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RELATED EXECUTIVE ORDERS

U.S. HOUSE OF REPRESENTATIVES

U.S. SENATE

over the last 20 years thereof, except that the guaranteed loan or any increments issued in a single transaction may include obligations having different maturities, interest rates, and payment terms if the aggregate scheduled debt service for all obligations issued in a single transaction equals the debt service for a single loan or increment of like amount having the standard terms described in this sentence. The guarantor shall not have the right to accelerate any guaranteed loan or increment or to pay any amounts in respect of the guaranteees issued other than in accordance with the original payment terms of the loan. For purposes of determining the maximum principal amount of any loan or increment to be guaranteed under this section, the principal amount of each such loan or increment shall be—

(A) in the case of any loan issued on a discount basis, the original issue price (excluding any transaction costs) thereof; or

(B) in the case of any loan issue on an interest-bearing basis, the stated principal amount thereof.

Title IV—Overseas Private Investment Corporation²⁰³

Sec. 231.²⁰⁴ **Creation, Purpose and Policy.**—To mobilize and facilitate the participation of United States private capital and skills in the economic and social development²⁰⁵ of less developed countries and areas, and countries in transition from nonmarket to market economies,²⁰⁶ thereby complementing the development assistance objectives of the United States, there is hereby created the Overseas Private Investment Corporation (hereinafter called the “Corporation”), which shall be an agency of the United States under the policy guidance of the Secretary of State.

The²⁰⁷ Corporation, in determining whether to provide insurance, financing, or reinsurance for a project, shall especially—

²⁰³Sec. 105 of the FA Act of 1969 (Public Law 91-175) added a new title IV. Prior to this, title IV had been titled “Surveys of Investment Opportunities.” For Executive Order concerning OPIC, see *Legislation on Foreign Relations Through 2005*, vol. I-B.

Title IV was amended extensively by title I of S. 2757 and title I of H.R. 5263, both enacted by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), as follows:

“Sec. 555. * * * *Provided further*, That title I of H.R. 5263 as passed by the House of Representatives on September 20, 1988, is hereby enacted into law: *Provided further*, That purchases, investments or other acquisitions of equity by the fund created by section 104 of H.R. 5263 as hereby enacted are limited to such amounts as may be provided in advance in appropriations Acts: *Provided further*, That notwithstanding any other provision of this Act, titles I and III of S. 2757 as reported by the Senate Committee on Foreign Relations on September 7, 1988, are hereby enacted into law: *Provided further*, That purchases, investments or other acquisitions of equity by the fund created by section 104 of S. 2757 as hereby enacted are limited to such amounts as may be provided in advance in appropriations Acts: * * *”.

Except in two instances, title I, S. 2757 and title I, H.R. 5263 are identical. Sec. 106 in each title amended sec. 235(a)(2) of the FA Act of 1961. Sec. 235(a)(2) was previously amended by Public Law 100-418, sec. 2203(b)(1)(A); H.R. 5263 took this into account. Public Law 100-418, sec. 2203(b)(1)(B) redesignated sec. 235(a)(5) of the FA Act of 1961 as sec. 235(a)(6). Sec. 107 in S. 2757 and H.R. 5263 amended this section, but H.R. 5263 took into account the redesignation by Public Law 100-418. Title III of S. 2757, which addresses the implementation of certain USIA Exchange Visitor Programs, is in *Legislation on Foreign Relations Through 2005*, vol. II, sec. E.

²⁰⁴22 U.S.C. 2191. Sec. 105 of the FA Act of 1969 (Public Law 91-175) added sec. 231.

²⁰⁵Sec. 2(1)(A) of the OPIC Amendments Act of 1974 (Public Law 93-390; 83 Stat. 809) struck out “progress” and inserted in lieu thereof “development”.

²⁰⁶Sec. 101 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651) struck out “friendly countries and areas,” and inserted in lieu thereof “countries and areas, and countries in transition from nonmarket to market economies.”

²⁰⁷Sec. 2(1) of Public Law 95-268 (92 Stat. 213) added this paragraph.

(1) be guided by the economic and social development impact and benefits of such a project and the ways in which such a project complements, or is compatible with, other development assistance programs or projects of the United States or other donors;

(2) give preferential consideration to investment projects in less developed countries that have per capita incomes of \$984 or less in 1986 United States dollars, and restrict its activities with respect to investment projects in less developed countries that have per capita incomes of \$4,269 or more in 1986 United States dollars (other than countries designated as beneficiary countries under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702), Ireland, and Northern Ireland); and²⁰⁸

(3)²⁰⁹ ensures that the project is consistent with the provisions of section 117²⁰⁹ (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act relating to the environment and natural resources of, and tropical forests and endangered species²⁰⁹ in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—

(a)²¹⁰ to conduct financing, insurance, and reinsurance operations on a self-sustaining basis, taking into account in its financing operations the economic and financial soundness of projects;

(b) to utilize private credit and investment institutions and the Corporation's guaranty authority as the principal means of mobilizing capital investment funds;

(c) to broaden private participation and revolve its funds through selling its direct investments to private investors whenever it can appropriately do so on satisfactory terms;

²⁰⁸The per capita income levels were increased from \$896 and \$3,887 in 1983 U.S. dollars by sec. 102 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268). Sec. 102 also added "(other than countries designated as beneficiary countries under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702))". Previously the per capita income levels were increased from \$680 and \$2,950 in 1979 U.S. dollars to \$896 and \$3,887 in 1983 U.S. dollars by sec. 3 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1669), and from \$520 and \$1,000 in 1975 U.S. dollars to \$680 and \$2,950 in 1979 U.S. dollars, respectively, by sec. 2(1) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021).

Sec. 105 of the Jobs Through Trade Expansion Act of 1994 (Public Law 103-392; 108 Stat. 4099) inserted ", Ireland, and Northern Ireland" in the parentheses.

²⁰⁹Sec. 4(a)(1)(C) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1669) added para. (3). The OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), made a correction to include section 117. S. 2757 also struck out "biological diversity" and inserted in lieu thereof "tropical forests and endangered species".

²¹⁰Sec. 2(1)(B) of the OPIC Amendments Act of 1974 (Public Law 93-390; 83 Stat. 809) amended and restated subsec. (a). It formerly read as follows: "(a) to conduct financial soundness of projects and the availability of financing from other sources on appropriate terms;".

(d) to conduct its insurance operations with due regard to principles of risk management including²¹¹ efforts to share its insurance risks and reinsurance²¹² risks;

(e)²¹³ to the maximum degree possible consistent with its purposes—

(1) to give preferential consideration in its investment insurance, reinsurance, and guaranty activities to investment projects sponsored by or involving United States small business; and

(2) to increase the proportion of projects sponsored by or significantly involving United States small business to at least 30 percent of all projects insured, reinsured, or guaranteed by the Corporation;

(f)²¹⁴ to consider in the conduct of its operations the extent to which less developed country governments are receptive to private enterprise, domestic and foreign, and their willingness and ability to maintain conditions which enable private enterprise to make its full contribution to the development process;

(g)²¹⁴ to foster private initiative and competition and discourage monopolistic practices;

(h)²¹⁴ to further to the greatest degree possible, in a manner consistent with its goals, the balance-of-payments and employment²¹⁵ objectives of the United States;

(i)²¹⁴ to conduct its activities in consonance with the activities of the agency primarily responsible for administering part I and the international trade, investment, and financial policies of the United States Government, and to seek to support those developmental projects having positive trade benefits for the United States;²¹⁶

(j)²¹⁴ to advise and assist, within its field of competence, interested agencies of the United States and other organizations, both public and private, national and international, with respect to projects and programs relating to the development of private enterprise in less developed countries and areas;

²¹¹Sec. 2(1)(C) of the OPIC Amendments Act of 1974 (Public Law 93-390) struck out “when appropriate,” after “including”.

²¹²Sec. 2(1)(C) of the OPIC Amendments Act of 1974 (Public Law 93-390) inserted “and reinsurance”.

²¹³Subsec. (e), as amended by Public Law 93-390, was amended and restated by sec. 2(2) of Public Law 95-268 (92 Stat. 213). It formerly read as follows:

“(e) to give preferential consideration in its investment insurance, financing, and reinsurance activities (to the maximum extent practicable consistent with the Corporation’s purposes) to investment projects involving businesses of not more than \$2,500,000 net worth or with not more than \$7,500,000 in total assets;”.

²¹⁴Sec. 2(5) of Public Law 95-268 (92 Stat. 214) struck subsecs. (f) and (l) and redesignated subsecs. (g) through (n) as (f) through (l), respectively. Subsecs. (f) and (l) formerly read as follows:

“(f) to encourage and support only those private investments in less developed friendly countries and areas which are sensitive and responsive to the special needs and requirements of their economies, and which contribute to the social and economic development of their people;”

and

“(l) to the maximum extent practicable, to give preferential consideration in the Corporation’s investment insurance, financing, and reinsurance activities to investment projects in the less developed friendly countries which have per capita incomes of \$450 or less in 1973 United States dollars; and”.

²¹⁵Sec. 2(1)(E) of the OPIC Amendments Act of 1974 (Public Law 93-390) inserted “and employment”.

²¹⁶Sec. 2(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021) inserted “, and to seek to support those developmental projects having positive trade benefits for the United States”.

(k)²¹⁷ (1) to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing for an eligible investor's proposed investment if the Corporation determines that such investment is likely to cause such investor (or the sponsor of an investment project in which such investor is involved) significantly to reduce the number of his employees in the United States because he is replacing his United States production with production from such investment which involves substantially the same product for substantially the same market as his United States production; and (2) to monitor conformance with the representations of the investor on which the Corporation relied in making the determination required by clause (1);

(l)²¹⁸ to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing for an eligible investor's proposed investment if the Corporation determines that such investment is likely to cause a significant reduction in the number of employees in the United States;

(m)²¹⁹ to refuse to insure, reinsure, or finance any investment subject to performance requirements which would reduce substantially the positive trade benefits likely to accrue to the United States from the investment; and

(n)²²⁰ to refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

Sec. 231A.²²¹ **Additional Requirements.**—(a) **WORKER RIGHTS.**—

(1) **LIMITATION ON OPIC ACTIVITIES.**—The Corporation may insure, reinsure, guarantee, or finance a project only if the country in which the project is to be undertaken is taking steps to adopt and implement laws that extend internationally recognized worker rights, as defined in section 507(4) of the Trade Act of 1974,²²² to workers in that country (including any designated zone in that country). The Corporation shall also include the following language, in substantially the following form, in all contracts which the Corporation enters into with

²¹⁷This subsection was originally added as subsec. (m) by sec. 2(1)(H) of the OPIC Amendments Act of 1974 (Public Law 93-390). It was redesignated as subsec. (k) by sec. 2(5) of Public Law 95-268; 92 Stat. 214.

²¹⁸This subsection was added as subsec. (n) by sec. 2(4) of Public Law 95-268 (92 Stat. 213), and redesignated as subsec. (l) by sec. 2(5) of the same Act.

²¹⁹Sec. 2(3)(C) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021) added subsec. (m).

²²⁰Sec. 4(a)(4) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1669) added subsec. (n).

²²¹22 U.S.C. 2191a. Sec. 5(a) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1670) added sec. 231A. Sec. 5(b) of the Act provides that sec. 231A(a) "shall not apply to projects insured, reinsured, guaranteed, or financed before the date of the enactment of this Act."

²²²Sec. 1954(b)(3)(A) of Public Law 104-188 (110 Stat. 1928) struck out "502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4))" and inserted in lieu thereof "507(4) of the Trade Act of 1974".

eligible investors to provide financial support under this title:²²³

“The investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and not to use forced labor. The investor is not responsible under this paragraph for the actions of a foreign government.”

(2) USE OF ANNUAL REPORTS ON WORKERS RIGHTS.—The Corporation shall, in making its determinations under paragraph (1), use the reports submitted to the Congress pursuant to section 504 of the Trade Act of 1974.²²⁴ The restriction set forth in paragraph (1) shall not apply until the first such report is submitted to the Congress.

(3) WAIVER.—Paragraph (1) shall not prohibit the Corporation from providing any insurance, reinsurance, guaranty, or financing with respect to a country if the President determines that such activities by the Corporation would be in the national economic interests of the United States. Any such determination shall be reported in writing to the Congress, together with the reasons for the determination.²²⁵

(4)²²⁶ In making a determination under this section for the People’s Republic of China, the Corporation shall discuss fully and completely the justification for making such determination with respect to each item set forth in subparagraphs (A) through (E) of section 507(4)²²⁷ of the Trade Act of 1974.

(b)²²⁸ ENVIRONMENTAL IMPACT.—The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented, unless for at least 60 days before the date of the vote—

(1) an environmental impact assessment or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has been completed by the project applicant and made available to the Board of Directors; and

²²³Sec. 102(a) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651) added the last sentence, including the quoted language required in contracts.

²²⁴Sec. 1954(b)(3)(B) of Public Law 104-188 (110 Stat. 1928) struck out “505(c) of the Trade Act of 1974 (19 U.S.C. 2465(c))” and inserted in lieu thereof “504 of the Trade Act of 1974”.

²²⁵On June 21, 1990, the President determined “that the waiver of section 231A(a)(1) with respect to Nicaragua, permitting the Overseas Private Investment Corporation to insure, reinsurance, guaranty, and finance projects in Nicaragua, is in the national economic interests of the United States.” (Presidential Determination 90-24; 55 F.R. 27631).

²²⁶Sec. 2203(c) of Public Law 100-418 (102 Stat. 1328) para. (4).

Sec. 902(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246; 104 Stat. 83) continued a suspension of OPIC’s issuing new insurance, reinsurance, guarantees, financing, or other financial support to the People’s Republic of China until the President reported to the Congress under subsec. (b) of that sec. that China had made certain political reforms, or that such assistance was in the national interest of the United States. For text of sec. 902, see *Legislation on Foreign Relations Through 2005*, vol. II, sec. D.

²²⁷Sec. 1954(b)(3)(C) of Public Law 104-188 (110 Stat. 1928) struck out “502(a)(4)” and inserted in lieu thereof “507(4)”.

²²⁸Sec. 3(a) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1745) redesignated subsec. (b) as subsec. (c), and added a new subsec. (b).

(2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.

(c) ²²⁸ PUBLIC HEARINGS.—(1) ²²⁹ The Board shall hold at least one public hearing each year in order to afford an opportunity for any person to present views as to whether the Corporation is carrying out its activities in accordance with section 231 and this section or whether any investment in a particular country should have been or should be extended insurance, reinsurance, guarantees, or financing under this title.

(2) ²²⁹ In conjunction with each meeting of its Board of Directors, the Corporation shall hold a public hearing in order to afford an opportunity for any person to present views regarding the activities of the Corporation. Such views shall be made part of the record.

Sec. 232. ²³⁰ **Capital of the Corporation.**—The President is authorized to pay in as capital of the Corporation, out of dollar receipts made available through the appropriation process from loans made pursuant to this part and from loans made under the Mutual Security Act of 1954, as amended, for the fiscal year 1970 not to exceed \$20,000,000 and for the fiscal year 1971 not to exceed \$20,000,000. Upon the payment of such capital by the President, the Corporation shall issue an equivalent amount of capital stock to the Secretary of the Treasury.

Sec. 233. ²³¹ **Organization and Management.**—(a) **STRUCTURE OF THE CORPORATION.**—The Corporation shall have a Board of Directors, a President, an Executive Vice President, and such other officers and staff as the Board of Directors may determine.

(b) **BOARD OF DIRECTORS.**—All powers of the Corporation shall vest in and be exercised by or under the authority of its Board of Directors (“the Board”) which shall consist of fifteen Directors, ²³² including the Chairman, with eight Directors ²³³ constituting a quorum for the transaction of business. ²³⁴ Eight Directors ^{233, 235} shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall not be officials or employees of the Government of the United States. At least two of the eight Directors ²³⁶ appointed under the preceding sentence shall be experienced in small business, one in organized labor, and one in cooperatives. Each such Director shall be appointed for a term of no more than three years. The terms of no more than three

²²⁹ Sec. 3(a)(3) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1745) inserted “(1)” before “The Board” and added a new para. (2).

²³⁰ 22 U.S.C. 2192. Sec. 105 of the FA Act of 1969 (Public Law 91-175) added sec. 232.

²³¹ 22 U.S.C. 2193. Sec. 105 of the FA Act of 1969 (Public Law 91-175) added sec. 233.

²³² Sec. 3(a)(1) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021) increased the number of Directors 11 to 15.

²³³ Sec. 3(a) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021) increased the number of Directors from six to eight.

²³⁴ Sec. 4(1) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1746) struck out two sentences at this point that designated the Administrator of AID as Chairman of the Board, ex officio, and the U.S. Trade Representative or Deputy U.S. Trade Representative as Vice Chairman of the Board, ex officio. The second sentence, establishing the USTR role, had been added by sec. 3(a)(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1021).

²³⁵ Sec. 4(2) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1746) struck out “(other than the President of the Corporation, appointed pursuant to subsection (c) who shall serve as a Director ex officio)” at this point.

²³⁶ Sec. 3(a) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) increased the number of Directors from one of the six to two of the eight.

such Directors²³⁷ shall expire in any one year. Such Directors shall serve until their successors are appointed and qualified and may be reappointed.

The other Directors shall be principal officers²³⁸ of the Government of the United States whose duties relate to the programs of the Corporation,²³⁹ including the President of the Corporation, the Administrator of the Agency for International Development, the United States Trade Representative, and²⁴⁰ one such officer²⁴¹ of the Department of Labor,²⁴² designated by and serving at the pleasure of the President of the United States. The United States Trade Representative may designate a Deputy United States Trade Representative to serve on the Board in place of the United States Trade Representative.²⁴³

There shall be a Chairman and a Vice Chairman of the Board, both of whom shall be designated by the President of the United States from among the Directors of the Board other than those appointed under the second sentence of the first paragraph of this subsection.²⁴⁴

All Directors who are not officers of the Corporation or officials of the Government of the United States shall be compensated at a rate equivalent to that of level IV of the Executive Schedule (5 U.S.C. 5315)²⁴⁵ when actually engaged in the business of the Corporation and may be paid per diem in lieu of subsistence at the applicable rate prescribed in the standardized Government travel regulations, as amended, from time to time, while away from their homes or usual places of business.

(c) PRESIDENT OF THE CORPORATION.—The President of the Corporation shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. In making such appointment, the President shall take into account private business experience of the appointee. The President of the Corporation shall be its Chief Executive Officer and responsible for the operations and management of the Corporation, subject to bylaws and policies established by the Board.

(d) OFFICERS AND STAFF.—The Executive Vice President of the Corporation shall be appointed by the President of the United

²³⁷Sec. 3(a)(3) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) increased the number of Directors from two to three.

²³⁸Sec. 3(e)(1) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “officials” and inserted in lieu thereof “principal officers”.

²³⁹Sec. 3(e)(2) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) inserted “whose duties relate to the programs of the Corporation”.

²⁴⁰Sec. 4(3)(A) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1746) inserted “the President of the Corporation, the Administrator of the Agency for International Development, the United States Trade Representative, and” after “including”.

²⁴¹Sec. 3(e)(3) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “an official” and inserted in lieu thereof “one such officer”.

²⁴²Sec. 3(b) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) added the reference to an official of the Department of Labor.

²⁴³Sec. 4(3)(B) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1746) inserted “The United States Trade Representative may designate a Deputy United States Trade Representative to serve on the Board in place of the United States Trade Representative.”.

²⁴⁴Sec. 4(4) of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1746) added this para.

²⁴⁵The rate of compensation at level IV of the Executive Schedule in 2006 is \$143,000 per annum (Executive Order 13393; 70 F.R. 76655; December 22, 2005).

States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. Other officers, attorneys, employees, and agents shall be selected and appointed by the Corporation, and shall be vested with such powers and duties as the Corporation may determine. Of such persons employed by the Corporation, not to exceed twenty may be appointed, compensated, or removed without regard to the civil service laws and regulations: *Provided*, That under such regulations as the President of the United States may prescribe, officers and employees of the United States Government who are appointed to any of the above positions may be entitled, upon removal from such position, except for cause, to reinstatement to the position occupied at the time of appointment or to a position of comparable grade and salary. Such positions shall be in addition to those otherwise authorized by law, including those authorized by section 5108 of title 5 of the United States Code.

(e)²⁴⁶ INVESTMENT ADVISORY COUNCIL.—The Board shall take prompt measures to increase the loan, guarantee, and insurance programs, and financial commitments, of the Corporation in sub-Saharan Africa, including through the use of an investment advisory council to assist the Board in developing and implementing policies, programs, and financial instruments with respect to sub-Saharan Africa. In addition, the investment advisory council shall make recommendations to the Board on how the Corporation can facilitate greater support by the United States for trade and investment with and in sub-Saharan Africa. The investment advisory council shall terminate 4 years after the date of the enactment of this subsection.

²⁴⁶Sec. 123(c)(1) of the Trade and Development Act of 2000 (Public Law 106-200; 114 Stat. 269) added subsec. (e). Sec. 123 of that Act, furthermore, provided the following:

“SEC. 123. OVERSEAS PRIVATE INVESTMENT CORPORATION INITIATIVES.

“(a) INITIATION OF FUNDS.—It is the sense of the Congress that the Overseas Private Investment Corporation should exercise the authorities it has to initiate an equity fund or equity funds in support of projects in the countries in sub-Saharan Africa, in addition to the existing equity fund for sub-Saharan Africa created by the Corporation.

“(b) STRUCTURE AND TYPES OF FUNDS.—

“(1) STRUCTURE.—Each fund initiated under subsection (a) should be structured as a partnership managed by professional private sector fund managers and monitored on a continuing basis by the Corporation.

“(2) CAPITALIZATION.—Each fund should be capitalized with a combination of private equity capital, which is not guaranteed by the Corporation, and debt for which the Corporation provides guaranties.

“(3) INFRASTRUCTURE FUND.—One or more of the funds, with combined assets of up to \$500,000,000, should be used in support of infrastructure projects in countries of sub-Saharan Africa.

“(4) EMPHASIS.—The Corporation shall ensure that the funds are used to provide support in particular to women entrepreneurs and to innovative investments that expand opportunities for women and maximize employment opportunities for poor individuals.

“(c) OVERSEAS PRIVATE INVESTMENT CORPORATION.—

“(1) INVESTMENT ADVISORY COUNCIL.—Section 233 of the Foreign Assistance Act of 1961 is amended * * *

“(2) REPORTS TO CONGRESS.—Within 6 months after the date of the enactment of this Act, and annually for each of the 4 years thereafter, the Board of Directors of the Overseas Private Investment Corporation shall submit to Congress a report on the steps that the Board has taken to implement section 233(e) of the Foreign Assistance Act of 1961 (as added by paragraph (1)) and any recommendations of the investment advisory council established pursuant to such section.”

Sec. 234.²⁴⁷ **Investment Insurance and Other Programs.**²⁴⁸—The Corporation is hereby authorized to do the following:

(a)²⁴⁹ INVESTMENT INSURANCE.—(1) To issue insurance, upon such terms and conditions as the Corporation may determine, to eligible investors assuring protection in whole or in part against any or all of the following risks with respect to projects which the Corporation has approved—

(A) inability to convert into United States dollars other currencies, or credits in such currencies, received as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof;

(B) loss of investment, in whole or in part, in the approved project due to expropriation or confiscation by action of a foreign government or any political subdivision thereof;²⁵⁰

(C) loss due to war, revolution, insurrection or civil strife; and²⁵¹

(D)²⁵² loss due to business interruption caused by any of the risks set forth in subparagraphs (A), (B), and (C).

(2)²⁵³ Recognizing that major private investments in less developed friendly countries or areas are often made by enterprises in which there is multinational participation, including significant United States private participation, the Corporation may make arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations and institutions for sharing liabilities assumed under investment insurance for such investments and may in connection therewith issue insurance to investors not otherwise eligible hereunder, except that liabilities assumed by the Corporation under the authority of this subsection shall be consistent with the purposes of this title and that the maximum share of liabilities so assumed

²⁴⁷ 22 U.S.C. 2194. Sec. 105 of the FA Act of 1969 (Public Law 91-175) added sec. 234.

²⁴⁸ Sec. 2(2)(A) of the OPIC Amendments Act of 1974 (Public Law 93-390) struck out “**Investment Incentive Programs**” and inserted in lieu thereof “**Investment Insurance and Other Programs**”.

²⁴⁹ Sec. 5(b)(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1023) provided:

“(2) The authority of the Overseas Private Investment Corporation to enter into contracts under section 234(a) of the Foreign Assistance Act of 1961 shall be effective for any fiscal year beginning after September 30, 1981, only to such extent or in such amounts as are provided in appropriation Acts.”.

²⁵⁰ Sec. 4(a) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) inserted “or any political subdivision thereof”.

²⁵¹ Sec. 4(a)(1) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) added the reference to civil strife.

²⁵² Sec. 6(a)(1)(D) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1671) added subpara. (D).

²⁵³ Sec. 2(2)(B) of the OPIC Amendments Act of 1974 (Public Law 93-390) amended and restated subsec. (a)(2). It formerly read as follows: “(2) Recognizing that major private investments in less developed friendly countries in areas are often made by enterprises in which there is multinational participation, including significant United States private participation, the Corporation may make such arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations for sharing liabilities assumed under investment insurance for such investments and may in connection therewith issue insurance to investors not otherwise eligible hereunder: *Provided, however*, That liabilities assumed by the Corporation under the authority of this subsection shall be consistent with the purposes of this title and that the maximum share of liabilities so assumed shall not exceed the proportionate participation by eligible investors in the total project financing.”.

shall not exceed the proportionate participation by eligible investors in the project.²⁵⁴

(3) Not more than 10 per centum of the maximum contingent liability²⁵⁵ of investment insurance which the Corporation is permitted to have outstanding under section 235(a)(1)²⁵⁶ shall be issued to a single investor.

(4)²⁵⁷ Before issuing insurance for the first time for loss due to business interruption, and in each subsequent instance in which a significant expansion is proposed in the type of risk to be insured under the definition of “civil strife” or “business interruption”,²⁵⁸ the Corporation shall, at least sixty days before such insurance is issued, submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs²⁵⁹ of the House of Representatives a report with respect to such insurance, including a thorough analysis of the risks to be covered, anticipated losses, and proposed rates and reserves and, in the case of insurance for loss due to business interruption, an explanation of the underwriting basis upon which the insurance is to be offered. Any such report with respect to insurance for loss due to business interruption shall be considered in accordance with the procedures applicable to re-programming notifications pursuant to section 634A of this Act.²⁶⁰

(b) INVESTMENT GUARANTIES.—To issue to eligible investors guaranties of loans and other investments made by such investors assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine: *Provided, however,* That such guaranties on other than loan investments shall not exceed 75 per centum of such investment: *Provided further,* That except for loan investments for credit unions made by eligible credit unions or credit union associations, the aggregate amount of investment (exclusive of interest and earnings) so guaranteed with respect to any project shall not exceed, at the time of issuance of any such guaranty, 75 per centum of the total investment committed to any such project as determined by the Corporation, which determination shall be conclusive for purposes of the Corporation’s authority to issue any such guaranty: *Provided further,* That not more than

²⁵⁴ Sec. 4(a)(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out “total” and “financing”, before and after “project”.

Sec. 3(1) of Public Law 95-268 (92 Stat. 214) struck out: “and that the maximum share of liabilities so assumed under paragraph (1) (A) and (B) of paragraph (1)(C) shall not exceed the Corporation’s proportional share of such liabilities as specified in paragraph (4) or (5) of this subsection.”

²⁵⁵ Sec. 3(2) of Public Law 95-268 (92 Stat. 214) struck out “total face amount” and inserted in lieu thereof “maximum contingent liability”.

²⁵⁶ Sec. 4(a)(3) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out “authorized to issue under this subsection” and inserted in lieu thereof “permitted to have outstanding under sec. 235(a)(1)”.

²⁵⁷ Paras. (4) through (7), which had been added by the OPIC Amendments Act of 1974 (Public Law 93-390) and had appeared at this point, were struck by sec. 3(3) of Public Law 95-268 (92 Stat. 214). This new para. (4) was added by sec. 4(a)(4) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022).

²⁵⁸ Sec. 6(a)(2)(A) and (B) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1671) struck out “civil strife insurance for the first time” and inserted in lieu thereof “insurance for the first time loss due to business interruption”, and struck out “definition of civil strife” and inserted in lieu thereof “definition of ‘civil strife’ or ‘business interruption’”.

²⁵⁹ Sec. 1(a)(5) of Public Law 104-14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

²⁶⁰ Sec. 6(a)(2) (C) and (D) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1671) added the text from the word “reserves” to the end of para. (4).

15²⁶¹ per centum of the maximum contingent liability of investment guaranties which the Corporation is permitted to have outstanding under section 235(a)(2)²⁶² shall be issued to a single investor.

(c) DIRECT INVESTMENT.—To make loans in United States dollars repayable in dollars or loans in foreign currencies (including, without regard to section 1415 of the Supplemental Appropriation Act, 1953, such foreign currencies which the Secretary of the Treasury may determine to be excess to the normal requirements of the United States and the Director of the Bureau of the Budget may allocate) to firms privately owned or of mixed private and public ownership upon such terms and conditions as the Corporation may determine.²⁶³ Loans may be made under this subsection only for projects that are sponsored by or significantly involve United States small business or cooperatives.²⁶⁴

The Corporation may designate up to 25 percent of any loan under this subsection for use in the development or adaptation in the United States of new technologies or new products or services that are to be used in the project for which the loan is made and are likely to contribute to the economic or social development of less developed countries.²⁶⁵

No loan may be made under this subsection to finance any operation for the extraction of oil or gas. The aggregate amount of loans under this subsection to finance operations for the mining or other extraction of any deposit of ore or other nonfuel minerals may not in any fiscal year exceed \$4,000,000.²⁶⁶

(d) INVESTMENT ENCOURAGEMENT.—To initiate and support through financial participation, incentive grant, or otherwise, and on such terms and conditions as the Corporation may determine, the identification, assessment, surveying and promotion of private investment opportunities, utilizing wherever feasible and effective the facilities of private investors, except that—

- (1) the Corporation shall not finance any survey to ascertain the existence, location, extent, or quality of, or to determine the feasibility of undertaking operations for the extraction of, oil or gas; and

²⁶¹Sec. 7 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1672) changed the per centum from 10 to 15.

²⁶²Sec. 4(b) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out “authorized to issue under this subsection” and inserted in lieu thereof “permitted to have outstanding under section 235(a)(2)”.

²⁶³Sec. 104 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), struck out the following which previously appeared at this point: “The Corporation may not purchase or invest in any stock in any other corporation, except that it may (1) accept as evidence of indebtedness debt securities convertible to stock, but such debt securities shall not be converted to stock while held by the Corporation, and (2) acquire stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness which would otherwise be in default, or as the result of any payment under any contract of insurance or guaranty. The Corporation shall dispose of any stock it may so acquire as soon as reasonably feasible under the circumstances then pertaining.”.

²⁶⁴Sec. 3(4) of Public Law 95-268 (92 Stat. 214) added this sentence.

²⁶⁵Sec. 103 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) added this para.

²⁶⁶Sec. 3(5) of Public Law 95-268 (92 Stat. 214) inserted this paragraph in lieu of the following:

“No loans shall be made under this section to finance operations for mining or other extraction of any deposit of ore, oil, gas, or other mineral.”.

(2) expenditures financed by the Corporation during any fiscal year on surveys to ascertain the existence, location, extent, or quality of, or to determine the feasibility of undertaking operations for the extraction of nonfuel minerals may not exceed \$200,000.²⁶⁷

(e) SPECIAL ACTIVITIES.—To administer and manage special projects and programs, including programs of financial and advisory support which provide private technical, professional, or managerial assistance in the development of human resources, skills, technology, capital savings and intermediate financial and investment institutions and cooperatives and including the initiation of incentives, grants, and studies for renewable energy and other small business activities.²⁶⁸ The funds for these projects and programs may, with the Corporation's concurrence, be transferred to it for such purposes under the authority of section 632(a) or from other sources, public or private. Administrative funds may not be made available for incentives, grants, and studies for renewable energy and other small business activities.²⁶⁹

(f)²⁷⁰ OTHER INSURANCE FUNCTIONS.—(1) To make and carry out contracts of insurance or reinsurance, or agreements to associate or share risks, with insurance companies, financial institutions, any other persons, or groups thereof, and employing the same where appropriate, as its agent, or acting as their agent, in the issuance and servicing of insurance, the adjustment of claims, the exercise of subrogation rights, the ceding and accepting of reinsurance, and in any other matter incident to an insurance business; except that such agreements and contracts shall be consistent with the purposes of the Corporation set forth in section 231 of this Act and shall be on equitable terms.²⁷¹

(2) To enter into pooling or other risk-sharing agreements with²⁷² multinational insurance or financing agencies or groups of such agencies.

(3) To hold an ownership interest in any association or other entity established for the purposes of sharing risks under investment insurance.

(4) To issue, upon such terms and conditions as it may determine, reinsurance of liabilities assumed by other insurers or groups thereof in respect of risks referred to in subsection (a)(1).

²⁶⁷ Sec. 3(6) of Public Law 95-268 (92 Stat. 214) struck out a proviso clause in subsec. (d) and added the words to this point beginning with “, except that—”.

²⁶⁸ Sec. 8(c) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218; 103 Stat. 1868) added text to the end of the sentence from “and including”.

²⁶⁹ Sec. 8(c) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101-218; 103 Stat. 1868) added the last sentence.

²⁷⁰ Sec. 2(2)(D) of the OPIC Amendments Act of 1974 (Public Law 93-390) added subsec. (f).
²⁷¹ Sec. 3(6) of Public Law 95-268 (92 Stat. 214) added “; except that such agreements and contracts shall be consistent with the purposes of the Corporation set forth in section 231 of this Act and shall be on equitable terms”. Subsequently, sec. 4(b)(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out the following text, as added by sec. 3(6) of Public Law 95-268: “and (B) the Corporation shall not make or carry out any association or risk-sharing agreement for the direct underwriting of insurance by the Corporation with others, other than on an individual basis where such direct underwriting facilitates the purposes of the Corporation as set forth in section 231 of this Act.”

²⁷² Sec. 8 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1672) struck out “other national or” after “agreements with”.

The amount of reinsurance of liabilities under this title which the Corporation may issue shall not²⁷³ in the aggregate exceed at any one time an amount equal to the amount authorized for the maximum contingent liability outstanding at any one time under section 235(a)(1). All reinsurance issued by the Corporation under this subsection shall require that the reinsured party retain for his own account specified portions of liability, whether first loss or otherwise.^{274, 275}

(g)²⁷⁶ PILOT EQUITY FINANCE PROGRAM.—

(1) AUTHORITY FOR PILOT PROGRAM.—In order to study the feasibility and desirability of a program of equity financing, the Corporation is authorized to establish a 4-year pilot program under which it may, on the limited basis prescribed in paragraphs (2) through (5), purchase, invest in, or otherwise acquire equity or quasi-equity securities of any firm or entity, upon such terms and conditions as the Corporation may determine, for the purpose of providing capital for any project which is consistent with the provisions of this title except that—

(A) the aggregate amount of the Corporation's equity investment with respect to any project shall not exceed 30 percent of the aggregate amount of all equity investment made with respect to such project at the time that the Corporation's equity investment is made, except for securities acquired through the enforcement of any lien, pledge, or contractual arrangement as a result of a default by any party under any agreement relating to the terms of the Corporation's investment; and

(B) the Corporation's equity investment under this subsection with respect to any project, when added to any other investments made or guaranteed by the Corporation under subsection (b) or (c) with respect to such project, shall not cause the aggregate amount of all such invest-

²⁷³Sec. 4(b)(3)(A) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out "exceed \$600,000,000 in any one year, and the amount of such reinsurance shall not" at this point.

²⁷⁴Sec. 4(b)(3)(B) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1022) struck out "and the Corporation shall endeavor to increase such specified portions to the maximum extent possible" at this point.

²⁷⁵Sec. 104 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), struck out the first sentence of this paragraph. It formerly read: "The authority granted by paragraph (3) may be exercised notwithstanding the prohibition under subsection (c) against the Corporation purchasing or investing in any stock in any other corporation."

²⁷⁶Sec. 104(3) of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) added subsec. (g).

Sec. 6001(1) of Public Law 106-31 (113 Stat. 113) struck out para. (C), which had provided as follows:

"(C) CREATION OF FUND FOR ACQUISITION OF EQUITY.—The Corporation is authorized to establish a revolving fund to be available solely for the purposes specified in this subsection and to make transfers to the fund of a total of \$10,000,000 (less amounts transferred to the fund before the date of the enactment of the Jobs Through Exports Act of 1992) from its noncredit account revolving fund. The Corporation shall transfer to the fund in each fiscal year all amounts received by the Corporation during the preceding fiscal year as income on securities acquired under this subsection, and from the proceeds on the disposition of such securities. Purchases of, investments in, and other acquisitions of equity from the fund are authorized for any fiscal year only to the extent or in such amounts as are provided in advance in appropriations Acts or are transferred to the Corporation pursuant to section 632(a) of this Act."

Previously para. (C) was amended and restated by sec. 103 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651).

ment to exceed, at the time any such investment is made or guaranteed by the Corporation, 75 percent of the total investment committed to such project as determined by the Corporation.

The determination of the Corporation under subparagraph (B) shall be conclusive for purposes of the Corporation's authority to make or guarantee any such investment.

(2)²⁷⁷ EQUITY AUTHORITY LIMITED TO PROJECTS IN SUB-SAHARAN AFRICA AND CARIBBEAN BASIN AND MARINE TRANSPORTATION PROJECTS GLOBALLY.—Equity investments may be made under this subsection only in projects in countries eligible for financing under this title that are countries in sub-Saharan Africa or countries designated as beneficiary countries under section 212 of the Caribbean Basin Economy Recovery Act²⁷⁸ and in marine transportation projects in countries and areas eligible for OPIC support worldwide using United States commercial maritime expertise.²⁷⁹

(3) ADDITIONAL CRITERIA.—In making investment decisions under this subsection, the Corporation shall give preferential consideration to projects sponsored by or significantly involving United States small business or cooperatives. The Corporation shall also consider the extent to which the Corporation's equity investment will assist in obtaining the financing required for the project.

(4) DISPOSITION OF EQUITY INTEREST.—Taking into consideration, among other things, the Corporations' financial interests and the desirability of fostering the development of local capital markets in less developed countries, the Corporation shall endeavor to dispose of any equity interest it may acquire under this subsection within a period of 10 years from the date of acquisition of such interest.

(5)²⁸⁰ IMPLEMENTATION.—To the extent provided in advance in appropriations Acts, the Corporation is authorized to create such legal vehicles as may be necessary for implementation of its authorities, which legal vehicles may be deemed non-Federal borrowers for purposes of the Federal Credit Reform Act of 1990. Income and proceeds of investments made pursuant to this section 234(g) may be used to purchase equity or quasi-equity securities in accordance with the provisions of this section: *Provided, however,* That such purchases shall not be limited to the 4-year period of the pilot program: *Provided further,* That the limitations contained in section 234(g)(2) shall not apply to such purchases.

²⁷⁷Sec. 6001(2) of Public Law 106-31 (113 Stat. 113) struck out "LIMITATION TO PROJECTS IN SUB-SAHARAN AFRICA AND CARIBBEAN BASIN" and inserted in lieu thereof "EQUITY AUTHORITY LIMITED TO PROJECTS IN SUB-SAHARAN AFRICA AND CARIBBEAN BASIN AND MARINE TRANSPORTATION PROJECTS GLOBALLY".

²⁷⁸Should read "Caribbean Basin Economic Recovery Act"; see *Legislation on Foreign Relations Through 2005*, vol. III, sec. J.

²⁷⁹Sec. 6001(2) of Public Law 106-31 (113 Stat. 113) inserted "and in marine transportation projects in countries and areas eligible for OPIC support worldwide using United States commercial maritime expertise" at the end of the sentence.

²⁸⁰Sec. 6001(3) of Public Law 106-31 (113 Stat. 113) added para. (5).

(6) CONSULTATIONS WITH CONGRESS.—The Corporation shall consult annually with the Committee on Foreign Affairs²⁸¹ of the House of Representatives and the Committee on Foreign Relations of the Senate on the implementation of the pilot equity finance program established under this subsection.

(h)²⁸² LOCAL CURRENCY GUARANTIES FOR ELIGIBLE INVESTORS.—To issue to—

(1) eligible investors, or

(2) local financial institutions, guaranties,

denominated in currencies other than United States dollars, of loans and other investments made to projects sponsored by or significantly involving eligible investors, assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine, for projects that the Corporation determines to have significant developmental effects or as the Corporation determines to be necessary or appropriate to carry out the purposes of this title.

Sec. 234A.²⁸³ Enhancing Private Political Risk Insurance Industry.

²⁸¹ Sec. 1(a)(5) of Public Law 104-14 (109 Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

²⁸² Sec. 5(a) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) added subsec. (h).

²⁸³ 22 U.S.C. 2194b. Sec. 105 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) amended and restated sec. 234A. First added by sec. 9 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 672), it formerly read as follows:

“In order to encourage greater availability of political risk insurance for eligible investors, the Corporation shall establish, not later than one year after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, a pilot program of facultative reinsurance. The program shall provide reinsurance to insurance companies, financial institutions, other persons, or groups thereof, with respect to insurance issued by such companies, institutions, persons, or groups for new investments, and expansions of existing investments, by eligible investors, in excess of limits which the Corporation would otherwise normally apply for its exposure to such investments. Contracts of reinsurance issued under the program shall be on equitable terms. The program, and any project covered by reinsurance under the program, shall be consistent with the provisions of this title.

“(b) PERSONS ELIGIBLE FOR THE PROGRAM.—An insurance company, financial institution, or other person shall be eligible to participate in the facultative reinsurance program established under subsection (a) if that company, institution, or other person is an eligible investor under this title. The Corporation shall take steps to encourage equitable participation in the program by all eligible persons.

“(c) MAXIMUM EXPOSURE.—The exposure of the Corporation under the facultative reinsurance program at any one time may not exceed \$150,000,000 or, with respect to one country, \$50,000,000.

“(d) ADVISORY GROUP.—

“(1) ESTABLISHMENT AND MEMBERSHIP.—The Corporation shall establish a group to advise the Corporation on the development and implementation of the program of facultative reinsurance under this section. The group shall be composed of nine members as follows:

“(A) Three officers or employees of the Corporation designated by the Board.

“(B) Four persons appointed by the Board, of whom at least one shall represent an insurance company, one a reinsurance brokerage firm, and one an underwriter, a financial institution, or other person or entity eligible for the facultative reinsurance program under this section. In selecting such persons, the Board shall consider their previous active involvement in the field of political risk insurance or reinsurance and shall consult with any major organizations representing insurance, reinsurance, and brokerage institutions as to the suitability of the respective candidates to represent their industry.

“(C) Two persons appointed by the Board from among persons who are eligible investors, other than persons described in subparagraph (B).

“(2) FUNCTIONS.—The advisory group shall advise the Corporation on the development and implementation of the facultative reinsurance program under this section, including ways to ensure equitable participation in the program by all eligible persons.

“(3) MEETINGS.—The advisory group shall meet not later than one hundred and eighty days after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, and not less than once in every one hundred and eighty-day period thereafter.

(a) COOPERATIVE PROGRAMS.—In order to encourage greater availability of political risk insurance for eligible investors by enhancing the private political risk insurance industry in the United States, and to the extent consistent with this title, the Corporation shall under take programs of cooperation with such industry, and in connection with such programs may engage in the following activities:

(1) Utilizing its statutory authorities, encourage the development of associations, pools, or consortia of United States private political risk insurers.

(2) Share insurance risks (through coinsurance, contingent insurance, or other means) in a manner that is conducive to the growth and development of the private political risk insurance industry in the United States.

(3) Notwithstanding section 237(e), upon the expiration of insurance provided by the Corporation for an investment, enter into risk-sharing agreements with United States private political risk insurers to insure any such investment; except that, in cooperating in the offering of insurance under this paragraph, the Corporation shall not assume responsibility for more than 50 percent of the insurance being offered in each separate transaction.

(b) ADVISORY GROUP.—

(1) ESTABLISHMENT AND MEMBERSHIP.—The Corporation shall establish a group to advise the Corporation on the development and implementation of the cooperative programs under this section. The group shall be appointed by the Board and shall be composed of up to 12 members, including the following:

(A) Up to seven persons from the private political risk insurance industry, of whom no fewer than two shall represent private political risk insurers, one shall represent private political risk reinsurers, and one shall represent insurance or reinsurance brokerage firms.

(B) Up to four persons, other than persons described in subparagraph (A), who are purchasers of political risk insurance.

(2) FUNCTIONS.—The Corporation shall call upon members of the advisory group, either collectively or individually, to advise it regarding the capability of the private political risk insurance industry to meet the political risk insurance needs of United States investors, and regarding the development of cooperative programs to enhance such capability.

(3) MEETINGS.—The advisory group shall meet not later than September 30, 1989, and at least annually thereafter. The Corporation may from time to time convene meetings of selected members of the advisory group to address particular questions requiring their specialized knowledge.

⁽⁴⁾ FEDERAL ADVISORY COMMITTEE ACT.—The advisory group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

^(e) REPORT TO THE CONGRESS.—The Corporation shall, not later than eighteen months after the date of the enactment of the Overseas Private Investment Corporation Amendments Act of 1985, submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the implementation of the facultative reinsurance program established under subsection (a).”

(4) FEDERAL ADVISORY COMMITTEE ACT.—The advisory group shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Sec. 235.²⁸⁴ Issuing Authority, Direct Investment Authority and Reserves.—

(a)²⁸⁵ ISSUING AUTHORITY.—

(1) INSURANCE AND FINANCING.—(A) The maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a), and the amount of financing issued under sections 234(b) and (c), shall not exceed in the aggregate \$29,000,000,000.

(B) Subject to spending authority provided in appropriations Acts pursuant to section 504(b) of the Federal Credit Reform Act of 1990, the Corporation is authorized to transfer such sums as are necessary from its noncredit activities to pay for the subsidy and administrative costs²⁸⁶ of the investment guaranties and direct loan programs under subsections (b) and (c) of section 234.

(2) TERMINATION OF AUTHORITY.—The authority of subsections (a), (b), and (c)²⁸⁷ of section 234 shall continue until 2007.²⁸⁸

²⁸⁴ 22 U.S.C. 2195. Sec. 235 was added by sec. 105 of the FA Act of 1969, originally as “**Issuing Authority, Direct Investment Fund and Reserves**”. Sec. 104(a)(1) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651) struck out “**Fund**” and inserted in lieu thereof “**Authority**”.

²⁸⁵ Sec. 104(a)(2) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651) amended and restated subsec. (a), and sec. 104(a)(3) of that Act repealed subsec. (b), which formerly established the Direct Investment Fund.

Sec. 581(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2435), amended and restated para. (1) of subsec. (a), struck out para. (2)(A), and redesignated para. (3) as para. (2). Paras. (1) and (2), as amended, formerly read as follows:

“(1) INSURANCE.—The maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a) shall not exceed in the aggregate \$13,500,000,000.

“(2) FINANCING.—(A) The maximum contingent liability outstanding at any one time pursuant to financing issued under subsections (b) and (c) of section 234 shall not exceed in the aggregate \$9,500,000,000.”

²⁸⁶ Sec. 3(a) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “subsidy cost” and inserted in lieu thereof “subsidy and administrative costs”.

²⁸⁷ Sec. 581(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2435), struck out “(a) and (b)” and inserted in lieu thereof “(a), (b), and (c)”.

²⁸⁸ Sec. 4(2) of Public Law 95-268 (92 Stat. 214) extended the authority from Dec. 31, 1977, to Sept. 30, 1981. This date was further extended to Sept. 30, 1985, by sec. 5(b)(1) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1023). Sec. 10 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1673), further extended the date from Sept. 30, 1985 to Sept. 30, 1988. Sec. 107 of the OPIC Amendments Act of 1988, H.R. 5263, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) extended the date from Sept. 30, 1988 to Sept. 30, 1992. Sec. 104(a)(2) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3651) amended and restated subsec. (a), extending the issuing authority from Sept. 30, 1992 to Sept. 30, 1994. The authority was extended again from Sept. 30, 1994 to Sept. 30, 1996 by sec. 103 of the Jobs Through Trade Expansion Act of 1994 (Public Law 103-392; 108 Stat. 4098). Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (enacted as sec. 101(c) of title I of the Omnibus Consolidated Appropriations Act, 1997; Public Law 104-208; 110 Stat. 3009) extended the date from September 30, 1996, to September 30, 1997. Sec. 581(a)(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2435) extended the date from September 30, 1997, to September 30, 1999. Sec. 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (H.R. 3422, enacted by reference in sec. 1000(a)(2) of Public Law 106-113; 113 Stat. 1535), struck out “1999” and inserted in lieu thereof “November 1, 2000”. Sec. 2 of the Export Enhancement Act of 1999 (Public Law 106-158; 113 Stat. 1745) would have struck out “1999” and inserted in lieu there “2003”; the amendment, however, was not executed as “1999” no longer appeared in the text. Sec. 2 of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “November 1, 2000” and inserted in lieu thereof “2007”.

Title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109-102; 119 Stat. 2173), provided the following:

“OVERSEAS PRIVATE INVESTMENT CORPORATION

“NONCREDIT ACCOUNT

“The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided*, That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed \$35,000) shall not exceed \$42,274,000: *Provided further*, That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

“PROGRAM ACCOUNT

“For the cost of direct and guaranteed loans, \$20,276,000, as authorized by section 234 of the Foreign Assistance Act of 1961, to be derived by transfer from the Overseas Private Investment Corporation Non-Credit Account: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such sums shall be available for direct loan obligations and loan guaranty commitments incurred or made during fiscal years 2006 and 2007: *Provided further*, That such sums shall remain available through fiscal year 2014 for the disbursement of direct and guaranteed loans obligated in fiscal year 2006, and through fiscal year 2015 for the disbursement of direct and guaranteed loans obligated in fiscal year 2007: *Provided further*, That notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of the Foreign Assistance Act of 1961 in Iraq: *Provided further*, That funds made available pursuant to the authority of the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations.

“In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.”

See also paragraph in title II of that Act, relating to assistance for the independent states of the former Soviet Union; sec. 507, relating to prohibition against direct funding for certain countries (particularly Libya); sec. 513, relating to commerce and trade; sec. 553, relating to authorization requirements; and sec. 579 (at 119 Stat. 2232), which provides the following:

“OPIC TRANSFER AUTHORITY

“(INCLUDING TRANSFER OF FUNDS)

“SEC. 579. Whenever the President determines that it is in furtherance of the purposes of the Foreign Assistance Act of 1961, up to a total of \$20,000,000 of the funds appropriated under title II of this Act may be transferred to and merged with funds appropriated by this Act for the Overseas Private Investment Corporation Program Account, to be subject to the terms and conditions of that account: *Provided*, That such funds shall not be available for administrative expenses of the Overseas Private Investment Corporation: *Provided further*, That funds earmarked by this Act shall not be transferred pursuant to this section: *Provided further*, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.”

Title III, ch. 8 of the Emergency Supplemental Appropriations Act To Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (division B of Public Law 109-148; 119 Stat. 2791), however, provided the following:

“GOVERNMENT-WIDE RESCISSIONS

“SEC. 3801. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 1 percent of—

“(1) the budget authority provided (or obligation limit imposed) for fiscal year 2006 for any discretionary account of this Act and in any other fiscal year 2006 appropriation Act;

“(2) the budget authority provided in any advance appropriation for fiscal year 2006 for any discretionary account in any prior fiscal year appropriation Act; and

“(3) the contract authority provided in fiscal year 2006 for any program subject to limitation contained in any fiscal year 2006 appropriation Act.

“(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

“(1) to each discretionary account and each item of budget authority described in such subsection; and

“(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

Continued

(b)²⁸⁵ * * * [Repealed—1992]

(c) There shall be established in the Treasury of the United States a noncredit account revolving fund, which²⁸⁹ shall be available for discharge of liabilities, as provided in subsection (d) of this section²⁹⁰ until such time as all such liabilities have been discharged or have expired or until all of the fund has²⁹¹ been expended in accordance with the provisions of this section. Such fund shall be funded by: (1) the funds heretofore available to discharge liabilities under predecessor guaranty authority (including housing guaranty authorities), less both the amount made available for housing guaranty programs pursuant to section 223(b) and the amount made available to the Corporation pursuant to subsection (e) of this section²⁹⁰ and (2) such sums as shall be appropriated pursuant to subsection (f) of this section for such purpose.²⁹² Additional amounts may thereafter be transferred to such fund²⁹³ pursuant to section 236.

(d) Any payment made to discharge liabilities under investment insurance or reinsurance issued under section 234²⁹⁴ under similar predecessor guaranty authority or under section 234A,²⁹⁴ shall be paid first out of the noncredit account revolving fund, as long as such fund²⁹⁵ remains available, and thereafter out of funds made available pursuant to subsection (f) of this section. Any payments made to discharge liabilities under guaranties issued under section 234(b) or 234(c) shall be paid in accordance with the Federal Credit Reform Act of 1990.²⁹⁶

“(c) EXCEPTIONS.—This section shall not apply—

“(1) to discretionary budget authority that has been designated pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006; or

“(2) to discretionary authority appropriated or otherwise made available to the Department of Veterans Affairs.

“(d) OMB REPORT.—Within 30 days after the date of the enactment of this section the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to this section.”

²⁸⁹Sec. 3(b)(1)(A) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves” and inserted in lieu thereof “a noncredit account revolving fund, which”.

²⁹⁰Sec. 17(b) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1676) struck out references to “section 234(e)” and “section 235(f)” and inserted in lieu thereof references to “subsection (e)”, or “subsection (j)”, “of this section”, and references to “section 235(d)” with “subsection (d) of this section”.

²⁹¹Sec. 3(b)(1)(B) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “such reserves have” and inserted in lieu thereof “of the fund has”.

²⁹²Sec. 3(b)(2) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “The allocation of such funds to each such reserve shall be determined by the Board after consultation with the Secretary of the Treasury.”

²⁹³Sec. 3(b)(3) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “reserves” and inserted in lieu thereof “fund”.

²⁹⁴Sec. 2(3)(B) of the OPIC Amendments Act of 1974 (Public Law 93-390) struck out “insurance issued under section 234(a)” and inserted in lieu thereof “insurance or reinsurance issued under section 234”.

Sec. 9(b) of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1672) added the reference to sec. 234A.

²⁹⁵Sec. 3(c)(1) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “Insurance Reserve, as long as such reserve” and inserted in lieu thereof “noncredit account revolving fund, as long as such fund”.

²⁹⁶Sec. 3(c)(2) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1949) struck out “or under similar predecessor guaranty authority shall be paid first out of the Guaranty Reserve as long as such reserve remains available, and thereafter out of funds made available pursuant to subsection (f) of this section” and inserted in lieu thereof “or 234(c) shall be paid in accordance with the Federal Credit Reform Act of 1990”.

(e) There is hereby authorized to be transferred to the Corporation at its call, for the purposes specified in section 236, all fees and other revenues collected under predecessor guaranty authority from December 31, 1968, available as of the date of such transfer.

(f)²⁹⁷ There are authorized to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the noncredit account revolving fund,²⁹⁸ to discharge the liabilities under insurance, reinsurance, or guaranties issued by the Corporation or issued under predecessor guaranty authority, or to discharge obligations of the Corporation purchased by the Secretary of the Treasury pursuant to this subsection. However, no appropriations shall be made to augment the noncredit account revolving fund²⁹⁹ until the amount of funds in the noncredit account revolving fund²⁹⁹ is less than \$25,000,000. Any appropriations to augment the noncredit account revolving fund²⁹⁹ shall then only be made either pursuant to specific authorization enacted after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974, or to satisfy the full faith and credit provision of section 237(c). In order to discharge liabilities under investment insurance or reinsurance, the Corporation is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed \$100,000,000. Any such obligation shall be repaid to the Treasury within one year after the date of issue of such obligation. Any such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of any obligation authorized by this subsection. The Secretary of the Treasury shall purchase any obligation of the Corporation issued under this subsection, and for such purchase he may use as a public debt transaction the proceeds of the sale of any securities issued under the Second Liberty Bond Act after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974. The purpose for which securities may be issued under such Bond Act shall include any such purchase.

Sec. 236.³⁰⁰ **Income and Revenues.**—In order to carry out the purposes of the Corporation, all revenues and income transferred

²⁹⁷Sec. 2(3)(C) of the OPIC Amendments Act of 1974 (Public Law 93-390) amended and restated subsec. (f). It formerly read as follows:

“(f) There is hereby authorized to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the insurance and guaranty fund or to discharge the liabilities under insurance and guaranties issued by the Corporation or issued under predecessor guaranty authority.”

Sec. 104 of Public Law 103-392 (108 Stat. 4098) struck out subsec. (g). Sec. 104(b) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3652) had added subsec. (g), which authorized the Corporation to draw from its noncredit account revolving fund \$8,128,000 for fiscal year 1993 and \$11,000,000 for fiscal year 1994 for administrative expenses.

²⁹⁸Sec. 3(d)(1) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “insurance and guaranty fund” and inserted in lieu thereof “noncredit account revolving fund”.

²⁹⁹Sec. 3(d)(2) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “Insurance Reserve” and inserted in lieu thereof “noncredit account revolving fund”.

³⁰⁰22 U.S.C. 2196. Added by sec. 105 of the FA Act of 1969 (Public Law 91-175).

to or earned by the Corporation, from whatever source derived, shall be held by the Corporation and shall be available to carry out its purposes, including without limitation—

(a) payment of all expenses of the Corporation, including investment promotion expenses;

(b) transfers and additions to the insurance or guaranty reserves, the Direct Investment Fund established pursuant to section 235, and such other funds or reserves as the Corporation may establish, at such time and in such amounts as the Board may determine; and

(c) payment of dividends, on capital stock, which shall consist of and be paid from net earnings of the Corporation after payments, transfers, and additions under subsections (a) and (b) hereof.

Sec. 237.³⁰¹ **General Provisions Relating to Insurance Guaranty, and Financing Program.**—(a) Insurance guaranties, and reinsurance³⁰² issued under this title shall cover investment made in connection with projects in any less developed friendly country or area with the government to which the President of the United States has agreed to institute a program for insurance, guaranties, or reinsurance.³⁰²

(b) The Corporation shall determine that suitable arrangements exist for protecting the interest of the Corporation in connection with any insurance, guaranty or reinsurance³⁰² issued under this title, including arrangements concerning ownership, use, and disposition of the currency, credits, assets, or investments on account of which payment under such insurance, guaranty, or reinsurance³⁰² is to be made, and right, title, claim, or cause of action existing in connection therewith.

(c) All guaranties issued prior to July 1, 1956, all guaranties issued under sections 202(b) and 413(b) of the Mutual Security Act of 1954, as amended, all guaranties heretofore issued pursuant to prior guaranty authorities repealed by the Foreign Assistance Act of 1969, and all insurance, reinsurance,³⁰² and guaranties issued pursuant to this title shall constitute obligations, in accordance with the terms of such insurance, reinsurance,³⁰² or guaranties, of the United States of America and the full faith and credit of the United States of America is hereby pledged for the full payment and performance of such obligations.

(d)³⁰³ **FEEES.**—

(1) **IN GENERAL.**—Fees may be charged for providing insurance, reinsurance, financing, and other services under this title in amounts to be determined by the Corporation. In the event fees charged for insurance, reinsurance, financing, or other services are reduced, fees to be paid under existing contracts for the same type of insurance, reinsurance, financing, or serv-

³⁰¹ 22 U.S.C. 2197. Added by Sec. 105 of the FA Act of 1969 (Public Law 91-175).

Sec. 110(c) of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), struck “and Guaranty” and inserted “Guaranty, and Financing”.

³⁰² Sec. 2(4) of the OPIC Amendments Act of 1974 (Public Law 93-390) added the reference to reinsurance.

³⁰³ Sec. 105(a) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3652) amended and restated subsec. (d). Previously it had been amended and restated by sec. 2(4)(D) of the OPIC Amendments Act of 1974 (Public Law 93-390).

ices and for similar guarantees issued under predecessor guarantee authority may be reduced.

(2) CREDIT TRANSACTION COSTS.—Project-specific transaction costs incurred by the Corporation relating to loan obligations or loan guarantee commitments covered by the provisions of the Federal Credit Reform Act of 1990, including the costs of project-related travel and expenses for legal representation provided by persons outside the Corporation and other similar expenses which are charged to the borrower, shall be paid out of the appropriate finance account established pursuant to section 505(b) of such Act.

(3) NONCREDIT TRANSACTION COSTS.—Fees paid for the project-specific transaction costs and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 (other than those covered in paragraph (2)), including financing, insurance, reinsurance, missions, seminars, conferences, and other preinvestment services, shall be available for obligation for the purposes for which they were collected, notwithstanding any other provision of law.

(e) No insurance, guaranty, or reinsurance³⁰² of any equity investment shall extend beyond twenty years from the date of issuance.

(f) Compensation for insurance, reinsurance, or guaranties issued under this title shall not exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the Corporation plus interest, earnings, or profits actually accrued on such investment to the extent provided by such insurance, reinsurance, or guaranty, except that the Corporation may provide that (1) appropriate adjustments in the insured dollar value be made to reflect the replacement cost of project assets, and (2) compensation for a claim of loss under insurance of an equity investment may be computed on the basis of the net book value attributable to such equity investment on the date of loss.³⁰⁴ Notwithstanding the preceding sentence, the Corporation shall limit the amount of direct insurance and reinsurance issued by it under section 234 or 234A so that risk of loss as to at least 10 per centum of the total investment of the insured and its affiliates in the project is borne by the insured and such affiliates, except that limitation shall not apply to direct insurance or reinsurance of loans by banks or other financial institutions to unrelated parties and³⁰⁵ (3)³⁰⁶ compensation for loss due to business interruption may be

³⁰⁴Sec. 6(a) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1023) amended and restated the first sentence of subsec. (f). Previous amendments to this sentence in subsec. (f) retained in the new text include the following: The word "reinsurance" was added by sec. 2(4)(F) of Public Law 93-390; the basic language of clause (1) was added by sec. 5 of Public Law 95-268 (92 Stat. 215).

³⁰⁵Sec. 2(4)(G) of the OPIC Amendments Act of 1974 (Public Law 93-390) added this sentence. Sec. 5 of Public Law 95-268 (92 Stat. 215) added "except that limitation shall not apply to direct insurance or reinsurance of loans by banks or other financial institutions to unrelated parties".

A sentence, as added by sec. 2(4)(G) of Public Law 93-390 and which previously appeared at this point, was struck out by sec. 6(b) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1023). It formerly read as follows: "The preceding sentence shall not apply to the extent not permitted by State law."

³⁰⁶Sec. 6(b) of the OPIC Amendments Act of 1985 (Public Law 99-204) added clause (3).

computed on a basis to be determined by the Corporation which reflects amounts lost.

(g) No payment may be made under any guaranty, insurance or reinsurance³⁰² issued pursuant to this title for any loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(h) Insurance, guaranties, or reinsurance³⁰⁷ of a loan or equity investment of an eligible investor in a foreign bank, finance company, or other credit institution shall extend only to such loan or equity investment and not to any individual loan or equity investment made by such foreign bank, finance company, or other credit institution.

(i) Claims arising as a result of insurance, reinsurance³⁰⁸ or guaranty operations under this title or under predecessor guaranty authority may be settled, and disputes arising as a result thereof may be arbitrated with the consent of the parties, on such terms and conditions as the Corporation may determine. Payment made pursuant to any such settlement, or as a result of an arbitration award, shall be final and conclusive notwithstanding any other provision of law.

(j) Each guaranty contract executed by such officer or officers as may be designated by the Board shall be conclusively presumed to be issued in compliance with the requirements of this Act.

(k)³⁰⁹ In making a determination to issue insurance, guaranties, or reinsurance under this title, the Corporation shall consider the possible adverse effect of the dollar investment under such insurance, guaranty, or reinsurance upon the balance of payments of the United States.

(l)³¹⁰ (1) No payment may be made under any insurance or reinsurance which is issued under this title on or after the date of enactment of this subsection for any loss occurring with respect to a project, if the preponderant cause of such loss was an act by the investor seeking payment under this title, by a person possessing majority ownership and control of the investor at the time of the act, or by any agent of such investor or controlling person, and a court of the United States has entered a final judgment that such act constituted a violation under the Foreign Corrupt Practices Act of 1977.

(2) Not later than 120 days after the date of enactment of this subsection, the Corporation shall adopt regulations setting forth appropriate conditions under which any person convicted under the Foreign Corrupt Practices Act of 1977 for an offense related to a project insured or otherwise supported by the Corporation shall be suspended, for a period of not more than five years, from eligibility to receive any insurance, reinsurance, guaranty, loan, or other financial support authorized by this title.

³⁰⁷ Sec. 2(4)(I) of the OPIC Amendments Act of 1974 (Public Law 93-390) struck out "or guaranties" and inserted in lieu thereof "guaranties, or reinsurance".

³⁰⁸ Sec. 2(4)(J) of the OPIC Amendments Act of 1974 (Public Law 93-390) inserted "reinsurance".

³⁰⁹ Sec. 2(4)(K) of the OPIC Amendments Act of 1974 (Public Law 93-390) amended and restated subsec. (k). It formerly read as follows:

"(k) In making a determination to issue insurance or a guaranty under this title, the Corporation shall consider the possible adverse effect of the dollar investment under such insurance or guaranty upon the balance of payments of the United States."

³¹⁰ Sec. 6 of Public Law 95-268 (92 Stat. 215) added subsec. (l).

(m)³¹¹ (1) Before finally providing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to the public health or safety or the environment which are applicable to the project; and

(B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards, and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review, or study prepared with respect to the investment pursuant to section 239(g).

(2) Before finally providing insurance, reinsurance, guarantees, or financing for any investment subject to paragraph (1), the Corporation shall take into account any comments it receives on the project involved.

(3) On or before September 30, 1986, the Corporation shall notify appropriate government officials of a country of the guidelines, standards, and legal restrictions described in paragraph (1) that apply to any project in that country—

(A) which the Corporation identifies as potentially posing major hazards to public health and safety or the environment; and

(B) for which the Corporation provided insurance, reinsurance, guarantees, or financing under this title before the date of enactment of this subsection and which is in the Corporation's portfolio on that date.

(n)³¹² PENALTIES FOR FRAUD.—Whoever knowingly makes any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of the Corporation with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation under section 234 or any change or extension of any such insurance, reinsurance, guarantee, loan, equity investment, or activity, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

(o)³¹³ USE OF LOCAL CURRENCIES.—Direct loans or investments made in order to preserve the value of funds received in inconvertible foreign currency by the Corporation as a result of activities conducted pursuant to section 234(a) shall not be considered in de-

³¹¹Sec. 4(b) of the OPIC Amendments Act of 1985 (Public Law 99-204) added subsec. (m).

³¹²Sec. 105(b) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3653) added subsec. (n).

³¹³Sec. 105(c) of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3653) added subsec. (o).

termining whether the Corporation has made or has outstanding loans or investments to the extent of any limitation on obligations and equity investment imposed by or pursuant to this title. The provisions of section 504(b) of the Federal Credit Reform Act of 1990 shall not apply to direct loan obligations made with funds described in this subsection.

Sec. 238.³¹⁴ **Definitions.**—As used in this title—

(a) the term “investment” includes any contribution or commitment³¹⁵ of funds, commodities, services, patents, processes, or techniques, in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such project, and (4) the furnishing of commodities or services pursuant to a lease or other contract;

(b) the term “expropriation” includes, but is not limited to, any abrogation, repudiation, or impairment by a foreign government, a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government,³¹⁶ of its own contract with an investor with respect to a project, where such abrogation, repudiation, or impairment is not caused by the investor’s own fault or misconduct, and materially adversely affects the continued operation of the project;

(c) the term “eligible investor” means: (1) United States citizens; (2) corporations, partnerships, or other associations including nonprofit associations, created under the laws of the United States any State or territory thereof, or the District of Columbia,³¹⁷ and substantially beneficially owned by United States citizens; and (3) foreign corporations, partnerships, or other associations wholly owned by one or more such United States citizens, corporations, partnerships, or other associations: *Provided however*, That the eligibility of such foreign corporation shall be determined without regard to any shares, in aggregate less than 5 per centum of the total issued and subscribed share capital,³¹⁸ held by other than the United States owners: *Provided further*, That in the case of any loan investment a final determination of eligibility may be made at the time the insurance or guaranty is issued; in all other cases, the investor must be eligible at the time a claim arises as well as the time the insurance or guaranty is issued;³¹⁹

(d)³¹⁹ the term “noncredit account revolving fund” means the account in which funds under section 236 and all funds from noncredit activities are held;³²⁰

³¹⁴22 U.S.C. 2198. Added by sec. 105 of the FA Act of 1969 (Public Law 91-175).

³¹⁵Sec. 7 of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) inserted “or commitment”.

³¹⁶Sec. 4(b) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) inserted “, a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government.”

³¹⁷Sec. 17(a) of the OPIC Amendments Act of 1985 (Public Law 99-204) added reference to the District of Columbia.

³¹⁸Sec. 104(a) of the FA Act of 1971 (Public Law 91-672) struck out “required by Law to be”.

³¹⁹Sec. 106 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3653): (1) struck out “and” at the end of subsec. (c); (2) redesignated subsec. (d) as subsec. (f); and (3) added new subsecs. (d) and (e).

³²⁰Sec. 5(b)(1) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “and” at this point.

(e)³¹⁹ the term “noncredit activities” means all activities of the Corporation other than its loan guarantee program under section 234(b) and its direct loan program under section 234(c);³²⁰

(f)³¹⁹ the term “predecessor guaranty authority” means prior guaranty authorities (other than housing guaranty authorities) repealed by the Foreign Assistance Act of 1969, section 202(b) and 413(b) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of authority relating to informational media guaranties); and³²¹

(g)³²¹ the term “local financial institution”—

(1) means any bank or financial institution that is organized under the laws of any country or area in which the Corporation operates; but

(2) does not include a branch, however organized, of a bank or other financial institution that is organized under the laws of a country in which the Corporation does not operate.

Sec. 239.³²² **General Provisions and Powers.**—(a) The Corporation shall have its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be resident thereof.

(b) The President shall transfer to the Corporation, at such time as he may determine, all obligations, assets and related rights and responsibilities arising out of, or related to, predecessor programs and authorities similar to those provided for in section 234 (a), (b), and (d). Until such transfer, the agency heretofore responsible for such predecessor programs shall continue to administer such assets and obligations, and such programs and activities authorized under this title as may be determined by the President.³²³

(c)³²⁴ (1) The Corporation shall be subject to the applicable provisions of chapter 91 of title 31, United States Code, except as otherwise provided in this title.

(2) An independent certified public accountant shall perform a financial and compliance audit of the financial statements of the Corporation at least once every three years, in accordance with generally accepted Government auditing standards for a financial and compliance audit, as issued by the Comptroller General. The

³²¹Sec. 5(b)(2) and (3) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1950) struck out “.” and inserted in lieu thereof “; and”, and added subsec. (g).

³²²22 U.S.C. 2199. Added by sec. 105 of the FA Act of 1969 (Public Law 91-175).

³²³Sec. 7(1) of Public Law 95-268 (92 Stat. 215) struck out a paragraph previously appearing in subsec. (b) that had directed OPIC to cease operating the programs authorized by sec. 234(b) through (e) and sec. 240.

A Presidential Determination of Dec. 30, 1969 (35 F.R. 43; January 3, 1970), provided for AID administration until transfer to the Overseas Private Investment Corporation.

³²⁴Sec. 11 of the OPIC Amendments Act of 1985 (Public Law 99-204), amended and restated subsec. (c). It previously read as follows:

“(c) The Corporation shall be subject to the applicable provisions of the Government Corporation Control Act, except as otherwise provided in this title.”

Sec. 209(e)(16) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (H.R. 3427, enacted by reference in sec. 1000(a)(7) of Public Law 106-113; 113 Stat. 1536), stated that sec. 3003(a)(1) of Public Law 104-66 (109 Stat. 734) is not applicable to this subsection. Sec. 3003(a)(1) of that Act, as amended, provided that “* * * each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual, or other regular periodic report specified on the list * * * [prepared by the Clerk of the House of Representatives for the first session of the One Hundred Third Congress] shall cease to be effective, with respect to that requirement, May 15, 2000.”

independent certified public accountant shall report the results of such audit to the Board. The financial statements of the Corporation shall be presented in accordance with generally accepted accounting principles. These financial statements and the report of the accountant shall be included in a report which contains, to the extent applicable, the information identified in section 9106 of title 31, United States Code, and which the Corporation shall submit to the Congress not later than six and one-half months after the end of the last fiscal year covered by the audit. The General Accounting Office³²⁵ may review the audit conducted by the accountant and the report to the Congress in the manner and at such times as the General Accounting Office³²⁵ considers necessary.

(3) In lieu of the financial and compliance audit required by paragraph (2), the Government Accountability Office³²⁵ shall, if the Office considers it necessary or upon the request of the Congress, audit the financial statements of the Corporation in the manner provided in paragraph (2). The Corporation shall reimburse the Government Accountability Office³²⁵ for the full cost of any audit conducted under this paragraph.

(4) All books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Corporation and the accountant who conducts the audit under paragraph (2), which are necessary for purposes of this subsection, shall be made available to the representatives of the Government Accountability Office.³²⁵

(d) To carry out the purposes of this title, the Corporation is authorized to adopt and use a corporate seal, which shall be judicially noticed; to sue and be sued in its corporate name; to adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law; to acquire, hold or dispose of, upon such terms and conditions as the Corporation may determine, any property, real, personal, or mixed, tangible or intangible, or any interest therein; to invest funds derived from fees and other revenues in obligations of the United States and to use the proceeds therefrom, including earnings and profits, as it shall deem appropriate; to indemnify directors, officers, employees and agents of the Corporation for liabilities and expenses incurred in connection with their Corporation activities; to require bonds of officers, employees, and agents and pay the premiums therefor; notwithstanding any other provision of law, to represent itself or to contract for representation in all legal and arbitral proceedings; to enter into limited-term contracts with nationals of the United States for personal services to carry out activities in the United States and abroad under subsections (d) and (e) of section 234;³²⁶ to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and guar-

³²⁵Sec. 8 of the GAO Human Capital Reform Act of 2004 (Public Law 108-271; 118 Stat. 814) redesignated the "General Accounting Office" as the "Government Accountability Office" and provided that "Any reference to the General Accounting Office in any law, rule, regulations, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office."

³²⁶Sec. 107 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3654) inserted "to enter into limited-term contracts with nationals of the United States for personal services to carry out activities in the United States and abroad under subsections (d) and (e) of section 234;" after "legal and arbitral proceedings;"

antee notes, participation certificates, and other evidence of indebtedness (provided that the Corporation shall not issue its own securities, except participation certificates for the purpose of carrying out section 231(c) or participation certificates as evidence of indebtedness held by the Corporation in connection with settlement of claims under section 237(i));³²⁷ to make and carry out such contracts and agreements as are necessary and advisable in the conduct of its business; to exercise the priority of the Government of the United States in collecting debts from bankrupt, insolvent, or decedents' estates; to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations; to collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation;³²⁸ and to take such actions as may be necessary or appropriate to carry out the powers herein or hereafter specifically conferred upon it.

(e) The Inspector General³²⁹ of the Agency for International Development (1) may conduct³³⁰ reviews, investigations, and inspections of all phases of the Corporation's operations and activities and (2) shall conduct all security activities of the Corporation relating to personnel and the control of classified material. With respect to his responsibilities under this subsection, the Inspector General³²⁹ shall report to the Board. The agency primarily responsible for administering part I shall be reimbursed by the Corporation for all expenses incurred by the Inspector General³²⁹ in connection with his responsibilities under this subsection.

(f)^{331, 332} Except for the provisions of this title, no other provision of this or any other law shall be construed to prohibit the operation in Yugoslavia, Poland, Hungary,³³³ or any other East European

³²⁷Sec. 7(2) of Public Law 95-268 (92 Stat. 215) inserted "or participation certificates as evidence of indebtedness held by the Corporation in connection with settlement of claims under section 237(i)".

³²⁸Sec. 8(1) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) inserted "to collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation;"

³²⁹Sec. 8(2)(A) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) struck out "Auditor-General" and inserted in lieu thereof "Inspector General".

³³⁰Sec. 8(2)(B) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) struck out "shall have the responsibility for planning and directing the execution of audits," and inserted in lieu thereof "may conduct".

³³¹Sec. 8(3) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) struck out subsecs. (f), (j), and (k) (subsecs. (j) and (k) added by sec. 7(3) of Public Law 95-268), and redesignated existing subsecs. (g), (h), (i), and (l) as subsecs. (f), (g), (h), and (i), respectively.

Old subsec. (f) authorized the establishment of an Advisory Board in order to further the purposes of OPIC; old subsec. (j) blocked OPIC support for copper exploration or mining projects begun after Jan. 1, 1981, and projects for the production of copper beginning after this date if the project would cause injury to the primary U.S. copper industry; and old subsec. (k) blocked OPIC support for any project to establish or expand production of processing of palm oil, sugar, or citrus crops for export.

³³²Sec. 104(b) of the FA Act of 1971 (Public Law 92-226) added subsec. (f), originally added as subsec. (g). Public Law 96-327 (94 Stat. 1026) inserted "the People's Republic of China". Sec. 108 of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) struck out "Romania".

³³³Sec. 302(a) of the Support for East European Democracy (SEED) Act of 1989 (Public Law 101-179; 103 Stat. 1311) inserted reference to Hungary and Poland.

country,³³⁴ or the People's Republic of China, or Pakistan³³⁵ of the programs authorized by this title, if the President determines that the operation of such program in such country is important to the national interest.

(g)^{331, 336} The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

(h)^{331, 337} In order to carry out the policy set forth in paragraph (1) of the second undesignated paragraph of section 231 of this Act, the Corporation shall prepare and maintain for each investment project it insures, finances, or reinsures, a development impact profile consisting of data appropriate to measure the projected and actual effects of such project on development. Criteria for evaluating projects shall be developed in consultation with the Agency for International Development.³³⁸

(i)^{331, 339} The Corporation shall take into account in the conduct of its programs in a country, in consultation with the Secretary of State, all available information about observance of and respect for human rights and fundamental freedoms in such country and the effect the operation of such programs will have on human rights and fundamental freedoms in such country. The provisions of section 116 of this Act shall apply to any insurance, reinsurance, guaranty, or loan issued by the Corporation for projects in a country, except that in addition to the exception (with respect to benefiting needy people) set forth in subsection (a) of such section, the Corporation may support a project if the national security interest so requires.

(j)³⁴⁰ The Corporation, including its franchise, capital, reserves, surplus, advances, intangible property, and income, shall be exempt from all taxation at any time imposed by the United States, by any territory, dependency, or possession of the United States, or

³³⁴ Sec. 576(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2044), inserted "or any other East European country".

³³⁵ Sec. 579(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105-118; 111 Stat. 2435), inserted ", or Pakistan" after "China". Sec. 579(b) of that Act, furthermore, provided the following:

"(b) TRADE AND DEVELOPMENT.—It is the sense of Congress that the Director of the Trade and Development Agency should use funds made available to carry out the provisions of section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421) to promote United States exports to Pakistan."

³³⁶ Sec. 2(5)(B) of the OPIC Amendments Act of 1974 (Public Law 93-390) added subsec. (g), originally as subsec. (h). Sec. 4(c) of the OPIC Amendments Act of 1985 (Public Law 99-204), restated and amended subsec. (g) in its current form. It previously read as follows:

"Within six months after the date of enactment of this subsection, the Corporation shall develop and implement specific criteria intended to minimize the potential environmental implications of projects undertaken by investors abroad in accordance with any of the programs authorized by this title."

The OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268) replaced "118(c)" with "117(c)".

³³⁷ Sec. 7(3) of Public Law 95-268 (92 Stat. 215) added subsec. (h), originally as subsec. (i).
³³⁸ This consultative function was transferred to the Director of IDCA, pursuant to sec. 6 of Reorganization Plan No. 2 of 1979 (establishing IDCA). The Reorganization Plan No. 2 of 1979 ceased to be effective with enactment of the Foreign Affairs Reform and Restructuring Act of 1998, pursuant to sec. 1422(a)(1) (division G of Public Law 105-277; 112 Stat. 2681).

³³⁹ Sec. 8 of Public Law 95-268 (92 Stat. 216) added subsec. (i), originally as subsec. (l).

³⁴⁰ Secs. 12 and 13 of the OPIC Amendments Act of 1985 (Public Law 99-204; 99 Stat. 1674) added subsecs. (j) and (k), respectively.

by any State, the District of Columbia, or any county, municipality, or local taxing authority.

(k)³⁴⁰ The Corporation shall publish, and make available to applicants for insurance, reinsurance, guarantees, financing, or other assistance made available by the Corporation under this title, the policy guidelines of the Corporation relating to its programs.

Sec. 240.³⁴¹ **Small Business Development.**—(a)³⁴² **IN GENERAL.**—The Corporation shall undertake, in cooperation with appropriate departments, agencies, and instrumentalities of the United States as well as private entities and others, to broaden the participation of United States small business, cooperatives, and other small United States investors in the development of small private enterprise in less developed friendly countries or areas. The Corporation shall allocate up to 50 percent of its annual net income, after making suitable provision for transfers and additions to reserves, to assist and facilitate the development of projects consistent with the provisions of this section. Such funds may be expended, notwithstanding the requirements of section 231(a), on such terms and conditions as the Corporation may determine, through loans, grants, or other programs authorized by section 234 and section 234A.

(b)³⁴³ **OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.**—The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

(1) the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and

(2) to the extent such information is available, the involvement of such businesses in procurement activities conducted or supported by the Corporation.

The Corporation shall include, in its annual report submitted to the Congress under section 240A, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.

Sec. 240A.³⁴⁴ **Reports to the Congress.**—(a)³⁴⁵ After the end of each fiscal year, the Corporation shall submit to the Congress a complete and detailed report of its operations during such fiscal year. Such report shall include—

(1) an assessment, based upon the development impact profiles required by section 239(h), of the economic and social development impact and benefits of the projects with respect to which such profiles are prepared, and of the extent to which

³⁴¹ 22 U.S.C. 2200. Sec. 9 of Public Law 95-268 (92 Stat. 216) added this new sec. 240. Previously, sec. 240 had concerned agricultural credit and self-help community development projects but had been repealed by the FA Act of 1974.

³⁴² Sec. 6(a)(1) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1951) struck out "The Corporation" and inserted in lieu thereof "(a) IN GENERAL.—The Corporation".

³⁴³ Sec. 6(a)(2) of the Overseas Private Investment Corporation Amendments Act of 2003 (Public Law 108-158; 117 Stat. 1951) added subsec. (b).

³⁴⁴ 22 U.S.C. 2200a. Sec. 240A, as added by sec. 105 of the FA Act of 1969 and amended by sec. 2(7) of Public Law 93-390, was amended and restated by sec. 10 of Public Law 95-268 (92 Stat. 216).

³⁴⁵ Sec. 14(a)(1) of the OPIC Amendments Act (Public Law 99-204; 99 Stat. 1674) inserted "(a)" before "After".

the operations of Corporation complement or are compatible with the development assistance programs of the United States and other donors; and

(2) a description of any project for which the Corporation—

(A) refused to provide any insurance, reinsurance, guaranty, financing, or other financial support, on account of violations of human rights referred to in section 239(i); or

(B) notwithstanding such violations, provided such insurance, reinsurance, guaranty, financing, or financial support, on the basis of a determination (i) that the project will directly benefit the needy people in the country in which the project is located, or (ii) that the national security interest so requires.

(b)³⁴⁶ (1) Each annual report required by subsection (a) shall contain projections of the effects on employment in the United States of all projects for which, during the preceding fiscal year, the Corporation initially issued any insurance, reinsurance, or guaranty or made any direct loan. Each such report shall include projections of—

(A) the amount of United States exports to be generated by those projects, both during the start-up phase and over a period of years;

(B) the final destination of the products to be produced as a result of those projects; and

(C) the impact such production will have on the production of similar products in the United States with regard to both domestic sales and exports.

(2)³⁴⁷ The projections required by this subsection shall be based on an analysis of each of the projects described in paragraph (1).

(3)³⁴⁷ In reporting the projections on employment required by this subsection, the Corporation shall specify, with respect to each project—

(A) any loss of jobs in the United States caused by the project, whether or not the project itself creates other jobs;

(B) any jobs created by the project; and

(C) the country in which the project is located, and the economic sector involved in the project.

No proprietary information may be disclosed under this paragraph.

(c)³⁴⁸ * * * [Repealed—1988]

(d) The Corporation shall maintain as part of its records—

³⁴⁶ Sec. 14(a)(2) of the OPIC Amendments Act (Public Law 99-204; 99 Stat. 1674) added subssecs. (b) through (e).

Previously, sec. 9(a)(2) of the OPIC Amendments Act of 1981 (Public Law 97-65; 95 Stat. 1024) struck out an earlier subsec. (b), which required a one-time report to Congress on the development of private and multilateral programs for investment insurance and any reinsurance arrangements OPIC had made with private insurance companies, multilateral organizations and institutions, or other entities.

³⁴⁷ Sec. 108 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3654) struck out the former para. (2), and inserted new paras. (2) and (3).

³⁴⁸ Sec. 110(b)(1) of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), struck out subsec. (c). Originally added by sec. 14(a)(2) of the OPIC Amendments Act (Public Law 99-204; 99 Stat. 1674), it had required that OPIC submit to Congress not later than December 31, 1987, a report analyzing the actual effects, as of September 30, 1986, on employment in the United States of all projects with respect to which any insurance, reinsurance, or guaranty issued by the Corporation was in effect on September 30, 1986, or with respect to which repayments on direct loans by the Corporation were being made as of that date.

(1) all information collected in preparing the report required by subsection (c) (as in effect before the enactment of the Overseas Private Investment Corporation Amendments Act of 1988),³⁴⁹ whether the information was collected by the Corporation itself or by a contractor; and

(2) a copy of the analysis of each project analyzed in preparing the reports required by either subsection (b) or (c) (as in effect before the enactment of the Overseas Private Investment Corporation Amendments Act of 1988).³⁴⁹

(e)³⁵⁰ Each annual report required by subsection (a) shall include an assessment of programs implemented by the Corporation under section 234A(a), including the following information, to the extent such information is available to the Corporation:

(1) The nature and dollar value of political risk insurance provided by private insurers in conjunction with the Corporation, which the Corporation was not permitted to provide under this title.

(2) The nature and dollar value of political risk insurance provided by private insurers in conjunction with the Corporation, which the Corporation was permitted to provide under this title.

(3) The manner in which such private insurers and the Corporation cooperated in recovery efforts and claims management.

(f)³⁵⁰ Subsections (b) and (e) do not require the inclusion in any report submitted pursuant to those subsections of any information which would not be required to be made available to the public pursuant to section 552 of title 5, United States Code (relating to freedom of information).

SEC. 240B.³⁵¹ PROHIBITION ON NONCOMPETITIVE AWARDED OF INSURANCE CONTRACTS ON OPIC SUPPORTED EXPORTS.

(a) REQUIREMENT FOR CERTIFICATION.—

(1) IN GENERAL.—Except as provided in paragraph (3), the investor on whose behalf insurance, reinsurance, guaranties, or other financing is provided under this title with respect to a project shall be required to certify to the Corporation that any contract for the export of goods as part of that project will include a clause requiring that United States insurance companies have a fair and open competitive opportunity to provide insurance against risk of loss of such export.

(2) WHEN CERTIFICATION MUST BE MADE.—The investor shall be required, in every practicable case, to so certify before the insurance, reinsurance, guarantee, or other financing is provided. In any case in which such a certification is not made in

³⁴⁹Sec. 110(b)(2) of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), added the parenthetical text following "(c)".

³⁵⁰Sec. 105(b) of the OPIC Amendments Act of 1988, S. 2757, enacted into law by reference in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461; 102 Stat. 2268), amended Sec. 240A by redesignating subsec. (e) as (f) and inserting a new subsec. (e).

³⁵¹22 U.S.C. 2200b. Sec. 109 of the Jobs Through Exports Act of 1992 (Public Law 102-549; 106 Stat. 3654) added sec. 240B. An earlier sec. 240B, struck out by sec. 15 of Public Law 99-204 (99 Stat. 1676), addressed the return of appropriated funds by the Corporation to the general fund of the Treasury.

advance, the investor shall include in the certification the reasons for the failure to make a certification in advance.

(3) EXCEPTION.—Paragraph (1) does not apply with respect to an investor who does not, because of the nature of the investment, have a controlling interest in fact in the project in question.

(b) REPORTS BY THE UNITED STATES TRADE REPRESENTATIVE.—The United States Trade Representative shall review the actions of the Corporation under subsection (a) and, after consultation with representatives of United States insurance companies, shall report to the Congress in the report required by section 181(b) of the Trade Act of 1974 with respect to such actions.

(c) DEFINITIONS.—For purposes of this section—

(1) the term “United States insurance company” includes—

(A) an individual, partnership, corporation, holding company, or other legal entity which is authorized, or in the case of a holding company, subsidiaries of which are authorized, by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

(B) foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in subparagraph (A);

(2) United States insurance companies shall be considered to have had a “fair and open competitive opportunity to provide insurance” if they—

(A) have received notice of the opportunity to provide insurance; and

(B) have been evaluated on a nondiscriminatory basis; and

(3) the term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

Title V—Disadvantaged Children in Asia³⁵²

Sec. 241.³⁵³ **Assistance to Certain Disadvantaged Children in Asia.**—(a) The Congress recognizes the humanitarian needs of disadvantaged children in Asian countries where there has been or continues to be a heavy presence of United States military and related personnel in recent years. Moreover, the Congress finds that inadequate provision has been made for the care and welfare of such disadvantaged children, particularly those fathered by the United States citizens.

(b) Accordingly, the President is authorized to expend up to \$3,000,000³⁵⁴ of funds made available under chapter 1 of this part, in addition to funds otherwise available for such purposes, to help

³⁵²Sec. 116 of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 952) struck out the title heading “**Development Research**” and added this new heading for title V.

³⁵³22 U.S.C. 2201. This new sec. 241 was added by sec. 116 of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 952). Previously, sec. 241 had contained the general authority under title V but was repealed by Public Law 94-161 (89 Stat. 849).

³⁵⁴Sec. 903(a) of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 190) struck out “\$2,000,000” and inserted in lieu thereof “\$3,000,000”.

Nuclear nonproliferation—Continued			
Reprocessing transfers			
Foreign aid prohibition	PL 90–629 Sec 102		535
South Asia			
Findings of Congress	PL 87–195 Sec 620F		344
Report to Congress	PL 87–195 Sec 620F(c)		345
Sense of Congress	PL 87–195 Sec 620F		344
Nuclear transfers			
U.S. foreign policy	PL 97–113 Sec 737		836
O			
Oaths of allegiance			
(see Refugees)			
Obligations (U.S.)			
Definitions and applications	31 USC 1551		1155
Documentary evidence requirements	31 USC 1501		1154
OECD			
(see Organization for Economic Cooperation and Development)			
Offset agreements			
Arms sales			
Incentive payments prohibition	PL 90–629 Sec 39A		495
Okinawa-U.S. relations			
Chemical munitions			
Transfer to United States	PL 91–672 Sec 13		907
Olympic games			
Boycott of	PL 96–533 Sec 718		849
Organization for Economic Cooperation and Development (OECD)			
Development Assistance Committee	PL 87–195 Sec 631(c)		356
Organization for the Prohibition of Chemical Weapons (OPCW)			
(see Chemical Weapons Convention)			
(see United States National Authority)			
Organization of American States-U.S. relations			
International military forces			
Establishment	PL 87–195 Sec 501		249
Orphans and vulnerable children			
Report to Congress	PL 109–95		554
Report to Congress	PL 87–195 Sec 135		93
Report to Congress	PL 109–95 Sec 5		557
Overseas Private Investment Corporation (OPIC)			
Activities			
Environmental impact	PL 87–195 Sec 231A(b)		120
Agricultural credit and assistance programs.			
Applicability of U.S. Code	PL 87–195 Sec 222A(f)		105
Appropriations, 2006	PL 87–195 Sec 239(c)		141
Board of directors	PL 109–102 Title I		926
Capital stock	PL 87–195 Sec 233(b)		121
Creation, purpose and policy	PL 87–195 Sec 232		121
Developing countries			
U.S. small business participation	PL 87–195 Sec 231		116
Direct investment	S 2757 Sec 109		749
Equity financing program			
Congressional consultation	PL 87–195 Sec 234(c)		126
Limitations on	PL 87–195 Sec 234(g)(6)		130
Pilot program	PL 87–195 Sec 234(g)(2)		129
Exports			
Insurance guaranty program	PL 87–195 Sec 234(g)		128
Functions	PL 87–195 Sec 240B		147
General provisions and powers	PL 87–195 Sec 234		124
Human rights	PL 87–195 Sec 239		141
Impact of guarantees on employment	PL 87–195 Sec 239(i)		144
Impact of guarantees on employment	PL 87–195 Sec 231		116

Overseas Private Investment Corporation (OPIC)—Continued			
Income and revenues	PL 87-195 Sec 236		135
Insurance	PL 87-195 Sec 234(a)		124
Other functions	PL 87-195 Sec 234(f)		127
Insurance guaranty program			
Awarding contracts	PL 87-195 Sec 240B		147
Insurance guaranty, and financing programs.	PL 87-195 Sec 237		136
Insurance, guaranties, or reinsurance	PL 87-195 Sec 237		136
Investment Advisory Council	PL 87-195 Sec 233(e)		123
Investment guaranties	PL 87-195 Sec 234(b)		125
Liabilities	PL 87-195 Sec 235		132
Investment insurance			
Liabilities	PL 87-195 Sec 235		132
Programs	PL 87-195 Sec 234		124
Legal capacity	PL 87-195 Sec 239(d)		142
Limitation on use of funds	PL 109-102 Sec 589		1001
Loans, direct			
Appropriations, 2000	PL 106-113 Title I		1080
Loans, guaranteed			
Appropriations, 2000	PL 106-113 Title I		1080
Noncredit account	PL 109-102 Title I		926
Noncredit account revolving fund	PL 87-195 Sec 235(c)		134
Replenishment of	PL 87-195 Sec 235(f)		135
Officers	PL 87-195 Sec 233(d)		122
Organization	PL 87-195 Sec 233		121
Predecessor guaranty authority	PL 87-195 Sec 235(d)		134
President of	PL 87-195 Sec 233(c)		122
Private insurance companies	PL 87-195 Sec 234		124
Private investment opportunities			
Surveys	PL 87-195 Sec 234(d)		126
Private political risk insurance			
Enhancement of	PL 87-195 Sec 234A		130
Program account	PL 109-102 Title I		926
Programs in Haiti			
Prohibitions on	S 2757 Sec 111		750
Protection of workers rights			
Report to Congress	PL 87-195 Sec 231A(a)(2)		120
Report to Congress	PL 87-195 Sec 240A		145
Staff	PL 87-195 Sec 233(d)		122
Tax exempt status	PL 87-195 Sec 239(j)		144
Technical assistance	PL 87-195 Sec 234(e)		127
Transfer authority	PL 109-102 Sec 579		996
U.S. small business participation	PL 87-195 Sec 240		145
United States Trade Representative			
Report to Congress	PL 87-195 Sec 240B(b)		148
Workers rights			
Limitation on activities	PL 87-195 Sec 231A(a)(1)		119
Overseas Private Investment Corporation Amendments Act of 1988.	S 2757		749

P

Pakistan-U.S. relations			
Disaster assistance	PL 87-195 Sec 494		217
Foreign aid			
Notification requirements	PL 109-102 Sec 520		961
Military aid	PL 87-195 Sec 620E		340
Naval vessel transfer	PL 109-134 Sec 2		545
Palestine			
(see Palestine Liberation Organization)			
(see Palestinian Authority-U.S. relations)			
Palestine Liberation Organization			
West Bank and Gaza assistance			
Audit requirement	PL 109-13 Sec 2103		1027