

Public Law 95-268
95th Congress

An Act

To amend the Foreign Assistance Act of 1961 with respect to the activities of the Overseas Private Investment Corporation.

Apr. 24, 1978
[H.R. 9179]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Overseas Private
Investment
Corporation
Amendments Act
of 1978.
22 USC 2151
note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Overseas Private Investment Corporation Amendments Act of 1978".

PURPOSE AND POLICY

SEC. 2. Section 231 of the Foreign Assistance Act of 1961 is amended—

22 USC 2191.

(1) by inserting after the first undesignated paragraph the following new undesignated paragraph:

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

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

"(2) give preferential consideration to investment projects in less developed countries that have per capita incomes of \$520 or less in 1975 United States dollars, and restrict its activities with respect to investment projects in less developed countries that have per capita incomes of \$1,000 or more in 1975 United States dollars.";

(2) by amending subsection (e) to read as follows:

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

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

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

(3) in subsection (m), by striking out the period at the end thereof and inserting in lieu thereof "; and";

(4) by adding at the end thereof the following new subsection:

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

(5) by striking out subsections (f) and (l), and redesignating subsections (g), (h), (i), (j), (k), (m), and (n) as subsections (f), (g), (h), (i), (j), (k), and (l), respectively.

INVESTMENT INSURANCE AND OTHER PROGRAMS

22 USC 2194.

SEC. 3. Section 234 of the Foreign Assistance Act of 1961 is amended—

(1) in subsection (a)(2), by striking out all after “total project financing” and inserting in lieu thereof a period;

(2) in subsection (a)(3) and subsection (b), by striking out “total face amount” each place it appears and inserting in lieu thereof “maximum contingent liability”;

(3) by striking out paragraphs (4) through (7) of subsection (a);

(4) in subsection (c), by adding the following new sentence at the end of the first paragraph: “Loans may be made under this subsection only for projects that are sponsored by or significantly involve United States small business or cooperatives.”;

(5) by striking out the last paragraph of subsection (c) and inserting in lieu thereof the following:

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

(6) in the first sentence of subsection (d), by striking out all after “private investors” and inserting in lieu thereof a comma and the following: “except that—

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

“(2) expenditures financed by the Corporation during any fiscal year on surveys to ascertain the existence, location, extent, or quality of, or to determine the feasibility of undertaking operations for the extraction of nonfuel minerals may not exceed \$200,000.”; and

(7) in paragraph (1) of subsection (f) by striking out the period at the end thereof and inserting in lieu thereof the following: “; except that (A) such agreements and contracts shall be consistent with the purposes of the Corporation set forth in section 231 of this Act and shall be on equitable terms, and (B) the Corporation shall not make or carry out any association or risk-sharing agreement for the direct underwriting of insurance by the Corporation with others, other than on an individual basis where such direct underwriting facilitates the purposes of the Corporation as set forth in section 231 of this Act.”.

Loans for
extraction of
nonfuel minerals.

Ante, p. 213.

ISSUING AUTHORITY

22 USC 2195.

SEC. 4. Section 235 of the Foreign Assistance Act of 1961 is amended—

(1) in subsection (a)(2), by striking out “, of which guaranties of credit union investment shall not exceed \$1,250,000”; and

(2) in subsection (a)(4), by striking out “December 31, 1977” and inserting in lieu thereof “September 30, 1981”.

GENERAL PROVISIONS RELATING TO INSURANCE AND GUARANTY
PROGRAM

SEC. 5. Section 237(f) of the Foreign Assistance Act of 1961 is amended— 22 USC 2197.

(1) by inserting before the period at the end of the first sentence a comma and the following: “except that the Corporation may provide for appropriate adjustments in the insured dollar value to reflect the replacement cost of project assets”; and

(2) by inserting before the period at the end of the second sentence a comma and the following: “except that such limitation shall not apply to direct insurance or reinsurance of loans by banks or other financial institutions to unrelated parties”.

ACTS OF BRIBERY

SEC. 6. Section 237 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

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

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

15 USC 78a note.
Regulations.

GENERAL PROVISIONS AND POWERS

SEC. 7. Section 239 of the Foreign Assistance Act of 1961 is amended— 22 USC 2199.

(1) in subsection (b), by striking out the second paragraph thereof;

(2) in subsection (d), by inserting after “section 231 (c)” in the parenthetical the following: “or participation certificates as evidence of indebtedness held by the Corporation in connection with settlement of claims under section 237 (i)”; and

(3) by adding at the end thereof the following new subsections:

“(i) 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.

“(j) The Corporation shall not provide any insurance, reinsurance, guaranty, loan, or other financial support authorized by section 234

Development
impact profile.
Ante, p. 213.

Ante, p. 214.

for any new or significantly expanded project involving the exploration for or the mining of or other extraction of copper if such new or expanded production of copper is planned to begin before January 1, 1981, and the Corporation shall not support any such project which would begin production after such date if the project will cause injury to the primary United States copper industry.

Ante, p. 214.

“(k) The Corporation may not provide any insurance, reinsurance, guaranty, financing, or other financial support authorized by section 234 for any project to establish or expand production or processing of palm oil, sugar, or citrus crops for export.”

HUMAN RIGHTS

22 USC 2199.

SEC. 8. Section 239 of the Foreign Assistance Act of 1961, as amended by section 7 of this Act, is further amended by adding at the end thereof the following new subsection:

22 USC 2151n.

“(1) 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.”

SMALL BUSINESS DEVELOPMENT

22 USC 2200.

SEC. 9. The Foreign Assistance Act of 1961 is amended by inserting after section 239 the following new section:

Ante, p. 213.

“SEC. 240. SMALL BUSINESS DEVELOPMENT.—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 per cent 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.”

REPORTS

22 USC 2200a.

SEC. 10. Section 240A of the Foreign Assistance Act of 1961 is amended to read as follows:

Reports to Congress.

“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—

Ante, p. 215.

“(1) an assessment, based upon the development impact profiles required by section 239(i), 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 the 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(1); or

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

“(b) Not later than September 30, 1980, the Corporation shall submit to the Congress a report on the development of private and multilateral programs for investment insurance and any reinsurance arrangements the Corporation has made with private insurance companies, multilateral organizations and institutions, or other entities.”.

Ante, p. 216.

Report to Congress.

Approved April 24, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-670 (Comm. on International Relations) and No. 95-1043 (Comm. of Conference).

SENATE REPORT No. 95-505 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Oct. 25, S. 1771 considered and passed Senate.

Nov. 2, 3, considered in House.

Vol. 124 (1978): Feb. 23, considered and passed House.

Mar. 6, considered and passed Senate, amended, in lieu of S. 1771.

Apr. 6, Senate agreed to conference report.

Apr. 11, House agreed to conference report.