

ENCOURAGEMENT OF DEBT-FOR-DEVELOPMENT SWAPS
THROUGH LOCAL CURRENCY REPAYMENT

Pub. L. 101-240, title V, §531, Dec. 19, 1989, 103 Stat. 2513, provided that:

“(a) STATEMENT OF POLICY.—It is the sense of the Congress that—

“(1) debt-for-development swaps, where payment is made in local currency at the free market rate, serve a useful purpose by providing banking institutions with constructive opportunities for the reduction of the external debt of highly indebted developing countries in a process that involves the participation of private, nonprofit groups in providing a stimulus to the economic and social development of such developing countries;

“(2) debt-for-development swaps provide highly indebted developing countries with a creative method of reducing external debt burdens, while promoting their economic growth and restructuring objectives;

“(3) banking institutions should give careful consideration to engaging in such swaps as one means of strengthening overall loan portfolios through the reduction of high external debt burdens while expanding economic opportunities through private sector initiatives; and

“(4) in order to avoid any bias against such swaps in the regulatory framework applicable to the financial reporting of banking institutions, where payment is made in local currency at the free market rate, appropriate recognition of the fair market exchange value of the currency so received should be made.

“(b) NOTIFICATION RELATING TO LOCAL CURRENCY REPAYMENT THROUGH DEBT-FOR-DEVELOPMENT SWAPS.—Before the end of the 6-month period beginning on the date of the enactment of this section [Dec. 19, 1989], each appropriate Federal banking agency shall adopt uniform guidelines that will effectuate the policy set forth in subsection (a) concerning the regulatory framework and accounting treatment of debt-for-development swaps involving repayment in local currency at the free market rate. For the purpose of such guidelines, the impact of such swaps on reported loan loss reserves shall be determined by valuing currency received in such swaps at fair market exchange value.

“(c) DEFINITIONS.—As used in this section:

“(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the meaning given such term in section 903(1) of the International Lending Supervision Act of 1983 [12 U.S.C. 3902(1)].

“(2) BANKING INSTITUTION.—The term ‘banking institution’ has the meaning given such term in section 903(2) of the International Lending Supervision Act of 1983.

“(3) DEBT-FOR-DEVELOPMENT SWAP.—The term ‘debt-for-development swap’ has the meaning given such term in section 1608(b)(2) of the International Financial Institutions Act [22 U.S.C. 262p-4c(b)(2)].

“(4) HIGHLY INDEBTED COUNTRY.—The term ‘highly indebted country’ means any country designated as a ‘Highly Indebted Country’ in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before the date of the enactment of this section [Dec. 19, 1989].”

§ 3902. Definitions

For purposes of this chapter—

(1) the term “appropriate Federal banking agency” has the same meaning given such term in section 1813(q) of this title, except that for purposes of this chapter such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a)¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(2) the term “banking institution” means—

(A)(i) an insured bank as defined in section 1813(h) of this title or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a)¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978 [12 U.S.C. 3101 et seq.]. The term “banking institution” shall not include a foreign bank.

(Pub. L. 98-181, title I [title IX, §903], Nov. 30, 1983, 97 Stat. 1278.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in pars. (1) and (2)(A), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The International Banking Act of 1978, referred to in par. (2)(B), is Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted chapter 32 (§3101 et seq.) and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 247, 611a, and 3101 of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For definitions, see section 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

§ 3903. Strengthened supervision of international lending

(a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

(Pub. L. 98-181, title I [title IX, §904], Nov. 30, 1983, 97 Stat. 1279.)

§ 3904. Reserves

(a) Establishment and maintenance of special reserves

(1) Each appropriate Federal banking agency shall require a banking institution to establish

¹ See References in Text note below.

and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) Accommodation of potential losses on foreign loans by United States banks

The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 3907 of this title (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title I [title IX, §905], Nov. 30, 1983, 97 Stat. 1279.)

§ 3904a. Additional reserve requirements

(a) In general

Each appropriate Federal banking agency shall review the exposure to risk of United States banking institutions arising from the medium- and long-term loans made by such institutions that are outstanding to any highly indebted country. Each agency shall provide direction to such institutions regarding additions to general reserves maintained by each banking institution for potential loan losses and special reserves required by such agency arising from such review.

(b) Determination of institutional exposure to risk

In determining the exposure of an institution to risk for purposes of subsection (a), the appropriate Federal banking agency—

(1) shall determine whether any country exposure that is, and has been for at least 2 years, rated in the category “Other Transfer

Risk Problems” or the category “Substandard” by the Interagency Country Exposure Review Committee should be reevaluated;

(2) may exempt, in full or in part, from reserve requirements established pursuant to subsection (a), any loan—

(A) to a country that enters into a debt reduction, debt service reduction, or financing program with its bank creditors that is supported by the International Bank for Reconstruction and Development or the International Monetary Fund; or

(B) secured, in whole or in part, by appropriate collateral for payment of interest or principal;

(3) take into account any other factors which bear on such exposure and the particular circumstances of the institution; and

(4) shall consider as indicators of risk, where appropriate, the average reserve levels maintained by or required of banking institutions in foreign countries and secondary market prices for such loans.

(c) Timing and report

(1) Determined by agency

Except as provided in paragraph (3), each appropriate Federal banking agency shall determine the timing of any addition to reserves required by subsection (a).

(2) Report

Each appropriate Federal banking agency shall include in each report required to be made under section 3912(d)¹ of this title after 1989 a report on the actions taken pursuant to this section.

(3) Deadline

Each Federal agency required to undertake a review described in subsection (a) shall complete the review not later than December 31, 1990.

(d) “Highly indebted country” defined

As used in this section, the term “highly indebted country” means any country designated as a “Highly Indebted Country” in the annual World Debt Tables most recently published by the International Bank for Reconstruction and Development before December 19, 1989.

(Pub. L. 98-181, title I [title IX, §905A], as added Pub. L. 101-240, title IV, §402(b), Dec. 19, 1989, 103 Stat. 2501.)

REFERENCES IN TEXT

Section 3912(d) of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 104-208, div. A, title II, §2224(c), Sept. 30, 1996, 110 Stat. 3009-415.

CONGRESSIONAL FINDINGS

Pub. L. 101-240, title IV, §402(a), Dec. 19, 1989, 103 Stat. 2501, provided that: “The Congress finds that—

“(1) since the adoption of the International Lending Supervision Act of 1983 [12 U.S.C. 3901 et seq.], the credit quality of loans by United States banking institutions to highly indebted countries has deteriorated and the prospects for full repayment of such loans have diminished;

“(2) in general during this period, the level of country exposure and transfer risk associated with loans

¹ See References in Text note below.