

(i) Consultations

It is the sense of the Congress that, as agreed between the two Governments and in order to further the policies specified in subsection (h), Israel and the United States should continue to engage in consultations concerning economic and financial measures, including structural and other reforms, that Israel should undertake during the pendency of this program to enable its economy to absorb and resettle immigrants and to accommodate the increased debt burden that will result from loans guaranteed pursuant to this section. It is the sense of the Congress that these consultations on economic measures should address progress and plans in the areas of budget policies, privatization, trade liberalization, financial and capital markets, labor markets, competition policy, and deregulation.

(j) Goods and services

During the pendency of the loan program authorized under this section, it is anticipated that, in the context of the economic reforms undertaken pursuant to subsections (h) and (i) of this section, Israel's increased population due to its absorption of immigrants, and the liberalization by the Government of Israel of its trade policy with the United States, the amount of United States investment goods and services purchased for use in or with respect to the country of Israel will substantially increase.

(k) Reports

The President shall report to Congress by December 31 of each fiscal year until December 31, 1999, regarding the implementation of this section.

(l) Applicability of certain sections

Section 2183 of this title shall apply to guarantees issued under subsection (a) in the same manner as such section applies to guarantees issued under section 2182 of this title, except that subsections (a), (e)(1), (g), and (j) of section 2183 of this title shall not apply to such guarantees and except that, to the extent section 2183 of this title is inconsistent with the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.], that Act shall apply. Loans shall be guaranteed under this section without regard to sections 2181, 2182, and 2198(c) of this title. Notwithstanding section 2183(f) of this title, the interest rate for loans guaranteed under this section may include a reasonable fee to cover the costs and fees incurred by the borrower in connection with this program or financing under this section in the event the borrower elects not to finance such costs or fees out of loan principal. Guarantees once issued hereunder shall be unconditional and fully and freely transferable.

(m) Terms and conditions

(1) Each loan guarantee issued under this section shall guarantee 100 percent of the principal and interest payable on such loans.

(2) The standard terms of any loan or increment guaranteed under this section shall be 30 years with semiannual payments of interest only over the first 10 years, and with semiannual payments of principal and interest on a level payment basis, over the last 20 years thereof, except that the guaranteed loan or any increments

issued in a single transaction may include obligations having different maturities, interest rates, and payment terms if the aggregate scheduled debt service for all obligations issued in a single transaction equals the debt service for a single loan or increment of like amount having the standard terms described in this sentence. The guarantor shall not have the right to accelerate any guaranteed loan or increment or to pay any amounts in respect of the guarantees issued other than in accordance with the original payment terms of the loan. For purposes of determining the maximum principal amount of any loan or increment to be guaranteed under this section, the principal amount of each such loan or increment shall be—

(A) in the case of any loan issued on a discount basis, the original issue price (excluding any transaction costs) thereof; or

(B) in the case of any loan issue¹ on an interest-bearing basis, the stated principal amount thereof.

(Pub. L. 87-195, pt. I, §226, as added Pub. L. 102-391, title VI, §601, Oct. 6, 1992, 106 Stat. 1699.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsecs. (e)(1) and (l), 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.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (g)(3), is section 601(b) of Pub. L. 94-329, title VI, June 30, 1976, 90 Stat. 765, which is not classified to the Code.

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.

SUBPART IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

§ 2191. Congressional statement of purpose; creation and functions of Corporation

To mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies, thereby complementing the development assistance objectives of the United States, there is hereby created the Overseas Private Investment Corporation (hereinafter called the "Corporation"), which shall be an agency of the United States under the policy guidance of the Secretary of State.

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 devel-

¹ So in original. Probably should be "issued".

opment assistance programs or projects of the United States or other donors;

(2) give preferential consideration to investment projects in less developed countries that have per capita incomes of \$984 or less in 1986 United States dollars, and restrict its activities with respect to investment projects in less developed countries that have per capita incomes of \$4,269 or more in 1986 United States dollars (other than countries designated as beneficiary countries under section 2702 of title 19, Ireland, and Northern Ireland); and

(3) ensure that the project is consistent with the provisions of section 2151p of this title, section 2151p-1 of this title, and section 2151q of this title relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to section 2151p of this title, section 2151p-1 of this title, and section 2151q of this title.

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;

(b) to utilize private credit and investment institutions and the Corporation's guaranty authority as the principal means of mobilizing capital investment funds;

(c) to broaden private participation and revolve its funds through selling its direct investments to private investors whenever it can appropriately do so on satisfactory terms;

(d) to conduct its insurance operations with due regard to principles of risk management including efforts to share its insurance and reinsurance risks;

(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;

(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;

(g) to foster private initiative and competition and discourage monopolistic practices;

(h) to further to the greatest degree possible, in a manner consistent with its goals, the balance-of-payments and employment objectives of the United States;

(i) to conduct its activities in consonance with the activities of the agency primarily responsible for administering subchapter I of this chapter and the international trade, in-

vestment, and financial policies of the United States Government, and to seek to support those developmental projects having positive trade benefits for the United States;

(j) to advise and assist, within its field of competence, interested agencies of the United States and other organizations, both public and private, national and international, with respect to projects and programs relating to the development of private enterprise in less developed countries and areas;

(k)(1) 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 such investor (or the sponsor of an investment project in which such investor is involved) significantly to reduce the number of his employees in the United States production he is replacing his United States production with production from such investment which involves substantially the same product for substantially the same market as his United States production; and (2) to monitor conformance with the representations of the investor on which the Corporation relied in making the determination required by clause (1);

(l) 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;

(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.

(Pub. L. 87-195, pt. I, § 231, as added Pub. L. 91-175, pt. I, § 105, Dec. 30, 1969, 83 Stat. 809; amended Pub. L. 93-390, § 2(1), Aug. 27, 1974, 88 Stat. 763; Pub. L. 95-268, § 2, Apr. 24, 1978, 92 Stat. 213; Pub. L. 97-65, § 2, Oct. 16, 1981, 95 Stat. 1021; Pub. L. 99-204, §§ 3, 4(a), Dec. 23, 1985, 99 Stat. 1669; Pub. L. 100-461, title V, § 555, Oct. 1, 1988, 102 Stat. 2268-36; Pub. L. 102-549, title I, § 101, Oct. 28, 1992, 106 Stat. 3651; Pub. L. 103-392, title I, § 105, Oct. 22, 1994, 108 Stat. 4099.)

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 102 and 110(a)(1) of title I of H.R. 5263, One Hundredth Con-

gress, as passed by the House of Representatives on Sept. 20, 1988, and sections 102 and 110(a)(1) of title I of S. 2757, One Hundredth Congress, as reported Sept. 7, 1988, and enacted into law by Pub. L. 100-461.

PRIOR PROVISIONS

A prior section 231 of Pub. L. 87-195, pt. 1, Sept. 4, 1961, 75 Stat. 432, related to general authority of President to participate in financing of surveys of investment opportunities in less developed friendly countries, prior to the general reorganization of this subpart by Pub. L. 91-175, pt. I, § 105, Dec. 30, 1969, 83 Stat. 807.

AMENDMENTS

1994—Pub. L. 103-392 inserted “, Ireland, and Northern Ireland” after “title 19” in par. (2) of second undesignated par.

1992—Pub. L. 102-549, in first undesignated par., substituted “countries and areas, and countries in transition from nonmarket to market economies,” for “friendly countries and areas.”

1988—Pub. L. 100-461, in par. (2) of second undesignated par., substituted “984 or less in 1986 United States dollars” for “\$896 or less in 1983 United States dollars” and “\$4,269 or more in 1986 United States dollars (other than countries designated as beneficiary countries under section 2702 of title 19)” for “\$3,887 or more in 1983 United States dollars”.

Pub. L. 100-461, in par. (3) of second undesignated par., substituted “section 2151p of this title, section 2151p-1 of this title, and section” for “sections 2151p of this title and” and “tropical forests and endangered species” for “biological diversity”.

1985—Pub. L. 99-204, in second undesignated par., substituted “\$896 or less in 1983 United States dollars” for “\$680 or less in 1979 United States dollars” and “\$3,887 or more in 1983 United States dollars” for “\$2,950 or more in 1979 United States dollars” in par. (2), added par. (3), and added cl. (n).

1981—Pub. L. 97-65 substituted “\$680 or less in 1979 United States dollars” for “\$520 or less in 1975 United States dollars” and “\$2,950 or more in 1979 United States dollars” for “\$1,000 or more in 1975 United States dollars” in par. (2) of undesignated paragraph covering the guidelines to be used with regard to operations in less developed countries, inserted “, and to seek to support those developmental projects having positive trade benefits for the United States” in cl. (i) of undesignated paragraph enumerating the activities of the Corporation, and, in that unnumbered paragraph, added cl. (m), relating to investments which would reduce positive trade benefits.

1978—Pub. L. 95-268 inserted undesignated par. relating to determinations by the Corporation respecting insurance, financing, or reinsurance for a project, in cl. (e) designated existing provisions as subcl. (1) and, as so designated, substituted reference to guaranty activities for reference to financing activities and reference to small businesses for reference to businesses with a net worth of not more than \$2,500,000 or with total assets of not more than \$7,500,000, and added subcl. (2), struck out cl. (f) relating to encouragement and support of private investments for certain less developed friendly countries, redesignated former cls. (g) to (k) as (f) to (j), respectively, struck out former cl. (l) relating to preference by the Corporation for projects in countries having a per capita income of \$450 or less in 1973 United States dollars, redesignated former cl. (m) as (k), and added cl. (n) which, as added, was redesignated as (l).

1974—Pub. L. 93-390, in introductory par., substituted “social development” for “social progress”, in cl. (a) inserted provisions for conducting insurance and reinsurance operations and substituted provisions requiring in financial operations consideration of economic and financial soundness of projects for provisions requiring consideration of economic and financial soundness of projects and availability of financing from other sources on appropriate terms, in cl. (d) substituted “efforts to share its insurance and reinsurance” for “when

appropriate, efforts to share its insurance”, in cl. (e) substituted provisions requiring preferential treatment to investment projects involving businesses with enumerated net worth or total assets for provisions requiring utilization and encouragement for full participation in Corporation programs of small businesses, in cl. (i) inserted “and employment” before “objectives”, and added cls. (l) and (m).

OVERSEAS PRIVATE INVESTMENT CORPORATION; REAFFIRMATION OF SUPPORT

Pub. L. 100-418, title II, § 2203(a), Aug. 23, 1988, 102 Stat. 1328, provided that: “The Congress reaffirms its support for the Overseas Private Investment Corporation as a United States Government agency serving important development assistance goals. In order to enhance the Corporation’s ability to meet these goals, the Overseas Private Investment Corporation should increase its loan guaranty and direct investment programs.”

EX. ORD. NO. 11579. OVERSEAS PRIVATE INVESTMENT CORPORATION

Ex. Ord. No. 11579, Jan. 19, 1971, 36 F.R. 969, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, provided:

By virtue of the authority vested in me by the Foreign Assistance Act of 1961 (75 Stat. 424), as amended (hereinafter the “Act”) [section 2151 et seq. of this title] and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. *Transfer to Overseas Private Investment Corporation.* All obligations, assets and related rights and responsibilities arising out of, or related to, predecessor programs and authorities similar to those provided for in sections 234(a), (b) and (d) of the Act [section 2194(a), (b) and (d) of this title] are hereby transferred to the Overseas Private Investment Corporation (hereinafter the “Corporation”).

SEC. 2. *Delegation of functions.* (a) [Revoked by Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673.]

(b) The function of prescribing regulations relating to the reinstatement or restoration of officers and employees of the Corporation to other government positions, when their appointment to a position in the Corporation was made from another government position and their separation from the Corporation was not made for cause, is hereby delegated to the Office of Personnel Management.

SEC. 3. *Allocation and transfer of funds.* Funds made available under section 232 of the Act (repealed by section 105 of the Foreign Assistance Act of 1969) [section 2192 of this title] which are obligated but unexpended are hereby transferred to the Corporation.

SEC. 4. *General provisions.* (a) As used in this order, the words “function” or “functions” include any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity.

(b) The Corporation shall be deemed to be the successor of the Agency for International Development and the Administrator thereof, with respect to all functions vested in the Corporation pursuant to law.

(c) Except to the extent that they may be inconsistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, or entered into with respect to any function affected by this order and not revoked, superseded or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

(d) Executive Order No. 10973 of November 3, 1961, as amended [set out as a note under this section], is hereby superseded insofar as any provision therein is in conflict with any provision herein.

(e) The provisions of this order shall become effective upon adoption by the Board of Directors of bylaws for the Corporation.

§ 2191a. 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 2467(4) of title 19, 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 subpart:

“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 2464 of title 19. 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) Operations of OPIC in the People's Republic of China

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 2467(4) of title 19.

(b) Environmental impact

The Board of Directors of the Corporation shall not vote in favor of any action proposed to be taken by the Corporation that is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented, unless for at least 60 days before the date of the vote—

(1) an environmental impact assessment or initial environmental audit, analyzing the environmental impacts of the proposed action and of alternatives to the proposed action has

been completed by the project applicant and made available to the Board of Directors; and
(2) such assessment or audit has been made available to the public of the United States, locally affected groups in the host country, and host country nongovernmental organizations.

(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 2191 of this title 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 subpart.

(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.

(Pub. L. 87-195, pt. I, § 231A, as added Pub. L. 99-204, § 5(a), Dec. 23, 1985, 99 Stat. 1670; amended Pub. L. 100-418, title II, § 2203(c), Aug. 23, 1988, 102 Stat. 1328; Pub. L. 102-549, title I, § 102(a), Oct. 28, 1992, 106 Stat. 3651; Pub. L. 104-188, title I, § 1954(b)(3), Aug. 20, 1996, 110 Stat. 1928; Pub. L. 106-158, § 3(a), Dec. 9, 1999, 113 Stat. 1745.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106-158, § 3(a)(2) added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-158, § 3(a)(1), (3), redesignated subsec. (b) as (c), designated existing provisions as par. (1), and added par. (2).

1996—Subsec. (a)(1). Pub. L. 104-188, § 1954(b)(3)(A), substituted “2467(4)” for “2462(a)(4)”.

Subsec. (a)(2). Pub. L. 104-188, § 1954(b)(3)(B), substituted “2464” for “2465(c)”.

Subsec. (a)(4). Pub. L. 104-188, § 1954(b)(3)(C), substituted “2467(4)” for “2462(a)(4)”.

1992—Subsec. (a)(1). Pub. L. 102-549 inserted at end provisions requiring Corporation to include certain language about employee rights in all contracts with eligible investors.

1988—Subsec. (a)(4). Pub. L. 100-418 added par. (4).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-158, § 3(b), Dec. 9, 1999, 113 Stat. 1746, provided that: “The amendments made by subsection (a) [amending this section] shall take effect 90 days after the date of the enactment of this Act [Dec. 9, 1999].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104-188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE

Pub. L. 99-204, § 5(b), Dec. 23, 1985, 99 Stat. 1671, provided that: “Subsection (a) of section 231A [subsec. (a) of this section], as added by subsection (a) of this section, shall not apply to projects insured, reinsured, guaranteed, or financed before the date of the enactment of this Act [Dec. 23, 1985].”

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.