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OVERSEAS PRIVATE INVESTMENT CORPORATION REAUTHORIZATION ACT OF 2009

DECEMBER 15, 2009.—Ordered to be printed

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

REPORT

[To accompany S. 705]

The Committee on Foreign Relations, having had under consideration the bill S. 705, to reauthorize the programs of 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

The purpose of S. 705 is to reauthorize the programs of the Overseas Private Investment Corporation.

II. COMMITTEE ACTION

S. 705 was introduced by Senators Kerry and Lugar on March 25, 2009. On March 31, 2009, the committee ordered S. 705 reported favorably by voice vote.

III. DISCUSSION

S. 705, the "Overseas Private Investment Corporation Reauthorization Act of 2009" reauthorizes the agency through September 30, 2013. It strengthens the agency's development mandate and ensures that its activities are consistent with United States foreign policy objectives. The Overseas Private Investment Corporation (OPIC) is an independent agency of the United States established

in 1971. OPIC's mandate is to mobilize and facilitate the participation of the U.S. private sector in the economic and social development of less developed countries, thereby complementing the development assistance objectives of the United States. OPIC provides political risk insurance, project financing, and other financial assistance to U.S. companies in support of these objectives.

Over the agency's 38-year history, OPIC projects have generated more than $72 billion in U.S. exports and more than 273,000 American jobs while supporting over $188 billion worth of investments that have helped developing countries generate almost $15 billion in host-government revenues leading to over 821,000 host-country jobs.

The legislation includes several important changes: (1) strengthening transparency requirements to ensure NGOs and other interested groups have sufficient notice and information about potential OPIC-supported projects; (2) ensuring extractive industry projects supported by OPIC conform to standards and principles established by the Extractive Industries Transparency Initiative; and (3) strengthening the rights of workers overseas.

Preferential Consideration of Certain Investment Projects. This section amends section 231(f) of the FAA and requires OPIC, to the greatest degree practicable and consistent with the Corporation's goals, to provide preferential consideration to investment projects in less developed countries, the governments of which are receptive to private enterprise and are willing and able to maintain conditions that enable private enterprise to make its full contribution to the development process. This does not affect the committee's longstanding belief that protecting human rights, strengthening the rule of law, and promoting democratic governance by the host government are essential elements towards sustainable long-term development.

Transparency for Extraction Investments. The bill creates a new subsection under the climate change mitigation section addressing extraction investments. The committee recognizes the problematic history of extractive industry projects in developing countries. The committee intends for this legislation to provide important transparency safeguards so that OPIC-sponsored projects can best fulfill the agency's development mandate. The legislation directs the Corporation to provide notice to Congress not later than 60 days before approval of extractive industry projects, defined as those which are Category A and valued at $10,000,000 or more.

In general, the Corporation may approve a contract of insurance, reinsurance, a guaranty, or provide financing to an eligible investor for a project that significantly involves an extractive industry only if: (1) the eligible investor has agreed to implement Extractive Industries Transparency Initiative (EITI) principles and criteria, or substantially similar principles and criteria related to the specific project to be carried out; and (2) the host country where the project is to be carried out has committed to EITI principles and criteria or substantially similar principles and criteria, or the host country is taking the necessary steps to establish functioning systems. Functioning systems include: accurately accounting for revenues and expenditures in connection with extraction; the independent audit of such revenues and expenditures and the widespread public

dissemination of the finding of the audit; and verifying government receipts against company payments, including widespread dissemination of such payment information and disclosure of such documents as host government agreements. The legislation includes an exception to the above provision and allows for the Corporation to approve an extractive industry project, even if the host country has not committed to EITI or substantially similar principles and criteria and is not taking the necessary steps to establish functioning accounting, auditing and government receipt verification systems, provided that the host government does not prevent the eligible investor from implementing EITI or substantially similar principles and criteria related to the specific project to be carried out.

"Extractive industry" refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals, or coal. By "substantially similar principles and criteria," the committee means the general agreement of EITI principles, as well as the adoption of specific criteria, including:

1. Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies to a wide audience in a publicly accessible, comprehensive and comprehensible manner;
2. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified;
3. This approach should be extended to all companies including state-owned enterprises; and
4. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

Finally, this section requires the Corporation, to the extent practicable and consistent with its development objectives, to give preference to projects where both the eligible investor and host country have agreed to implement EITI principles and criteria, or substantially similar principles and criteria.

Increased Transparency and Public Participation

The committee commends OPIC for its transparency initiative implemented in response to the 2003 reauthorization committee report. This section furthers transparency by amending section 231A(c)(2) of the FAA to require OPIC to provide advance notice and information regarding all projects considered by the Board of Directors. The committee wants to ensure there is a robust exchange of information and viewpoints prior to Board discussion of potential projects. In the past, public hearings scheduled by OPIC to receive views regarding the activities of the Corporation have been sparsely attended or cancelled due to lack of attendance. The committee believes public input would be enhanced by requiring OPIC to make information available in advance about potential projects to be voted on by the Board of Directors. The legislation is intended to address this information gap and ensure that inter-

ested parties are aware in advance about the public hearing date and have sufficient information in order to prepare for such a hearing.

The legislation directs the Corporation to hold a public hearing in order to afford an opportunity for any person to present view regarding the activities of the Corporation. It shall notice such a hearing at least 20 days in advance. To ensure participants are adequately prepared for such a hearing, at least 15 days in advance, the Corporation shall make available a public summary of each project, not including any confidential business information, including information related to workers rights, as well as information related to the project's social and environmental impacts.

The legislation also directs the Corporation to make available to the public the detailed methodology used to assess and monitor the impact of projects supported by the Corporation related to host-country environmental and development impact, project impact toward employment in the United States and the protection of internationally recognized worker rights, as well as the elimination of discrimination with respect to employment and occupation, in host countries.

The legislation furthers additional transparency toward "Category A" projects, which are projects that have a significant adverse environmental impact. "Category A project" means a project or other activity for which the Corporation proposes to provide insurance, reinsurance, a guaranty, financing, or other assistance and which is likely to have a significant adverse environmental impact. OPIC's Board of Directors may not vote in favor of any action proposed to be taken by the Corporation on any Category A project until at least 60 days after the Corporation makes available for public comment a summary of the project and relevant information about the project. Such summaries, which shall not include confidential business information, shall be made available to groups in the area that may be impacted by the proposed project and to NGOs in the host country. To the extent practicable, the Corporation shall publish responses to comments received with respect to a Category A project and submit the responses to the Board not later than 7 days before a vote is to be taken for action on the project.

The committee commends the Corporation for establishing an Office of Accountability. The Corporation shall continue to maintain an Office of Accountability to provide, to the maximum extent practicable, upon request, problem-solving services for projects supported by the Corporation and to review the Corporation's compliance with its environmental, social, internationally recognized worker rights, human rights, and transparency policies and procedures. The committee expects the Office of Accountability to continue to operate in a manner that is fair, objective, and transparent.

The committee expects that:

- The transparency commitments made by OPIC Acting President in his April 7, 2009 letter to the Committee on Foreign Relations for the Senate and the Committee on Foreign Affairs for the House of Representatives, will be faithfully implemented by the Corporation, and will apply consistently to all

projects and subprojects. OPIC's commitment to improved coordination with locally affected communities found in the September 21, 2006 OPIC Anti-Corruption and Transparency Initiative Fact Sheet will also be faithfully implemented. In addition, the brief project summaries will identify environmental and social policies that will be applied to the project and subprojects will include developmental, labor, and worker rights policies.

- OPIC's definition of "business confidential" should be consistent with FOIA definition as per 5 U.S.C. §552(b)(4) and pursuant to the guidance of the U.S. Department of Justice.
- Mandatory Board approval (and 60 day public notice and comment period) should be required for all Category A projects.
- Within one year of the date of enactment of this act, the OPIC Board of Directors should consider a proposal to include discussion and/or votes on projects as part of the open session of board meetings.
- The statutorily required review of proposed OPIC assessment and monitoring methodology should include the subsequent revision of this methodology. This review and revision will recur on every 3 years, and a minimum of 60 days of public comment will be provided. A summary of the project monitoring reports should also be disclosed.
- Regarding 60 day public notice and comment period for Category A projects, detailed information, including documentation that project related information has been made available to potentially affected peoples in the host country in a language and manner of distribution that is accessible to them, will be required to be made available at least 60 days in advance of the Board meeting
- All new Host Country Notifications, Third Party Independent Audits Certification and Summaries of Category A Projects and Subprojects for which OPIC received an application after the effective date of OPIC's Transparency Initiative commitments, will be made publicly available on OPIC's website as soon as they are issued.
- Statutory requirements for the Office of Accountability will result in independence of budget and power to approve expenditures associated with that budget, and its ability to carry out investigations and analysis should not be dictated by OPIC management. This includes, but is not limited to, the freedom of the Office of Accountability staff and its designates to travel in fulfillment of the Office of Accountability's duties.

Investment Funds and Other Financial Intermediaries

The committee expects that:

- All requirements for OPIC projects should be applied to "subprojects," investment funds, and other financial intermediaries.
- All Category A subprojects should be approved by OPIC and include the public comment period and publication of environmental and social assessments.
- *Contract language:* Language pertaining to environmental, social and labor requirements must be written into all con-

tracts between OPIC-supported investment funds, financial intermediaries and the companies and "subprojects" in which they invest.

The committee expects that analysis of fund performance in the Annual Report shall identify and describe each subproject supported by OPIC Investment Funds, including an analysis of the performance of each fund. Such analysis shall identify the domicile of each fund, all subprojects of each fund, the categorization of each subproject (i.e. category A, B), and provide descriptions of environmental and social impacts of each subproject.

Given the current financial climate and the opaque nature of offshore funds, the committee expects that OPIC will continue to take every precaution to ensure that any funds domiciled offshore meet the requirements of all relevant U.S. statutes.

Ineligibility of Persons Doing Certain Business with State Sponsors of Terrorism. The bill adds a new subsection (m) to Section 239 of the FAA to make ineligible for OPIC assistance persons with certain business activity in or with state sponsors of terrorism. This will ensure that OPIC assistance will not go towards entities, parent companies or affiliates that are engaged in a discouraged transaction with a "state sponsor of terrorism."

The legislation is meant to strike a balance between concern that the Corporation refrain from directing any support towards entities engaged in a discouraged transaction with a state sponsor of terrorism, while ensuring the Corporation is able to function in an effective and efficient manner and that certification requirements will not have a chilling effect on potential applicants.

The Corporation has provided the committee with assurances that the certification required by this section will require the certifying officer to affirm that they have taken measures necessary to determine whether their firm and any applicable affiliated entities are engaged in discouraged transactions, and if necessary, has received any information and cooperation from affiliated entities needed to make the certification.

"State sponsor of terrorism" means any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism pursuant to the Export Administration Act of 1979 and the Arms Export Control Act. This does not include Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, Darfur, if the Corporation, with concurrence of the Secretary of State, Determines that providing assistance for projects in such regions will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary program in support of a viable peace agreement in Sudan.

OPIC officials have committed to consult closely with the Secretary of State to ensure that any support provided to projects within Gaza is consistent with U.S. policy objectives. In addition, the committee expects the Corporation to consult with Senate Committee on Foreign Relations and the House Committee on Foreign Affairs before approval of assistance to such projects.

Increasing Project Requirements Regarding Employment. This section amends section 231A of the Foreign Assistance Act (FAA) to require OPIC to take certain measures to strengthen the rights

of workers overseas. The committee believes that promoting internationally recognized worker rights is an integral component of U.S. foreign policy, and OPIC plays an important role in this effort. The bill directly links workers rights standards in OPIC-supported projects to standards established under the Generalized System of Preferences (GSP) in the Trade Act of 1974 and directs that the Corporation can only provide assistance to prospective applicants if: 1) the country in which the project is to be undertaken is eligible under GSP; or 2) the country in which the project is to be undertaken is not eligible under GSP but has taken or is taking steps to afford workers in the country internationally recognized worker rights. The committee expects OPIC to implement a thorough review of its approval process for determining the eligibility of non-GSP cleared countries to ensure that OPIC assistance is not directed towards those countries that fail to respect internationally recognized worker rights. The committee also expects OPIC to carefully review all project applications to ensure that project sponsors have not previously committed, or are currently committing, significant violations of internationally recognized worker rights. OPIC should monitor project compliance, and review any complaints related to a project.

"Internationally recognized worker rights" follows the definition provided in section 507(4) of the Trade act of 1974. The worker rights limitation does not apply to the provision of humanitarian services. If Congress raises GSP workers rights standards, then workers rights standards for OPIC projects in GSP eligible countries will also increase. The legislation directs OPIC to refer to information contained in reports required by this Act and the Trade Act of 1974 as well as other relevant information—including observations, reports and recommendations of the International Labor Organization—when making worker rights determinations for purposes of project eligibility. In addition, the legislation removes a waiver previously granted to the president of OPIC allowing the Corporation to support projects "in the national interest" that may fall below established worker rights standards. Finally, the legislation adds an "elimination of discrimination with respect to employment and occupation" clause to the worker rights standard.

Climate Change Mitigation. The committee directs OPIC to institute a climate change mitigation action plan. Climate change is one of the critical issues facing the international community and has especially serious implications for developing countries. The committee believes that agencies such as OPIC, whose mandate is to promote economic and social development in less developed countries, has an important role to play toward mitigating climate change and energy security. The committee commends OPIC for the strong leadership role it has assumed through its greenhouse gas and clean energy initiative, and urges the Corporation to continue to sustain such efforts. To ensure this momentum is not lost, the legislation directs the Corporation to establish benchmark clean energy technology, climate mitigation and greenhouse gas goals. Within 180 days of enactment, the Corporation must institute a plan that will include the following:

First, OPIC shall establish a goal for substantially increasing support of projects that use, develop, or otherwise promote the use of clean energy technology during the 10-year period beginning on

the date of enactment of this Act. This should include preferential treatment to evaluating and awarding assistance for projects that use, develop, or otherwise promote the use of clean energy technologies.

Second, when the agency undertakes environmental impact assessments of potential projects, it shall take into account the degree to which the project contributes to the emission of greenhouse gases. This subsection applies to all projects, not just those classified as "Category A," and shall not be construed to eliminate any other requirement found elsewhere in law.

Third, OPIC shall continue to maintain a goal for reducing direct greenhouse gas emissions associated with projects in the Corporation's portfolio by 20 percent during the 10-year period beginning on the date of enactment, as well as a goal for limiting annual investment in projects that have significant greenhouse gas emissions in a manner that will help achieve a 20-percent reduction in greenhouse gas emissions over 10 years. The Corporation is directed to maintain a goal based on total aggregate greenhouse gas emissions of all projects in a manner compatible with the findings and actions taken under the United Nations Framework Convention on Climate Change.

The committee includes the following reporting requirements to be included in the Corporation's annual report: Annual greenhouse gas emissions attributable to each project that has significant greenhouse gas emissions in the Corporation's active portfolio; estimated greenhouse gas emissions for each new project that has significant greenhouse gas emissions; extent to which the Corporation is meeting its greenhouse gas reduction goals; and a listing of each new project supported by the Corporation that involves renewable energy and environmentally beneficial products and services, including clean energy technology. In submitting its annual report, the "reporting requirements" in this subsection apply to all projects, including those implemented through financial intermediaries.

"Clean technology" refers to a renewable energy supply or end-use technology that, compared over its life cycle to a similar technology already in widespread commercial use within a given country, will reduce emissions of greenhouse gases or decrease energy intensity of operation, substantially lower emissions of air pollutants, or generate substantially smaller and less hazardous quantities of solid and liquid waste. "Clean" end-use technologies include end-use energy efficiency measures that achieve substantial reductions in greenhouse gas emissions. "Clean" end-use technologies do not include HFC-23 abatement projects.

The committee expects the President of OPIC to provide the following information within one year of the date of enactment of this Act:

- An update of OPIC's methodology for accounting for GHG emissions in consultation with the public. Such methodology shall account for all OPIC supported projects and sub-projects that have GHG emissions of more than 25,000 tonnes of CO_2-equivalent per year.
- Measures to be taken to reduce GHG emissions of all OPIC supported projects and subprojects, as rapidly as practicable,

all projects and subprojects in which OPIC invests, by at least 50 percent by 2023 with a goal of limiting new carbon additions in proportional annual increments.

- Inclusion in each annual report under section 240A: (i) annual GHG emissions of the Corporation, (ii) annual GHG emissions of each project that OPIC supports that are estimated to emit more than 25,000 tonnes of CO_2 eq.

Environmental and Social Guidelines

The committee has strongly directed the Corporation to issue regulations of the highest standards in terms of environmental and social guidelines that can be feasibly implemented. Not only should these guidelines be no less rigorous than those the Corporation has made publicly available as of June 3, 2009 and of the environmental and social policies of the World Bank Group, these guidelines should also incorporate the highest of standards, whether from the World Bank Group or other relevant institutions. For example, the Asian Development Bank, having conducted a multiyear process of rewriting its environmental and social policies, proposes that draft full environmental impact assessments for all category A private sector and public sector projects be publicly disclosed 120 days prior to Board consideration, proposes that draft full EAIs for Category A subprojects are required to be disclosed 120 days before approval by the appropriate body (e.g., the ADB Board), and proposes that environmental assessments be required for all Bank financed or administered projects and their components, regardless of the source of financing (i.e. whether financed by the ADB, co-financed, or financed by borrower).

Scoring. In early 2009, the Congressional Budget Office issued a document it described as a "Notification," which proposed "to stop crediting the Overseas Private Investment Corporation (OPIC) with savings of discretionary budget authority from the interest earned on its reserves of U.S. Treasury securities."

While this proposal was not adopted, the committee reexamined the relevant statutory requirements, and the committee fully expects that any assessment of OPIC's capacity to self-fund will include interest income from its holdings of U.S. securities. The committee strongly opposes redefining the interest earned on OPIC's reserves of U.S. Treasury securities as an intra-governmental transfer. Such an action would be inconsistent with OPIC's statutory mandates.

V. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee provides this estimate of the costs of this legislation prepared by the Congressional Budget Office.

UNITED STATES CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 2009.

Hon. JOHN F. KERRY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 705, the Overseas Private Investment Corporation Reauthorization Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 7, 2009.

S. 705

OVERSEAS PRIVATE INVESTMENT CORPORATION
REAUTHORIZATION ACT OF 2009

AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FOREIGN RELATIONS ON MARCH 31, 2009

SUMMARY

S. 705 would authorize the Overseas Private Investment Corporation (OPIC) to continue to issue political risk insurance and to finance investments in developing countries and emerging market economies with direct loans and loan guarantees. This authority, which is set to expire at the end of fiscal year 2009 under current law, would extend through September 30, 2013.

CBO estimates that implementing S. 705 would cost $137 million over the 2010–2014 period, assuming appropriation of the estimated amounts. Enacting the bill would not affect direct spending or revenues.

S. 705 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. 705 is shown in the following table. The costs of this legislation fall within budget function 150 (international affairs).

Changes in Spending Subject to Appropriation Due to S. 705

By Fiscal Year, in Millions of Dollars

	2010	2011	2012	2013	2014	2010–2014
Administrative Expenses						
Estimated Authorization Level	10	22	32	44	39	148
Estimated Outlays	9	20	30	42	39	140
Insurance Program						
Estimated Authorization Level	5	8	10	10	7	40
Estimated Outlays	2	5	8	9	9	33
Loan Program						
Estimated Authorization Level	27	19	8	1	–33	23
Estimated Outlays	–1	–4	–9	–11	–11	–36
Total Changes						
Estimated Authorization Level	42	49	50	55	13	209
Estimated Outlays	10	21	29	40	37	137

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 705 will be enacted before the end of fiscal year 2009, that the necessary funds and authority will be provided in annual appropriation acts each fiscal year, and that outlays will follow historical spending patterns for OPIC activities.

OPIC operates a program to insure investors in developing countries and emerging markets against financial losses due to expropriation, currency inconvertibility, and damage resulting from political violence. In addition, OPIC operates a loan program to finance such investment through direct loans and loan guarantees. The bill would authorize OPIC to issue new insurance policies, loans, and loan guarantees through September 30, 2013.

The Omnibus Appropriations Act, 2009 (Public Law 111–8) authorized OPIC to continue issuing insurance policies and financing investments through the end of fiscal year 2009. Estimated spending under current law therefore assumes that OPIC continues to service its outstanding portfolio of insurance and loans and continues to receive interest on its current investments in U.S securities, but that it issues no new policies and finances no new investments after September 30, 2009.

Administrative Expenses

In 2009, OPIC received appropriations of $51 million for administrative expenses. CBO expects that under current law (that is, without reauthorization) total appropriations for administrative expenses would decline gradually from the 2009 level to the minimum amount necessary to service its outstanding insurance and loans. CBO estimates that if the programs are reauthorized total appropriations for administrative expenses would remain at 2009 levels, adjusted for inflation, through 2013. Administrative expenses thereafter would only be needed to service outstanding insurance and loans. CBO estimates that under the bill additional

administrative costs would total $140 million over the 2010-2014 period, assuming appropriation of the necessary amounts.

Insurance Program

CBO expects that under current law insurance premiums and claim payments would decline each year, based on historical data showing that about 20 percent of insurance policies are cancelled or reduced each year. CBO also anticipates that there would be no further obligations for project-specific expenses or various activities to encourage investment. Under the bill, CBO assumes that OPIC's insurance portfolio, premiums, and claims would remain at the estimated 2009 level through 2013. Given that claim payments have exceeded premiums in recent years, we estimate that, excluding relevant administrative expenses, extending the authority for OPIC's insurance program would result in a net cost of $33 million (claims paid out minus premiums paid in) over the 2010–2014 period.

Loan Program

In 2009, OPIC received an appropriation of $29 million for the cost of loan subsidies as defined in the Federal Credit Reform Act. CBO expects that under current law subsidy costs would decline gradually from the 2009 level as disbursement of approved loans also decline. CBO estimates that under the bill subsidy costs would remain at 2009 levels, adjusted for inflation, through 2013. CBO estimates that additional subsidy costs under the bill would total $60 million over the 2010–2014 period.

For the past several years, the subsidy rate for many loan guarantees made by OPIC has been negative, thus generating discretionary offsetting collections. CBO expects that under current law such receipts would decline gradually from an estimated $40 million in 2009 to $5 million in 2014. We estimate that under the bill those collections would increase by $96 million over the 2010–2014 period.

Thus, CBO estimates that, excluding relevant administrative expenses, reauthorizing OPIC's loan program would result in a net savings of $36 million over the 2010–2014 period—$60 million in additional costs minus $96 million in additional receipts.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 705 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

FEDERAL COSTS: John Chin

IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS: Jacob Kuipers

IMPACT ON THE PRIVATE SECTOR: Burke Doherty

ESTIMATE APPROVED BY:

Theresa Gullo, *Deputy Assistant Director for Budget Analysis.*

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 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).

The Foreign Assistance Act of 1961

* * * * * * *

TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 231. CREATION, PURPOSE AND POLICY.— * * *

* * * * * * *

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

(a) 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;

* * * * * * *

[(f) 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;**]**

(f) to the greatest degree practicable and consistent with the goals of the Corporation, to give preferential consideration to investment projects in any less developed country the government of which is receptive to both domestic and foreign private enterprise and to projects in any country the government of which is willing and able to maintain conditions that enable private enterprise to make a full contribution to the development process;

* * * * * * *

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

(o) to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing or any other assistance for a prospective eligible investor who enters, directly or through an affiliate, into certain discouraged transactions with a state sponsor of terrorism.

SEC. 231A. 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, 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 eligible investors to provide financial support under this title:

["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. 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.

[(4) 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.]

(a) INCREASING PROJECT REQUIREMENTS REGARDING EMPLOYMENT.—

(1) IN GENERAL.—The Corporation may insure, reinsure, guaranty, or finance a project only if—

(A) the country in which the project is to be undertaken is eligible for designation as a beneficiary developing country under the Generalized System of Preferences (19 U.S.C. 2461 et seq.) and has not been determined to be ineligible for such designation on the basis of section 502(b)(2)(G) of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)(G)) (relating to internationally recognized worker rights), or section 502(b)(2)(H) of such Act (19 U.S.C. 2462(b)(2)(H) (relating to the worst forms of child labor); or

(B) the country in which the project is to be undertaken is not eligible for designation as a beneficiary country under the Generalized System of Preferences, the government of that country has taken or is taking steps to afford workers in the country (including any designated zone or

special administrative region or area in that country) internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) (19 U.S.C. 2467(4)).

(2) LIMITATION INAPPLICABLE.—The limitation contained in paragraph (1) shall not apply to providing assistance for humanitarian services.

(3) USE OF REPORTS.—The Corporation shall, in implementing paragraph (1), consider—

(A) information contained in the reports required by sections 116(d) and 502B(b) of this Act and the report required by section 504 of the Trade Act of 1974 (19 U.S.C. 2464);

(B) other relevant sources of information readily available to the Corporation, including observations, reports, and recommendations of the International Labour Organization; and

(C) information provided in the hearing required under subsection (c).

(4) CONTRACT LANGUAGE.—The Corporation shall include the following language, in substantially the following form, in all contracts which the Corporation enters into with eligible investors to provide support under this title:

"The investor agrees not to take any actions to obstruct or prevent employees of the foreign enterprise from exercising the employees' internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) (19 U.S.C. 2467(4)) and the investor agrees to adhere to the obligations regarding those rights. The investor agrees to prohibit discrimination with respect to employment and occupation."

(5) PREFERENCE TO CERTAIN COUNTRIES.—Consistent with its development objectives, the Corporation shall give preferential consideration to projects in countries that—

(A) have adopted and maintained, in the country's laws and regulations, internationally recognized worker rights, as well as the elimination of discrimination with respect to employment and occupation; and

(B) are effectively enforcing those laws.

* * * * * * *

(c) PUBLIC HEARINGS.—(1) 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) 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.**]**

(2) 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. The Corporation shall provide notice of the hearing at least 20 days in before the hearing. At least 15 days in before the hearing the Corporation shall make available a public summary of

each project, including information related to workers rights, to be considered at the meeting. The Corporation shall not include any confidential business information in the summary made available under this subsection. Any views expressed at the hearing or in written comments shall be made part of the record.

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[(g) 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 investment 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) 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 Act and in marine transportation projects in countries and areas eligible for OPIC support worldwide using United States commercial maritime expertise.

[(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) 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.

[(6) CONSULTATIONS WITH CONGRESS.—The Corporation shall consult annually with the Committee on Foreign Affairs 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)] *(g)* 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.

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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—

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(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 15 per centum of the maximum contingent liability of investment guaranties which the Corporation is permitted to have outstanding under section **[**235(a)(2)**]** *235(a)(1)* shall be issued to a single investor.

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SEC. 234A. ENHANCING PRIVATE POLITICAL RISK INSURANCE INDUSTRY.

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SEC. 234B. EXTRACTION INVESTMENT.

(a) EXTRACTION INVESTMENTS.—

(1) PRIOR NOTIFICATION TO CONGRESSIONAL COMMITTEES.—

(A) IN GENERAL.—The Corporation shall provide notice of consideration of approval of a project described in subparagraph (B) to the Committees on Foreign Relations and Appropriations of the Senate and the Committees on Foreign Affairs and Appropriations of the House of Representatives not later than 60 days before approval of such project.

(B) PROJECT DESCRIBED.—A project described in this subparagraph is a Category A project (as defined in section 237(q)(3)) relating to an extractive industry project or any extractive industry project for which the assistance to be provided by the Corporation is valued at $10,000,000 or more (including contingent liability).

(2) COMMITMENT TO EITI PRINCIPLES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Corporation may approve a contract of insurance, reinsurance, a guaranty, or enter into an agreement to provide financing to an eligible investor for a project that significantly involves an extractive industry only if—

(i) the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria related to the specific project to be carried out; and

(ii)(I) the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria; or

(II) the host country where the project is to be carried out has in place or is taking the necessary steps to establish functioning systems for—

(aa) accurately accounting for revenues and expenditures in connection with the extraction and export of the type of natural resource to be extracted or exported;

(bb) the independent audit of such revenues and expenditures and the widespread public dissemination of the finding of the audit; and

(cc) verifying government receipts against company payments, including widespread dissemination of such payment information, and disclosure of such documents as host government agreements, concession agreements, and bidding documents, and allowing in any such dissemination or disclosure for the redaction of, or exceptions for, information that is commercially proprietary or that would create a competitive disadvantage.

(B) EXCEPTION.—If a host country does not meet the requirements of subparagraph (A)(ii) (I) or (II), the Corporation may approve a contract of insurance, reinsurance, or a guaranty, or enter into an agreement to provide financing for a project in the host country if the Corporation determines it is in the foreign policy interest of the United States for the Corporation to provide support for the project in the host country and the host country does not prevent an eligible investor from complying with subparagraph (A)(i).

(3) PREFERENCE FOR CERTAIN PROJECTS.—With respect to all projects that significantly involve an extractive industry, the Corporation, to the extent practicable and consistent with the Corporation's development objectives, shall give preference to a project in which the eligible investor has agreed to implement the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria, and the host country where the project is to be carried out has committed to the Extractive Industries Transparency Initiative principles and criteria, or substantially similar principles and criteria.

(4) EFFECT ON OTHER REQUIREMENTS.—Nothing in this subsection shall affect the limitations and prohibitions with respect to direct investments described in section 234(c).

(5) REPORTING REQUIREMENT.—The Corporation shall include in each annual report required under section 240A a description of its activities to carry out this subsection.

(b) EXTRACTIVE INDUSTRY.—The term "extractive industry" refers to an enterprise engaged in the exploration, development, or extraction of oil and gas reserves, metal ores, gemstones, industrial minerals (except rock used for construction purposes), or coal.

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 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 [2007] *September 30, 2013.*

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[(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)] *(e)* 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, 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 fund until the amount of funds in the noncredit account revolving fund is less than $25,000,000. Any appropriations to augment the 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. 237. GENERAL PROVISIONS RELATING TO INSURANCE GUARANTY, AND FINANCING PROGRAM.—(a) Insurance guaranties, and reinsurance 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.

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(j) Each *insurance, reinsurance, and* 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.

* * * * * * *

(m)(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)] *239(f)*.

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(o) 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 determining 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.

(p) REVIEW OF METHODOLOGY.—Not later than 180 days after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2009, the Corporation shall make available to the public the methodology, including relevant regulations, used to assess and monitor the impact of projects supported by the Corporation—

(1) on employment in the United States;

(2) on development and the environment in host countries; and

(3) on the protection of internationally recognized worker rights, as well as the elimination of discrimination with respect to employment and occupation, in host countries.

(q) PUBLIC NOTICE PRIOR TO PROJECT APPROVAL.—

(1) PUBLIC NOTICE.—

(A) IN GENERAL.—The Board of Directors of the Corporation may not vote in favor of any action proposed to be taken by the Corporation on a Category A project before the date that is 60 days after the Corporation—

(i) makes available for public comment a summary of the project and relevant information about the project; and

(ii) such summary and information described in clause (i) has been made available to groups in the area that may be impacted by the proposed project and to nongovernmental organizations in the host country.

(B) EXCEPTION.—The Corporation shall not include any confidential business information in the summary and information made available under clauses (i) and (ii) of subparagraph (A).

(2) PUBLISHED RESPONSE.—To the extent practicable, the Corporation shall publish responses to the comments received under paragraph (1)(A)(i) with respect to a Category A project and submit the responses to the Board not later than 7 days before a vote is to be taken on any action proposed by the Corporation on the project.

(3) CATEGORY A PROJECT DEFINED.—The term "Category A project" means any project or other activity for which the Corporation proposes to provide insurance, reinsurance, a guaranty, financing, or other assistance under this title and which is likely to have a significant adverse environmental impact.

(r) OFFICE OF ACCOUNTABILITY.—The Corporation shall maintain an Office of Accountability to provide, to the maximum extent practicable, upon request, problem-solving services for projects supported by the Corporation and review of the Corporation's compliance with its environmental, social, internationally recognized worker rights, human rights, and transparency policies and procedures. The Office of Accountability shall operate in a manner that is fair, objective, and transparent.

(s) PROHIBITION ON ASSISTANCE FOR CERTAIN RAILWAY PROJECTS.—The Corporation may not provide insurance, reinsurance, a guaranty, financing, or other assistance to support the development or promotion of a railway connection or railway-related connection that connects Azerbaijan and Turkey without connecting or traversing with Armenia.

SEC. 239. 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.**]**

[(c)**]** *(b)*(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 independent certified public accountant shall report the results of such audit to the Board. The financial statements of the Corpora-

tion 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 Office 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 Office considers necessary.

(3) In lieu of the financial and compliance audit required by paragraph (2), the Government Accountability Office 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 Office 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.

[(d)**]** *(c)* 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; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and guarantee 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)); 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; and to take such actions as may be necessary or appropriate to carry out the powers herein or hereafter specifically conferred upon it.

[(e)] *(d)* The Inspector General of the Agency for International Development (1) may conduct 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 General 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 General in connection with his responsibilities under this subsection.

[(f)] *(e)* 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, or any other East European country,[334] or the People's Republic of China, or Pakistan 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)] *(f)* 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)] *(g)* 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.

[(i)] *(h)* 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)] *(i)* 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 by any State, the District of Columbia, or any county, municipality, or local taxing authority.

[(k)](j) 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.

(k) CONGRESSIONAL NOTIFICATION OF INCREASE IN MAXIMUM CONTINGENT LIABILITY.—The Corporation shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives not later than 15 days after the date on which the Corporation's maximum contingent liability outstanding at any time pursuant to insurance issued under section 234(a), and the amount of finfncing issued under section 234(b) and (c), exceeds the Corporation's maximum contingent liability for the preceding fiscal year by 25 percent or more.

(l) TRANSPARENCY AND ACCOUNTABILITY OF INVESTMENT FUNDS.—

(1) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—With respect to any investment fund that the Corporation creates on or after the date of the enactment of the Overseas Private Investment Corporation Reauthorization Act of 2009, the Corporation may select persons to manage the fund only by contract using competitive precedures that are full and open.

(2) CRITERIA FOR SELECTION.—In assessing a proposal for investment fund management, the Corporation shall consider, in addition to other factors, the following:

(A) The prospective fund management's experience, depth, and cohesiveness.

(B) The prospective fund management's track record in investing risk capital in emerging markets.

(C) The prospective fund management's experience, management record, and monitoring capabilities in the countries in which the management operates, including details of local presence (directly or through local alliances).

(D) The prospective fund management's experience as a fiduciary in managing institution capital, meeting reporting requirements, and administration.

(E) The prospective fund management's record in avoiding investments in companies that would be disqualified under section 239(l).

(3) ANNUAL REPORT.—The Corporation shall include in each annual report under section 240A an analysis of the investment fund portfolio of the Corporation, including the following:

(A) FUND PERFORMANCE.—An analysis of the aggregate financial performance of the investment fund portfolio grouped by region and maturity.

(B) STATUS OF LOAN GUARANTIES.—The amount of guaranties committed by the Corporation to support investment funds, including the percentage of such amount that has been disbursed to the investment funds.

(C) RISK RATINGS.—The definition of risk ratings, and the current aggregate risk ratings for the investment fund portfolio, including the number of investment funds in each of the Corporation's rating categories.

(D) COMPETITIVE SELECTION OF INVESTMENT FUND MANAGEMENT.—The number of proposals received and evaluated for each newly established investment fund.

(m) OPERATIONS IN IRAQ.—Notwithstanding subsections (a) and (b) of section 237, the Corporation is authorized to undertake in Iraq any program authorized by this title.

(n) STATE SPONSOR OF TERRORISM.—

(1) IN GENERAL.—In order to carry out the policy set forth in section 231(o) of this Act, the Corporation shall require a certification from an officer of a prospective OPIC-supported United States investor that the investor and all affiliates of the investor are not engaged in a discouraged transaction with a state sponsor of terrorism.

(2) DISCOURAGED TRANSACTION.—In this subsection, the term "discouraged transaction" means any of the following activities:

(A) An investment commitment of $20,000,000 or more by the investor in the energy sector in a state sponsor of terrorism.

(B) Any loan, or an extension of credit, to the government of a state sponsor of terrorism by the investor that—

(i) is outstanding on the date the Corporation enters into a contract with the investor; and

(ii) that has a value of more than $5,000,000, including the sale of goods for which payment is not required by the purchaser within 45 days.

(C) The transfer by the investor of goods that are included on the United States Munitions List, referred to in section 38(a)(1) of the Arms Export Control Act (22 U.S.C. 2778(a)(1)) to a state sponsor of terrorism within the 3-year period preceding the date the Corporation enters into a contract with the investor.

(3) EXCEPTION.—An officer of a prospective OPIC-supported United States investor may provide a certification under this subsection notwithstanding the fact that an affiliate of the investor is engaged in a discouraged transaction if the transaction is carried out under a contract or other obligation of the affiliate that was entered into or incurred before the acquisition of such affiliate by the prospective OPIC-supported United States investor or the parent company of the OPIC-supported United States investor.

(4) DEFINITIONS.—In this subsection:

(A) AFFILIATE.—The term "affiliate" means any person that is directly or indirectly controlled by, under common control with, or controls a prospective OPIC-supported United States investor or the parent company of such investor.

(B) INVESTMENT COMMITMENT IN THE ENERGY SECTOR OF A STATE SPONSOR OF TERRORISM.—The term "investment commitment in the energy sector of a state sponsor of terrorism" means any of the following activities if such activity is undertaken pursuant to a commitment, or pursuant to the exercise of rights under a commitment, that was entered into with the government of a state sponsor of terrorism or a nongovernmental entity in a country that is a state sponsor of terrorism:

(i) The entry into a contract that includes responsibility for the development or transportation of petroleum or natural gas resources located in a country that

is a state sponsor of terrorism, or the entry into a contract providing for the general supervision or guaranty of another person's performance of such a contract.

(ii) The purchase of a share of ownership, including an equity interest, in the development of petroleum or natural resources described in clause (i).

(iii) The entry into a contract providing for the participation in royalties, earnings, or profits in the development of petroleum or natural resources described in clause (i), without regard to the form of the participation.

(C) STATE SPONSOR OF TERRORISM.—The term "state sponsor of terrorism"—

(i) means any country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism pursuant to section 6(j) of the Export Administration Act of 1979, section 620A of this Act, or section 40 of the Arms Export Control Act; and

(ii) does not include Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, Darfur, if the Corporation, with the concurrence of the Secretary of State, determines that providing assistance for projects in such regions will provide emergency relief, promote economic self-sufficiency, or implement a nonmilitary program in support of a viable peace agreement in Sudan, such as the Comprehensive Peace Agreement for Sudan and the Darfur Peace Agreement.

SEC. 240. SMALL BUSINESS DEVELOPMENT.—(a) IN GENERAL.—
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(c) RESOURCES DEDICATED TO SMALL BUSINESSES, COOPERATIVES, AND OTHER SMALL UNITED STATES INVESTORS.—The Corporation shall ensure that adequate personnel and resources, including senior officers, are dedicated to assist United States small businesses, cooperatives, and other small United States investors in obtaining insurance, reinsurance, financing, and other assistance under this title. The Corporation shall include, in each annual report under section 240A, the following information with respect to the period covered by the report:

(1) A description of such personnel and resources.

(2) The number of United States small businesses, cooperatives, and other small United States investors that received insurance, reinsurance, financing, and other assistance from the Corporation, and the dollar value of such insurance, reinsurance, financing, and other assistance.

(3) A description of the projects for which the insurance, reinsurance, financing, and other assistance was provided.

SEC. 240A. REPORTS TO THE CONGRESS.—(a) 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)] *239(g)*, 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 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)] *239(h)*; 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.

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