

Calendar No. 386

108TH CONGRESS }
1st Session }

SENATE

{ REPORT
108-194

OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 2003

NOVEMBER 11, 2003.—Ordered to be printed

Mr. LUGAR, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany S. 1824]

The Committee on Foreign Relations, having had under consideration the bill S. 1824 to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The bill reauthorizes the Overseas Private Investment Corporation through September 30, 2007, makes several technical and perfecting amendments to its underlying statute, provides the Corporation with modest enhancements in its investment insurance and local currency guaranty programs and directs the Corporation to collect data on the amount of insurance and financing provided to minority and women-owned businesses. OPIC's authorization expired on September 30, 2003, and has been extended through November 21, 2003 by continuing resolution.

OPIC is a self-sustaining, independent government agency providing political risk insurance and project finance to U.S. businesses in over 150 emerging markets and developing countries. Its operations and activities have supported over 250,000 U.S. jobs and produced \$64 billion of U.S. exports while generating \$4.4 billion

in reserves. Over the past 30 years, it has created close to 670,000 host country jobs and supported \$145 billion of investments overseas. Nearly 70 percent of suppliers to OPIC-backed projects are U.S. small businesses.

II. BACKGROUND AND NEED FOR THE LEGISLATION

In 1971, OPIC was established as an independent government corporation by Congress to help American businesses compete overseas and to promote economic development in host countries.

OPIC Chairman and CEO Peter Watson is to be commended for his efforts to refocus OPIC on the administration's overall development priorities, particularly in sub-Saharan Africa, where new project approvals over the past two years now amount to \$750 million. It is focused on the housing and health sectors, promoting projects and activities in South Africa that meet the challenges of HIV/AIDS, and providing clean drinking water to countries in West and East Africa.

OPIC and Its Outreach Efforts

The committee commends the recent efforts of OPIC to reach out to nongovernmental organizations (NGOs) and the labor community on issues relating to accountability, transparency, environmental and labor standards, human rights and corruption. The committee expects OPIC to continue a regular dialogue with all stakeholders and the goal of making reforms and process improvements with respect to issues such as accountability, transparency, environmental, social/labor and worker rights protections.

OPIC and An Accountability Mechanism and A Transparency Initiative

The committee is aware of the establishment in recent years of various mechanisms within multilateral and bilateral financial and export-promotion institutions to increase accountability and transparency of those institutions. These institutions include: the World Bank, the International Finance Corporation, the Asian Development Bank, the Inter-American Development Bank, the Multilateral Investment Guarantee Agency, the European Bank for Reconstruction and Development, the International Monetary Fund, the Export Development Corporation of Canada, and the Japan Bank for International Cooperation. The committee encourages OPIC to follow the example of the best practices of these institutions and work with all stakeholders to establish an "accountability mechanism" and continue its "transparency initiative."

An accountability mechanism should: evaluate and report on OPIC compliance with environmental, social, labor, human rights, and transparency standards consistent with OPIC statutory mandates; provide a forum for resolving concerns regarding the impacts of specific OPIC-supported projects with respect to such issues; and provide advice regarding OPIC projects, policies and practices. Such a mechanism should also: be transparent in its operations and outputs, and be responsive to stakeholders' considerations on environmental and social concerns, including labor, human rights and corruption concerns; be accessible to project-affected parties; and insure the independence and integrity of the evaluations and advice provided by the accountability mechanism. With respect to

the independence of the accountability mechanism, the committee urges the Corporation to follow the model of several international financial institutions by providing the mechanism the ability to report directly to the Corporation's Board of Directors.

The committee commends OPIC's efforts to convene a dialogue with stakeholders on a transparency initiative and encourages OPIC to continue this dialogue. The committee believes a transparency initiative should heighten transparency and information disclosure concerning OPIC's projects and internal mechanisms, consistent with existing statutes and laws. Interested stakeholders, including NGOs, environmental and labor organizations, and the business/investor community, should play an active role in this process and provide recommendations on how it should be used to strengthen OPIC's programs and policies.

The committee will use its oversight function to monitor OPIC's performance and progress toward achieving these goals, and expects a fulsome briefing by OPIC on such progress and performance six months after enactment of this Act, and annually thereafter for the duration of the authorization contained in this bill.

OPIC and Labor Issues

The committee recognizes that OPIC has statutory obligations with regard to worker rights which must be fully implemented.

The committee also commends the efforts of OPIC in guarding against an erosion of U.S. jobs as a result of OPIC-supported projects. OPIC should continue to work, in consultation with all its stakeholders, to ensure that: OPIC-supported projects do not result in significant job loss or substantially reduce positive trade benefits for the U.S.; investors provide detailed information on jobs created or supported by an OPIC-supported project; due diligence, reporting, and monitoring procedures provide detailed, accurate and timely information on U.S. effects; and enforcement procedures are comprehensive, effective, and transparent.

The committee will use its oversight function to monitor OPIC's performance and progress toward achieving these goals and expects a fulsome briefing by OPIC on such progress and performance six months after enactment of this Act, and annually thereafter for the duration of the authorization contained in this bill.

OPIC and Minority-Business Outreach

The committee commends OPIC for its minority-owned business outreach efforts and encourages the Corporation to continue its activities and to work with other U.S. Government trade, development and finance agencies in promoting economic opportunities for small and minority-owned businesses in developing countries.

OPIC and Small Business

The committee commends OPIC's efforts in support of U.S. Small and Medium-sized Enterprises (SMEs). The committee notes that many of these firms, particularly those with annual revenues of less than \$35 million, could substantially increase their exports to the extent that they secure access to OPIC financing and investment support. The committee supports recent efforts by the Corporation to establish a Small Business Center, to create a Small Business Initiative in coordination with the Small Business Admin-

istration, to launch a SME shared-risk loan guaranty program in partnership with the private sector, and to create a new Small and Medium Enterprise Department to implement and oversee SME activities.

III. COMMITTEE ACTION

On November 6, 2003, the Committee on Foreign Relations considered the bill, pursuant to notice, in open session. The committee agreed to a motion by Chairman Lugar to favorably report the bill to the Senate, by voice vote, a quorum being present.

IV. COST ESTIMATE

In accordance with rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides the following estimate of the cost of this legislation prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 10, 2003.

Honorable RICHARD G. LUGAR, *Chairman*
Committee on Foreign Relations,
United States Senate,
Washington, DC.

DEAR MR. CHAIRMAN:

The Congressional Budget Office has prepared the enclosed cost estimate for S. 1824, the Overseas Private Investment Corporation Amendments Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

S. 1824—OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 2003

SUMMARY

S. 1824 would extend through 2007 the authority of the Overseas Private Investment Corporation (OPIC) to issue political risk insurance and to finance investments in developing countries and emerging market economies. The bill would clarify that the term “expropriation” would include actions by political subdivisions or a foreign government or corporations owned by or controlled by foreign governments. It also would authorize OPIC to issue guarantees in local currencies, and it would require OPIC to report to the Congress on the effectiveness of its activities to reach businesses owned by women and minorities. OPIC’s authority would be limited to such amounts as may be provided in advance in appropriations acts. CBO estimates that implementing the bill would cost \$146 million over the 2004-2008 period, assuming the appropriation of

the necessary funds. The bill would not affect direct spending or receipts.

OPIC is a government corporation authorized to encourage private-sector investment in developing countries and emerging market economies. It insures investments against the risk of losses due to expropriation, inconvertibility of currencies, and war or political violence. In addition, OPIC finances investments through guaranteed and direct loans. OPIC is largely self-financing. Its noncredit program earns income from investments in government securities and insurance operations.

S. 1824 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1824 is shown in the following table. The estimate assumes that the bill will be enacted before the end of calendar year 2003, that funds and authority will be provided in annual appropriation acts near the start of each fiscal year, and that outlays will follow historical spending patterns. The costs of this legislation fall within budget function 150 (international affairs).

	By Fiscal Year, in Millions of Dollars					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for OPIC:						
Estimated Authorization Level ¹	-209	-233	-245	-266	-282	-297
Estimated Outlays	-213	-218	-232	-257	-277	-294
Proposed Changes:						
Estimated Authorization Level ²	0	27	35	47	58	36
Estimated Outlays	0	3	14	31	46	53
Spending Under S. 1824 for OPIC:						
Estimated Authorization Level ¹	-209	-206	-210	-219	-224	-261
Estimated Outlays	-213	-215	-218	-226	-231	-241

Note: OPIC = Overseas Private Investment Corporation.

¹The 2003 level is the amount appropriated for that year plus the estimated amount of offsetting collections in OPIC's noncredit account. A full-year appropriation for fiscal year 2004 has not been enacted for OPIC; the amounts shown here assume limited funding to permit OPIC to continue servicing its outstanding insurance and credits and to receive offsetting collections.

²The estimated authorization level assumes the 2003 funding level adjusted for inflation through 2007. Funding at the 2003 level over that period would lower outlays by \$21 million over the 2004-2008 period.

BASIS OF ESTIMATE

In 2003, OPIC received appropriations of \$40 million for administrative expenses and \$24 million for the cost of credit as defined by the Federal Credit Reform Act. Funding for 2004 has not been enacted. The estimated spending under current law assumes that OPIC continues to service its outstanding insurance and credits and to receive collections on its investments in U.S. securities, but that it issues no new insurance or finances no new investments after September 30, 2003. (Interest on existing securities brings in collections of more than \$230 million a year to the OPIC account; but those collections are offset by interest paid elsewhere in the federal budget.) CBO assumes that administrative expenses under

current law would be gradually reduced to a minimum rate necessary to service outstanding insurance and credits.

CBO assumes that under S. 1824 OPIC would continue to issue insurance over the 2004-2007 period and that funding for administrative expenses and the cost of credit would be provided in annual appropriations acts at the 2003 level adjusted for inflation through 2007 since a full-year appropriation has not been enacted. Based on information from OPIC, CBO estimates that the new reporting requirement and local-currency guarantees would not significantly affect the costs of OPIC's operations. Thus, enacting the bill would continue the policies that are assumed in CBO's baseline through 2007. Because the bill would extend OPIC's authorities through 2007 only, we estimate that funding in 2008 would only be needed for the administrative expenses of servicing outstanding insurance and credits.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 1824 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On September 30, 2003, the CBO transmitted an estimate for H.R. 3145, the Overseas Private Investment Corporation Amendments Act of 2003, as ordered reported by the House Committee on International Relations on September 25, 2003. The two bills are identical, as are their estimated costs.

Estimate prepared by: Federal Costs—Joseph C. Whitehill. Impact on State, Local, and Tribal Governments—Melissa Merrell. Impact on the Private Sector—Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has concluded that there is no regulatory impact from this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman).

Foreign Assistance Act of 1961

PART I

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Chapter 2—Other Programs

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TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

* * * * *

SEC. 233. 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, including the Chairman, with eight Directors constituting a quorum for the transaction of business. Eight Directors 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 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 such Directors 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 [officials] *principal officers* of the Government of the United States *whose duties relate to the programs of the Corporation*, including the President of the Corporation, the Administrator of the Agency for International Development, the United States Trade Representative, and [an official] *one such officer* of the Department of Labor, 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.

* * * * *

SEC. 234. INVESTMENT INSURANCE AND OTHER PROGRAMS.—The Corporation is hereby authorized to do the following:

(a) 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*;

* * * * *

(g) PILOT EQUITY FINANCE PROGRAM.—

* * * * *

(h) 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. 235. ISSUING AUTHORITY, DIRECT INVESTMENT AUTHORITY AND RESERVES.—

(a) 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 cost]** *subsidy and administrative costs* 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) of section 234 shall continue until **November 1, 2000]** *September 30, 2007.*

(b) * * * [Repealed—1992]

(c) There shall be established in the Treasury of the United States **[an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves]** *a noncredit account revolving fund, which shall be available for discharge of liabilities, as provided in subsection (d) of this section until such time as all such liabilities have been discharged or have expired or until all [such reserves have] of the fund has 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 section and (2) such sums as shall be appropriated pursuant to subsection (f) of this section for such purposes. [The allocation of such funds to each such reserve shall be determined by the Board after consultation with the Secretary of the Treasury.] Additional amounts may thereafter be transferred to such [reserves] fund pursuant to section 236.*

(d) Any payment made to discharge liabilities under investment insurance or reinsurance issued under section 234 under similar predecessor guaranty authority or under section 234A, shall be paid first out of the **[Insurance Reserve, as long as such reserve]** noncredit account revolving fund, as long as such fund remains available, and thereafter out of funds made available pursuant to subsection (f) of this section. Any payments made to discharge li-

abilities under guaranties issued under section 234(b) [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] 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) 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 [insurance and guaranty fund] *noncredit account revolving fund*, 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 [Insurance Reserve] *noncredit account revolving fund* until the amount of funds in the [Insurance Reserve] *noncredit account revolving fund* is less than \$25,000,000. Any appropriations to augment the [Insurance Reserve] *noncredit account revolving fund* 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. INCOME AND REVENUES.—* * *

* * * * *

SEC. 237. GENERAL PROVISIONS RELATING TO INSURANCE GUARANTY, AND FINANCING PROGRAM.—* * *

* * * * *

SEC. 238. DEFINITIONS.—As used in this title—

(a) the term “investment” includes any contribution or commitment 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*, 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 non-profit associations, created under the laws of the United States any State or territory thereof, or the District of Columbia, 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, 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;

(d) the term “noncredit account revolving fund” means the account in which funds under section 236 and all funds from non-credit activities are held; **[and]**

(e) 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);

(f) 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)**[.]**; *and*

(g) *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. 240. SMALL BUSINESS DEVELOPMENT.—[The Corporation]
(a) 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 234(A).

(b) *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 240(A), 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.