

# **PAPER**

## **RESTRUCTURING OF FIDIC OPERATIONS**

Report by  
FIDIC Executive Committee  
1 September 2017

### **1. Introduction**

The purpose of this paper is to inform Member Associations of the work that the FIDIC Executive Committee (EC) has undertaken in relation to the re-structuring of the FIDIC operations and to share the status of this work and the position the EC has reached to date.

It is the EC's intention to be completely transparent. Hence the EC is providing a full explanation of the basic assumptions made as well as its interpretation of the advice received from experts consulted (Deloitte, Eversheds).

This report is intended to expand on the information provided in the President's letter dated 17 July 2017 and not to repeat material contained in it.

FIDIC (as an organization) is domiciled in Geneva, Switzerland. It is not possible to transfer an association out of Switzerland to another country without liquidating this association in Switzerland, distributing remaining assets to members after paying all creditors and taxes due in Switzerland. The members would then need to re-assemble and found a new federation in the new location. The EC concluded that such an approach is not feasible.

This proposal now is only seeking to re-locate various functions to a location which would be of benefit to FIDIC moving forward.

### **2. Case for Change**

Further to the downward pressures impacting subscription revenue, the views expressed by MAs in Dubai and Marrakech and considering how best to address the costs of FIDICs activities, the EC embarked on an investigation of alternative locations for the Secretariat some years ago. This work was reported in a number of fora and last year in Marrakech.

In 2016, the EC began a broad review of how FIDIC may develop going forward, in the best interests of the Member Associations and the industry globally. This was also discussed in Marrakech.

The EC has now developed a Draft Strategic Plan which will be discussed in Jakarta. We have attached a copy of this Draft Strategic Plan (see the attached file V6) for your consideration. At a high level, the Plan has defined the future direction of FIDIC and highlighted areas that will require new resources and activity over the coming years. It will be finalised once it has been discussed more broadly and future management appointments are made.

What is evident in considering the Draft Strategic Plan is that to successfully and efficiently deliver on it, FIDIC will need to develop new functionality and capability.

The FIDIC Secretariat currently employs 7.5 staff (on a full-time equivalent basis). The breadth of activities undertaken by the Secretariat, while limited resources are available, has stretched Secretariat staff beyond any reasonable expectation of personal capacity. As a consequence, the Secretariat is now simply unable to undertake its current and additional work without considerable compromise in terms of level of service, efficiency or

effectiveness.

In describing this situation, the EC appreciates that the Secretariat's staff are very committed to FIDIC's success and have put in a massive effort trying to keep on top of the many aspects of FIDIC's activities. Nearly all staff are undertaking too many functions to be able to work efficiently or to do their work as well as they may personally wish.

The challenge facing the EC is to firstly align FIDIC around the Strategic Plan and to then be able to resource the Secretariat in such a way to achieve it. One aspect of achieving the objectives of Strategic Plan is to be able to do so at a reasonable cost.

Discussion in the past has centred on expanding the resources in the Secretariat, either through direct staff employment or through various outsourcing strategies. The Secretariat already outsources various activities and will continue to do so where this is cost effective.

Most of the EC's focus has been to explore relocating the Secretariat to a lower cost location and also access a broader range of talent and the new skills it may require to deliver the Strategic Plan.

Geneva is a very liveable city from social and environmental viewpoints, but it is a very small city by international standards (Population 2015: approx. 500,000) and an expensive city in world terms. It is home to many international organisations employing many expatriate staff. Accommodation is very expensive close to the city centre forcing many people to travel considerable distances (by European standards) to work.

Most currencies have weakened against the Swiss Franc (CHF). Among the G20 nations over the last 5 years, 3 remain on par, 4 have weakened between 1 - 10% of which 3 are Euro countries, 2 between 10 - 20%, 7 by between 20 – 40% and 3 greater than 40%. The downward pressure on subscriptions has no doubt been exacerbated by these currency movements and forced the EC to consider how it can provide better value for members and stakeholders.

The EC has found that there are cities, which would offer FIDIC considerable benefits going forward. These benefits are derived from: the size and intensity of the cities; the accessibility to and within cities; the broad range and tremendous depth of skill available; the fast pace of business model and technological innovation and adaptation. These considerations are believed to contribute to enabling high quality staff, while keeping competitive pressure on staff costs, to deliver the most efficient and effective service to FIDIC Member Associations.

### **3. Process and History**

To date the work undertaken by the EC has involved:

- Performing a preliminary location study. Amsterdam and Berlin were identified as the preferred options for relocation, as they factored in most criteria considered as beneficial to FIDIC's future. This work was overseen by a task group (Alain Bentejac, Kaj Möller, Geoff French, Enrico Vink)
- Engaging Deloitte to undertake a detailed study comparing possible relocation to either Amsterdam or Berlin against a base-case scenario of remaining in Geneva. This work was overseen by a task group (Alain Bentejac, Aisha Nadar, Enrico Vink with the assistance of Bernd Kordes as Treasurer)

- Based on the Deloitte Study, which was undertaken based on moving the entire operations of the FIDIC Secretariat to a new location, selecting Berlin for further detailed investigation, with Amsterdam retained as the second option.
- Engaging legal advisers, Eversheds, to address a number of specific issues, which included advice that:
  - The Berlin option would require establishing a wholly FIDIC owned limited liability company.
  - The preferred organisational model in Amsterdam was that FIDIC establishes a branch office.
- Engaging Eversheds (lawyers) and Deloitte to provide specific advice on inter-related corporate legal and tax matters.

## 4. Issues Identified

Selection of a preferred location for an operational entity involves many complex legal, tax and some risk issues.

### 4.1 *FIDIC as an organisational entity*

In principle, it is not possible to transfer an association from country A to country B without dissolving the association in country A and establishing a new association in country B. Dissolving FIDIC in Switzerland would in all likelihood give rise to substantial tax consequences in Switzerland (e.g. exit tax and value added tax).

### 4.2 *FIDIC domiciled in Switzerland*

The Swiss Law requires an association to retain its place of effective management in Switzerland. Relocating its management out of Switzerland may give rise to a deemed liquidation event, potentially crystalizing substantial tax consequences in Switzerland (e.g. exit tax and value added tax)

To remain compliant and avoid such tax consequences, the advice received from with Deloitte and Eversheds indicates that FIDIC will be required to retain its “Place of Effective Management” and administrative seat in Switzerland. This is a substantive and important legal question.

### 4.3 *Place of Effective Management*

Detailing what constitutes FIDIC’s place of effective management, by defining the functions that are retained in Switzerland and how they are staffed is critical to achieving a prudent outcome.

It is understood that the main business decisions and especially the decisions of the Executive Committee need to be taken and actioned in Switzerland.

### 4.4 *FIDIC’s Tax Status*

FIDIC is a tax citizen in Switzerland. It pays tax on profits it makes from commercial services and activities conducted by FIDIC. In determining what tax is payable, subscription income is not considered taxable income.

FIDIC has often been described as a “Not for Profit” organisation. However, this is a matter of policy not a statutory right. “Not for Profit” status is sought and obtained by NGO’s and other organisations whose activities are primarily related to a charitable or benevolent purpose or where the activities a primarily of public benefit.

As an industry association, the EC considers it unlikely that FIDIC would be granted “Not for Profit” status by Swiss tax authorities.

Based on FIDIC’s policy approach, the EC does not believe that differences in profit tax rates between jurisdictions is likely to impact the selection of a location for FIDIC’s service operations.

#### **4.5 Service Entity Tax Status**

The establishment of a service entity, that would essentially carry out activities for which it is paid or funded by FIDIC, is likely to give rise to a profit tax liability in the country in which that entity is established.

Tax authorities, seeking to secure that profit tax, would most likely require those services to be charged on an arms-length commercial basis, which would involve compliance with international transfer pricing rules.

Once a proposal of the envisioned organizational structure has been well defined, the EC considers that it would be necessary to obtain tax rulings in both Switzerland and the country in which the service entity is to operate, prior to any final decision.

#### **4.6 Value Added Tax**

Value Added Tax (VAT) is payable by FIDIC to its Swiss suppliers of services which FIDIC utilises. VAT is levied on services received at 8% of the value of the services. FIDIC also charges its clients VAT on the services it provides. However, VAT is not charged to clients purchasing services outside of Switzerland. In practice, only Swiss clients are charged VAT on services supplied. This VAT exemption for services supplied to international clients would be similar in Germany or the Netherlands.

FIDIC is then able to claim a VAT refund (VAT paid – VAT collected) and in that context FIDIC has been a net beneficiary of the Swiss VAT scheme.

#### **4.7 Import Tax**

Where FIDIC purchases services from international suppliers, an import tax, calculated at 8% of the value of the services is payable by FIDIC in Switzerland. The tax is not refundable nor can it be offset against VAT charged to FIDIC clients. It is understood that no such import taxes on services are levied in Germany or the Netherlands.

#### **4.8 FIDIC Statutes**

No changes to the statutes required to facilitate this proposal have been identified. Should any changes be identified, such a requirement may be addressed through an Extraordinary GAM or at the planned GAM in 2018.

#### **4.9 Operational Entity**

In establishing an operational entity in a country other than Switzerland, two options have been discussed:

- A branch office
- A wholly FIDIC owned subsidiary limited liability company.

There are differences between these options in terms of corporate risk, of FIDIC’s legal status in an European Union country, the perspectives of tax authorities in both Switzerland and the country in which the organisational entity operates, the impacts in Switzerland of taxes related to the services provided by servicing entity and the extent to which those services can or cannot be supplied directly to FIDIC clients.

These matters are being further investigated.

#### **4.10 Intellectual Property Rights**

FIDIC's Intellectual Property Rights are owned by FIDIC domiciled in Switzerland at this time. In establishing a service operation in another country, which may support FIDIC committees as well as the development and publishing of FIDIC documents, FIDIC would need to put in place various agreements with the operational entity, which ensures FIDIC's intellectual property rights are protected and that they do not unwittingly transfer to the operational entity over time. There may be a potential tax risk and impact on the potential valuation of those rights if an unwitting transfer was to occur. This will be further investigated and managed.

#### **4.11 Cost Savings**

The work undertaken by Deloitte and described in their report dated 16 June 2017, indicates that there are substantial cost advantages to be gained if FIDIC is wholly operated in either Berlin or Amsterdam compared to Geneva.

The EC does not intend to convert these savings to profit, but to invest in the new and expanded services by a stronger workforce and technologies required to deliver on the FIDIC Strategic Plan (currently in draft).

It is evident that the requirement to retain the place of effective management in Geneva along with possible costs associated with import tax and VAT may reduce the perceived cost advantages, identified by Deloitte.

As advice regarding these matters becomes clearer, the EC will continue to reassess the cost-benefit of the proposal, prior to finalising its recommendations and decisions.

### **5. Executive Committee Decisions**

The Executive Committee has considered various aspects of this matter and taken the following decisions in relation to it:

- From a policy perspective, remain a "Not for Profit" entity
- Maintain the effective place of management in Geneva
- Move the operations out of Geneva to a lower cost centre to the extent possible
- Should statute changes be required, submit these to the GAM for its consideration
- Preferred location for operations is Berlin with Amsterdam being the second preference, based on moving entire operations to new destination.
- Hire an additional resource on a temporary basis to assist the EC in undertaking investigations and in preparing the relocation plan
- Review cost savings estimates once the functions remaining in Geneva are determined.
- Obtain tax rulings first in Switzerland, then in the proposed host country, prior to finalising the matter
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The EC has discussed and continues to investigate but not yet come to any decisions on:

- The proposed functions and staffing levels in the Geneva office
- The type of operational entity – wholly owned subsidiary limited liability company or branch office
- Fall back options should the above not prove viable.

## **6. Planned Activity**

The EC is working to progress the following matters over the next month and will report on the status of these matters in Jakarta:

- Definition of the potential new operating model:
  - Definition of the functions that shall remain in Geneva
  - Definition of the key roles and personnel required to staff the Geneva Office
  - Definition of the functions that will be located in the new operational entity out of Switzerland
  - Definition of the key roles and personnel required to staff the new operational entity
  - Identification of the appropriate legal structure for the new operational entity
  - Definition of FIDIC's approach to management of the proposed operational structure
- Consultation with our professional advisers as may be required to validate impacts (e.g. Legal, Tax) and feasibility of the new operating model envisioned
- Review cost savings estimates in adopting the proposal
- Documentation of the proposal sufficient to facilitate any further consideration by the EC and the various meetings in Jakarta
- Brief advisers who may be engaged to seek a tax ruling from authorities in Switzerland and in the jurisdiction of the new operational entity.

**The Executive Committee**

**1 September 2017**

## **Attachment**

**Deloitte**

**Milestone Report – UPDATED 16 June 2017**

**Attachment**

**FIDIC**

**DRAFT Strategic Plan – Version 6**