

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

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

(b) transfers and additions to the insurance or guaranty reserves, the Direct Investment Fund established pursuant to section 2195 of this title, and such other funds or reserves as the Corporation may establish, at such time and in such amounts as the Board may determine; and

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

(Pub. L. 87-195, pt. I, §236, as added Pub. L. 91-175, pt. I, §105, Dec. 30, 1969, 83 Stat. 814.)

§ 2197. General provisions relating to insurance, guaranty, financing, and reinsurance programs

(a) Scope

Insurance, guaranties, and reinsurance issued under this subpart shall cover investment made in connection with projects in any less developed friendly country or area with the government of which the President of the United States has agreed to institute a program for insurance, guaranties, or reinsurance.

(b) Protection of interest

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

(c) Guaranties as obligations backed by full faith and credit of United States

All guaranties issued prior to July 1, 1956, all guaranties issued under sections 1872(b)¹ and 1933(b)¹ of this title, all guaranties heretofore issued pursuant to prior guaranty authorities repealed by the Foreign Assistance Act of 1969, and all insurance, reinsurance and guaranties issued pursuant to this subpart shall constitute obligations, in accordance with the terms of such insurance, reinsurance or guaranties, of the United States of America and the full faith and credit of the United States of America is hereby pledged for the full payment and performance of such obligations.

(d) Fees

(1) In general

Fees may be charged for providing insurance, reinsurance, financing, and other services under this subpart in amounts to be determined by the Corporation. In the event fees

charged for insurance, reinsurance, financing, or other services are reduced, fees to be paid under existing contracts for the same type of insurance, reinsurance, financing, or services and for similar guaranties issued under predecessor guaranty authority may be reduced.

(2) Credit transaction costs

Project-specific transaction costs incurred by the Corporation relating to loan obligations or loan guarantee commitments covered by the provisions of the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.], including the costs of project-related travel and expenses for legal representation provided by persons outside the Corporation and other similar expenses which are charged to the borrower, shall be paid out of the appropriate finance account established pursuant to section 505(b) of such Act [2 U.S.C. 661d(b)].

(3) Noncredit transaction costs

Fees paid for the project-specific transaction costs and other direct costs associated with services provided to specific investors or potential investors pursuant to section 2194 of this title (other than those covered in paragraph (2)), including financing, insurance, reinsurance, missions, seminars, conferences, and other preinvestment services, shall be available for obligation for the purposes for which they were collected, notwithstanding any other provision of law.

(e) Maximum term of obligation

No insurance, guaranty, or reinsurance of any equity investment shall extend beyond twenty years from the date of issuance.

(f) Limitations on amounts

Compensation for insurance, reinsurance, or guaranties issued under this subpart shall not exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the Corporation plus interest, earnings, or profits actually accrued on such investment to the extent provided by such insurance, reinsurance, or guaranty, except that the Corporation may provide that (1) appropriate adjustments in the insured dollar value be made to reflect the replacement cost of project assets, (2) compensation for a claim of loss under insurance of an equity investment may be computed on the basis of the net book value attributable to such equity investment on the date of loss, and (3) compensation for loss due to business interruption may be computed on a basis to be determined by the Corporation which reflects amounts lost. Notwithstanding the preceding sentence, the Corporation shall limit the amount of direct insurance and reinsurance issued by it under section 2194 or 2194b of this title so that risk of loss as to at least 10 per centum of the total investment of the insured and its affiliates in the project is borne by the insured and such affiliates, except that such limitation shall not apply to direct insurance or reinsurance of loans by banks or other financial institutions to unrelated parties.

(g) Fraud or misrepresentation

No payment may be made under any guaranty, insurance, or reinsurance issued pursuant to

¹ See References in Text note below.

this subpart for any loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(h) Limits of obligation

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

(i) Claims settlement

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

(j) Presumption of compliance

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

(k) Balance of payments

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

(l) Convictions under Foreign Corrupt Practices Act of 1977; prohibition on payments for losses resulting from unlawful activities; suspension from eligibility of receipt of financial support

(1) No payment may be made under any insurance or reinsurance which is issued under this subpart on or after April 24, 1978, 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 subpart, 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 April 24, 1978, 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 subpart.

(m) Notification of countries of environmental restrictions on certain activities

(1) Before finally providing insurance, reinsurance, guaranties, or financing under this sub-

part 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 2199(g) of this title.

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

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

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

(B) for which the Corporation provided insurance, reinsurance, guaranties, or financing under this subpart before December 23, 1985, and which is in the Corporation's portfolio on that date.

(n) Penalties for fraud

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of the Corporation with respect to any insurance, reinsurance, guarantee, loan, equity investment, or other activity of the Corporation under section 2194 of this title or any change or extension of any such insurance, reinsurance, guarantee, loan, equity investment, or activity, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

(o) Use of local currencies

Direct loans or investments made in order to preserve the value of funds received in convertible foreign currency by the Corporation as a result of activities conducted pursuant to section 2194(a) of this title 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 subpart. The provisions of section 504(b) of the Federal Credit Reform Act of 1990 [2 U.S.C. 661c(b)] shall not apply to direct loan obliga-

tions made with funds described in this subsection.

(Pub. L. 87-195, pt. I, §237, as added Pub. L. 91-175, pt. I, §105, Dec. 30, 1969, 83 Stat. 814; amended Pub. L. 93-390, §2(4), Aug. 27, 1974, 88 Stat. 767; Pub. L. 95-268, §§5, 6, Apr. 24, 1978, 92 Stat. 215; Pub. L. 97-65, §6, Oct. 16, 1981, 95 Stat. 1023; Pub. L. 99-204, §§4(b), 6(b), 9(b)(2), Dec. 23, 1985, 99 Stat. 1670, 1671, 1673; Pub. L. 100-461, title V, §555, Oct. 1, 1988, 102 Stat. 2268-36; Pub. L. 102-549, title I, §105, Oct. 28, 1992, 106 Stat. 3652.)

REFERENCES IN TEXT

Sections 1872(b) and 1933(b) of this title, referred to in subsec. (c), 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.

The Foreign Assistance Act of 1969, referred to in subsec. (c), 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 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.

The Federal Credit Reform Act of 1990, referred to in subsec. (d)(2), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

This chapter, referred to in subsec. (j), was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (l), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 to 78dd-3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

CODIFICATION

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

AMENDMENTS

1992—Subsec. (d). Pub. L. 102-549, §105(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Fees shall be charged for insurance, guaranty, and reinsurance coverage in amounts to be determined by the Corporation. In the event fees charged for investment insurance, guaranties, or reinsurance are reduced, fees to be paid under existing contracts for the same type of insurance, guaranties, or reinsurance and for similar guaranties issued under predecessor guaranty authority may be reduced."

Subsecs. (n), (o). Pub. L. 102-549, §105(b), (c), added subsecs. (n) and (o).

1988—Pub. L. 100-461 inserted reference to financing in section catchline.

1985—Subsec. (f). Pub. L. 99-204, §6(b), added cl. (3).

Pub. L. 99-204, §9(b)(2), inserted "or 2194b" after "section 2194".

Subsec. (m). Pub. L. 99-204, §4(b), added subsec. (m).
1981—Subsec. (f). Pub. L. 97-65 substituted "Compensation for insurance, reinsurance, or guaranties issued under this subpart shall not exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the Corporation plus interest, earnings, or profits actually accrued on such investment to the extent provided by such insurance, reinsurance, or guaranty, except that the Corporation may provide that (1) appropriate adjustments in the insured dollar value be made to reflect the replacement cost of project assets, and (2) compensation for a claim of loss under insurance of an equity investment may be computed on the basis of the net book value attributable to such equity investment on the date of loss" for "No insurance, reinsurance, or guaranty issued under this subpart shall exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the Corporation plus interest, earnings or profits actually accrued on said investment to the extent provided by such insurance, reinsurance, or guaranty, except that the Corporation may provide for appropriate adjustments in the insured dollar value to reflect the replacement cost of project assets", and struck out provision that the preceding sentence not apply to the extent not permitted by State law.

1978—Subsec. (f). Pub. L. 95-268, §5, inserted provisions excepting from dollar amounts adjustments in the insured dollar amounts to reflect replacement cost of project assets, and provisions excepting from limitations loans by banks or other financial institutions to unrelated parties.

Subsec. (l). Pub. L. 95-268, §6, added subsec. (l).

1974—Subsecs. (a) to (c). Pub. L. 93-390, §2(4)(A)-(C), inserted references to reinsurance wherever appearing.

Subsec. (d). Pub. L. 93-390, §2(4)(D), inserted provisions authorizing fees to be charged for reinsurance and reduction of reinsurance fees under existing contracts in the event fees charged for reinsurance are reduced.

Subsec. (e). Pub. L. 93-390, §2(4)(E), inserted reference to reinsurance.

Subsec. (f). Pub. L. 93-390, §2(4)(F), (G), inserted "reinsurance" before "or guaranty" wherever appearing and provisions relating to limitations on the amount of direct insurance or reinsurance.

Subsec. (g). Pub. L. 93-390, §2(4)(H), inserted applicability to insurance and reinsurance.

Subsecs. (h) to (k). Pub. L. 93-390, §2(4)(I)-(K), inserted reference to reinsurance wherever appearing.

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.

§ 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