

56673, as amended, set out as a note under section 2381 of this title.

§ 2198. Definitions

As used in this subpart—

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

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

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

(d) the term “noncredit account revolving fund” means the account in which funds under section 2196 of this title and all funds from noncredit activities are held;

(e) the term “noncredit activities” means all activities of the Corporation other than its loan guarantee program under section 2194(b) of this title and its direct loan program under section 2194(c) of this title;

(f) the term “predecessor guaranty authority” means prior guaranty authorities (other than housing guaranty authorities) repealed by the Foreign Assistance Act of 1969, and sections 1509(b)(3), 1872(b), and 1933(b)¹ of this title (exclusive of authority relating to informational media guaranties); and

(g) the term “local financial institution”—

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

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

(Pub. L. 87-195, pt. I, §238, as added Pub. L. 91-175, pt. I, §105, Dec. 30, 1969, 83 Stat. 815; amended Pub. L. 92-226, pt. I, §104(a), Feb. 7, 1972, 86 Stat. 22; Pub. L. 97-65, §7, Oct. 16, 1981, 95 Stat. 1024; Pub. L. 99-204, §17(a), Dec. 23, 1985, 99 Stat. 1676; Pub. L. 102-549, title I, §106, Oct. 28, 1992, 106 Stat. 3653; Pub. L. 108-158, §§4(b), 5(b), Dec. 3, 2003, 117 Stat. 1950.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1969, referred to in subsec. (f), is Pub. L. 91-175, Dec. 30, 1969, 83 Stat. 805, as amended. For complete classification of this Act to the Code, see Short Title of 1969 Amendment note set out under section 2151 of this title and Tables. The guaranty authorities repealed by the 1969 Act were the guaranty authorities contained in sections 2181 to 2184 prior to the general reorganization of subpart III by the 1969 Act.

Section 1509(b)(3) of this title, referred to in subsec. (f), was repealed by act Aug. 26, 1954, ch. 937, title V, §542(a)(4), 68 Stat. 861.

Sections 1872(b) and 1933(b) of this title, referred to in subsec. (f), were repealed by Pub. L. 87-195, pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460. Section 642(b) of Pub. L. 87-195 provided that references to provisions of law repealed by subsec. (a) were to be deemed references to the appropriate provisions of Pub. L. 87-195. See sections 2163 and 2351 of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-158, §4(b), inserted “, a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government,” after “government”.

Subsec. (d). Pub. L. 108-158, §5(b)(1), struck out “and” after semicolon at end.

Subsec. (g). Pub. L. 108-158, §5(b)(2), (3), added subsec. (g).

1992—Subsecs. (c) to (f). Pub. L. 102-549 struck out “and” at end of subsec. (c), added subsecs. (d) and (e), and redesignated former subsec. (d) as (f).

1985—Subsec. (c)(2). Pub. L. 99-204 inserted reference to the District of Columbia.

1981—Subsec. (a). Pub. L. 97-65 substituted “contribution or commitment of funds” for “contribution of funds”.

1972—Subsec. (c). Pub. L. 92-226 struck out “required by law to be” after “share capital,” in first proviso.

§ 2199. General provisions and powers

(a) Place of residence

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 a resident thereof.

(b) Transfer of prior obligations, etc.; administration prior to transfer

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 2194(a), (b), and (d) of this title. Until such transfer, the agency heretofore responsible for such predecessor programs shall continue to administer such assets and obligations, and such programs and activities author-

¹ See References in Text note below.

ized under this subpart as may be determined by the President.

(c) Audits of the Corporation

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

(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 Corporation shall be presented in accordance with generally accepted accounting principles. These financial statements and the report of the accountant shall be included in a report which contains, to the extent applicable, the information identified in section 9106 of title 31, 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 Government Accountability Office may review the audit conducted by the accountant and the report to the Congress in the manner and at such times as the Government Accountability 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) Powers of Corporation

To carry out the purposes of this subpart, 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; notwithstanding any other provision of law, to represent itself or to contract for representation in all legal and arbitral proceedings; to enter into lim-

ited-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 2194 of this title; 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 2191(c) or participation certificates as evidence of indebtedness held by the Corporation in connection with settlement of claims under section 2197(i) of this title); to make and carry out such contracts and agreements as are necessary and advisable in the conduct of its business; to exercise any 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) Reviews, investigations, and inspections by Inspector General of Agency for International Development

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 subchapter I of this chapter shall be reimbursed by the Corporation for all expenses incurred by the Inspector General in connection with his responsibilities under this subsection.

(f) Programs for Yugoslavia, Poland, Hungary, Romania, the People's Republic of China, or Pakistan; national interest

Except for the provisions of this subpart, no other provision of this chapter or any other law shall be construed to prohibit the operation in Yugoslavia, Poland, Hungary, or any other East European country, or the People's Republic of China, or Pakistan of the programs authorized by this subpart, if the President determines that the operation of such program in such country is important to the national interest.

(g) Environmental impact assessments

The requirements of section 2151p(c) of this title relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this subpart in connection with a project in a country.

(h) Preparation, maintenance, and contents of development impact profile for investment projects; development of criteria for evaluating projects

In order to carry out the policy set forth in paragraph (1) of the second undesignated paragraph of section 2191 of this title, 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) Observance of and respect for human rights and fundamental freedoms as considerations for conduct of assistance programs, etc.; provisions applicable for determinations; exceptions

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 2151n of this title 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) Exemption from taxation

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) Publication of policy guidelines

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

(Pub. L. 87-195, pt. I, §239, as added Pub. L. 91-175, pt. I, §105, Dec. 30, 1969, 83 Stat. 816; amended Pub. L. 92-226, pt. I, §104(b), Feb. 7, 1972, 86 Stat. 22; Pub. L. 92-310, title II, §227(d), June 6, 1972, 86 Stat. 207; Pub. L. 93-390, §2(5), Aug. 27, 1974, 88 Stat. 768; Pub. L. 95-268, §§7, 8, Apr. 24, 1978, 92 Stat. 215, 216; Pub. L. 95-598, title III, §318, Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96-327, Aug. 8, 1980, 94 Stat. 1026; Pub. L. 97-65, §8, Oct. 16, 1981, 95 Stat. 1024; Pub. L. 97-113, title VII, §705(b)(2), Dec. 29, 1981, 95 Stat. 1545; Pub. L. 99-204, §§4(c), 11-13, Dec. 23, 1985, 99 Stat. 1670, 1673, 1674; Pub. L. 100-461, title V, §555, Oct. 1, 1988, 102 Stat. 2268-36; Pub. L. 101-167, title V, §597(a), Nov. 21, 1989, 103 Stat. 1257; Pub. L. 101-179, title III, §302(a), Nov. 28, 1989, 103 Stat.

1311; Pub. L. 101-513, title V, §576(a), Nov. 5, 1990, 104 Stat. 2044; Pub. L. 102-549, title I, §107, Oct. 28, 1992, 106 Stat. 3654; Pub. L. 105-118, title V, §579(a), Nov. 26, 1997, 111 Stat. 2435; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§2346 et seq.), VI (§2348 et seq.), and VIII (§2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CODIFICATION

Amendment by Pub. L. 100-461 is based on sections 108 and 110(a)(2) of title I of H.R. 5263, One Hundredth Congress, as passed by the House of Representatives on Sept. 20, 1988, and sections 108 and 110(a)(2) of title I of S. 2757, One Hundredth Congress, as reported Sept. 7, 1988, and enacted into law by Pub. L. 100-461.

AMENDMENTS

2004—Subsec. (c)(2) to (4). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” wherever appearing.

1997—Subsec. (f). Pub. L. 105-118 inserted “, or Pakistan” after “China”.

1992—Subsec. (d). Pub. L. 102-549, after “legal and arbitral proceedings;”, inserted “to enter into limited-term contracts with nationals of the United States for personal services to carry out activities in the United States and abroad under subsections (d) and (e) of section 2194 of this title;”.

1990—Subsec. (f). Pub. L. 101-513 inserted “or any other East European country,” after “Hungary,”.

1989—Subsec. (f). Pub. L. 101-179 inserted “, Poland, Hungary,” after “Yugoslavia”.

Pub. L. 101-167, which directed amendment of subsec. (f) by inserting “Poland, Hungary,” after “Yugoslavia,” did not take effect due to similar amendment by section 302(a) of Pub. L. 101-179. See amendment note above and section 302(c) of Pub. L. 101-179, set out below.

1988—Subsec. (f). Pub. L. 100-461, which directed that “, Romania,” be struck out, was executed by striking out “, Romania” after “Yugoslavia”, as the probable intent of Congress, because no comma followed “Romania” in original.

Subsec. (g). Pub. L. 100-461 made technical amendment to reference to section 2151p(c) of this title to reflect renumbering of corresponding section of original act.

1985—Subsec. (c). Pub. L. 99-204, §11, amended subsec. (c) generally, designating existing provisions as par. (1), substituting “chapter 91 of title 31” for “the Government Corporation Control Act”, and adding pars. (2) to (4).

Subsec. (g). Pub. L. 99-204, §4(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “Within six months after August 27, 1974, the Corporation shall develop and implement specific criteria intended to minimize the potential environmental implications of projects undertaken by investors abroad in accordance with any of the programs authorized by this subpart.”

Subsecs. (j), (k). Pub. L. 99-204, §§12, 13, added subsecs. (j) and (k).

1981—Subsec. (d). Pub. L. 97-65, §8(1), inserted provision authorizing the Corporation to collect or compromise any obligations assigned to or held by the Corporation, including any legal or equitable rights accruing to the Corporation.

Subsec. (e). Pub. L. 97-65, §8(2)(A), and Pub. L. 97-113, §705(b)(2), made identical amendments by substituting references to Inspector General for references to Auditor-General wherever appearing.

Pub. L. 97-65, §8(2)(B), substituted language referring to Inspector General's authority to reviews, investigate, and conduct inspections of all phases of the Corporation's operations and activities for provisions which had formerly placed upon that official the responsibility for planning and directing the execution of audits, reviews, investigations, and inspections of all phases of the Corporation's operations and activities.

Subsecs. (f) to (l). Pub. L. 97-65, §8(3), redesignated subsecs. (g), (h), (i), and (l) as (f), (g), (h), and (i), respectively. Former subsecs. (f) providing for the establishment of an Advisory Council, (j) providing limits for projects involving the exploration for or the mining of or other extraction of copper, and (k) prohibiting the granting of insurance, reinsurance, guaranty, financing, or other financial support for projects to establish or expand production or processing of palm oil, sugar, or citrus crops for export, were struck out.

1980—Subsec. (g). Pub. L. 96-327 substituted "Yugoslavia, Romania or the People's Republic of China" for "Yugoslavia or Romania".

1978—Subsec. (b). Pub. L. 95-268, §7(1), struck out provisions relating to the cessation on Dec. 31, 1979, of programs operated by the Corporation under sections 2194(b) to (e) and 2200 of this title and transfer by the President of such programs and all obligations, etc., arising out of such programs to other agencies of the United States.

Subsec. (d). Pub. L. 95-598 substituted "any priority" for "the priority".

Pub. L. 95-268, §7(2), inserted provision relating to participation certificates as evidence of indebtedness held by Corporation for settlement of claims under section 2197(i) of this title.

Subsecs. (i) to (k). Pub. L. 95-268, §7(3), added subsecs. (i) to (k).

Subsec. (l). Pub. L. 95-268, §8, added subsec. (l).

1974—Subsec. (b). Pub. L. 93-390, §2(5)(A), inserted provisions relating to the cessation on Dec. 31, 1979, of programs operated by the Corporation under sections 2194(b) to (e) and 2200 of this title and transfer by the President of such programs and all obligations, etc., arising out of such programs to other agencies of the United States.

Subsec. (h). Pub. L. 93-390, §2(5)(B), added subsec. (h). 1972—Subsec. (d). Pub. L. 92-310 struck out provisions which authorized the Corporation to require bonds of officers and employees and to pay premiums therefor.

Subsec. (g). Pub. L. 92-226 added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

ENHANCEMENT OF NONGOVERNMENTAL SECTOR IN POLAND AND HUNGARY

Pub. L. 101-179, title III, §302(b), Nov. 28, 1989, 103 Stat. 1311, provided that: "In accordance with its man-

date to foster private initiative and competition and enhance the ability of private enterprise to make its full contribution to the development process, the Overseas Private Investment Corporation shall support projects in Poland and Hungary which will result in enhancement of the nongovernmental sector and reduction of state involvement in the economy."

AVOIDANCE OF DUPLICATIVE AMENDMENTS

Pub. L. 101-179, title III, §302(c), Nov. 28, 1989, 103 Stat. 1311, provided that: "If the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 [Pub. L. 101-167], contains the same amendment that is made by subsection (a) of this section [see 1989 Amendment note set out above], the amendment made by that Act shall not be effective."

§ 2200. Small business development in less developed friendly countries or areas; encouragement by other Federal departments, etc., of broadened participation by United States small business cooperatives and investors; project funding

(a) In general

The Corporation shall undertake, in cooperation with appropriate departments, agencies, and instrumentalities of the United States as well as private entities and others, to broaden the participation of United States small business, cooperatives, and other small United States investors in the development of small private enterprise in less developed friendly countries or areas. The Corporation shall allocate up to 50 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 2191(a) of this title, on such terms and conditions as the Corporation may determine, through loans, grants, or other programs authorized by section 2194 of this title and section 2194b of this title.

(b) Outreach to minority-owned and women-owned businesses

The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

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

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

The Corporation shall include, in its annual report submitted to the Congress under section 2200a of this title, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.

(Pub. L. 87-195, pt. I, §240, as added Pub. L. 95-268, §9, Apr. 24, 1978, 92 Stat. 216; amended Pub. L. 99-204, §9(b)(3), Dec. 23, 1985, 99 Stat. 1673; Pub. L. 108-158, §6(a), Dec. 3, 2003, 117 Stat. 1950.)