with any NCJ Links, EBID shall collect information about the level of commitment by the relevant NCJ to comply with tax good governance standards, such as:

1. the reason for inclusion of the relevant jurisdiction on the list of non-cooperative jurisdictions for tax purposes;
2. commitment to implement the automatic exchange of information;
3. membership of the Global Forum and satisfactory rating;
4. being signatory and a party of the OECD Multilateral Convention on Mutual Administrative Assistance;
5. existence of harmful preferential tax regimes, identified by certain Lead Organisations;
6. existence of tax regimes which facilitate offshore structures that attract profits without real economic activity;
7. membership of the Inclusive Framework on BEPS or implementation of the BEPS minimum standards; and
8. being a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

EBID Contracting Counterparties should take account of tax good governance principles and closely cooperate with the EBID for this purpose considering the relevant elements of the Anti-Tax Avoidance Toolbox in Appendix 1 hereto.

**C. Relocation requirements**

In addition to the general prohibition against carrying out NCJ Operations as outlined in section V.A., EBID adopts the relocation requirements for new Cross-border Operations with Contracting Counterparties incorporated or established in NCJs prior to signature of the contract.

On that basis, if the Contracting Counterparty's place of incorporation or establishment is or becomes classified as an NCJ by one or more Lead Organisations, EBID will not enter into New or Renewed Operations with these entities unless they relocate outside an NCJ prior to signing of the contract. As stated above the relocation requirements only apply to Cross-border Operations: by analogy with the principles stated in Section V.A. no relocation requirements will be imposed if the Contracting Counterparty is established or incorporated in the same NCJ in which the operation is physically implemented and the operation does not present a risk (if any) of being misused for Targeted Activities that cannot be mitigated.

**D. Additional measures**

EBID may adopt additional measures to address certain risk factors identified in the course of the due diligence performed on the NCJ Operation which may be perceived as being open to misuse by the Contracting Counterparty for Targeted Activities.

Possible measures to mitigate tax avoidance risk are provided in the Anti-Tax Avoidance Toolbox in Appendix 1 hereto.

On a risk-sensitive basis, EBID may decide to extend the above-mentioned additional measures to other operations in line with EBID policies.

**E. Integrity clauses in the EBID's contracts; Contracting Counterparty's declarations and undertakings**

When concluding agreements with financial intermediaries, EBID shall transpose certain principles referred to in this Policy into the relevant agreements and shall require the parties to report on their observance.

Additional contractual provisions addressing specific transparency and integrity issues can be imposed by EBID on a case-by-case basis for operations with an NCJ Link, following the publication of any assessment of the Lead Organisations which highlights weaknesses in their compliance with international standards.

In the event of breach of the above clauses, EBID may have recourse to appropriate measures under applicable laws, policies and rules, including cancellation or suspension of the financing. Entities found to have engaged in Prohibited Conduct may be excluded from future operations.

**VII. Implementation and Review of Policy**

The Board will adopt detailed operational procedures and due diligence measures for the implementation of this Policy.

The department responsible for risk management is responsible for the administration of this Policy pursuant to the applicable internal procedures established in close cooperation with the responsible for the compliance function.

The Bank will keep this Policy updated also taking into account relevant international regulatory development

**Appendix 1: Anti-Tax Avoidance Toolbox**

This toolkit shall be used by the Bank when identifying the potential risk of tax avoidance in operations.

I. Tax good governance expected from the Contracting Counterparties	II. Tax avoidance risk assessment tools and measures	III. Relationship with competent tax authorities	IV. Country-related tax risks
<p>EBID expects that Contracting Counterparties:</p> <ul style="list-style-type: none"> <li>• are compliant with the applicable national and international laws and to that extent refrain from artificial arrangements aimed at tax avoidance;</li> <li>• hold and provide adequate, accurate and current beneficial ownership information;</li> <li>• are aware of the Bank's tax good governance expectations highlighted in its NCJ Policy;</li> <li>• refrain from cross-border ownership structures involving jurisdictions with identified tax good governance deficiencies by lead Organisations which are primarily motivated by tax reasons and do not have economic substance;</li> <li>• proactively take account of their exposure to national and international tax risks arising from their ownership/control structure; and</li> <li>• endorse the arm's length principle for transactions with related parties.</li> </ul> <p>The Bank expects that Contracting</p>	<p>The Bank may seek confirmation from Contracting Counterparties that they do not benefit from harmful preferential tax regimes identified by certain Lead Organisations.</p> <p>Contracting Counterparties are subject to the risk- based tax due diligence assessment and may be requested to provide when relevant inter alia:</p> <ul style="list-style-type: none"> <li>• ownership structure chart indicating the relevant jurisdiction, economic rationale and tax regime applicable to major shareholders upstream the project ownership structure;</li> <li>• information regarding the statutory and effective tax rates and explanation of differences (if any) between such two rates;</li> <li>• Explanation on how adverse media reports regarding tax matters were or are currently being addressed;</li> <li>• explanation on disputed tax positions (if any);</li> <li>• description of the tax regime applied to the expected</li> </ul>	<p>When necessary, EBID may encourage dialogue between the Contracting Counterparties with competent tax authorities, with a view to them being informed about certain tax aspects of the Contracting Counterparty's structure and/or arrangements, such as the multijurisdictional ownership structure and/or the classification of financial instruments/entities, and/or information on direct or indirect shareholders.</p>	<p>In the course of tax due diligence EBID will take into account the tax integrity risks stemming from the presence of the Contracting Counterparties in certain jurisdictions. This assessment may consider inter alia:</p> <ul style="list-style-type: none"> <li>• jurisdiction's tax good governance deficiencies identified by Lead Organisations;</li> <li>• membership of a country / jurisdiction in the Global Forum;</li> <li>• membership of a country / jurisdiction in the Inclusive Framework on BEPS;</li> <li>• Adherence to the Multilateral Convention on Administrative Assistance in Tax Matters and/or existence of bilateral exchange of information instruments;</li> <li>• Adherence to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS;</li> </ul> <p>key indicators and outcomes of the</p>

<p>Counterparties who are financial intermediaries apply, on a risk-sensitive basis, principles referred to in the Bank's NCJ Policy when extending funding to final beneficiaries in line with the mechanisms laid down in section VI.E. of this Policy.</p>	<p>revenues/cash flows that will be generated from the supported project;</p> <ul style="list-style-type: none"> <li>• confirmation that their intra-group transactions (if any) are compliant with the arm's length principle and/or whether any transfer pricing documentation was prepared and provided to relevant tax authorities;</li> <li>• information on Common Reporting Standard - CRS and Foreign Account Tax Compliance Act- FATCA classification of the entities included in the ownership structure;</li> <li>• an independent tax opinion describing the applicable tax regime and confirming that the ownership structure does not present any indication of tax avoidance;</li> <li>• document from competent tax authorities on 'tax good standing' (if available).</li> </ul> <p>When plausible, EBID may engage in dialogue with Contracting Counterparties to address identified tax good governance deficiencies.</p>		<p>OECD work on international tax matters regarding the relevant jurisdiction.</p>
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