

## § 709.2

Directors of OPIC has authorized the President of OPIC to issue these regulations and to amend them as the President shall deem appropriate.

(b) These regulations prescribe the procedure under which individuals and companies may be suspended, as mandated by section 237(1) of the Foreign Assistance Act of 1961, as amended, from eligibility for OPIC services because of conviction under the Foreign Corrupt Practices Act of 1977 (Pub. L. 95-213) of an offense related to an OPIC-supported project.

(c) The purposes of the suspensions provided herein are to carry out the statutory requirements of Section 237(1) of the Foreign Assistance Act of 1961, as amended, to protect the interest of the United States and to foster full and free competition in international commerce.

(d) The specific provisions of law under which OPIC operates and the general powers conferred on OPIC give OPIC broad discretion in the conduct of its programs. The issuance of these regulations is not to be construed as in any way limiting or derogating from the discretion of OPIC to determine whether or not to support the investment of a particular entity in a particular case.

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(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 5 years, from eligibility to receive any insurance, reinsurance, guaranty, loan or other financial support authorized by this title.

## 22 CFR Ch. VII (4-1-01 Edition)

### § 709.2 Applicability.

These regulations take effect on the date of publication in the FEDERAL REGISTER and govern eligibility for OPIC services for which OPIC has not previously obligated itself.

### § 709.3 Definitions

(a) The *Act* means the Foreign Corrupt Practices Act of 1977.

(b) *Entity* means any individual, association, company, corporation, concern, partnership, or person.

(c) *Offense* means any act or omission to act which has been found by a United States court of competent jurisdiction to constitute, with respect to a particular entity, a violation of the Act, of section 13(b)(2), 13(b)(3) or 30A of the Securities Exchange Act of 1934 (which were added in 1977 by the Act), or of any other provision of law derived from the Act.

(d) *Suspension* means the designation of an entity as ineligible to receive OPIC services through a suspension determination.

(e) *Suspension determination* means a determination by the President of OPIC pursuant to these regulations that an entity is ineligible to receive OPIC services.

### § 709.4 Cause for suspension of entities from eligibility.

Any entity which has been convicted of an offense related to a project insured or otherwise supported by OPIC may be suspended from eligibility for additional OPIC services for a period of not more than 5 years pursuant to a suspension determination.

### § 709.5 Procedure.

(a) Upon receipt of an application for OPIC services from any entity which OPIC has reason to believe may have been convicted under the Act the OPIC General Counsel shall ascertain whether a conviction has been entered against such entity under the Act and, if so, whether it was entered for an offense related to a project insured or otherwise supported by OPIC. If such an offense is found, the General Counsel shall advise the President of such finding and any known circumstances indicating that suspension would not be in the national interest of the

United States. If, after reviewing the submission from the General Counsel, the President determines that national interest considerations are not great enough to preclude suspension, OPIC shall furnish the subject entity with a written notice (1) specifying the offense and stating that suspension for the maximum duration is being considered and (2) inviting the subject entity to submit to OPIC any evidence of facts or circumstances which it deems appropriate to indicate that a suspension should not be imposed or that the duration of the suspension should be less than the maximum. Such notice shall further state that the subject entity must provide such evidence within 30 days of the date of such written notice or any extension of time granted in writing by OPIC. The General Counsel shall promptly review any evidence submitted by the subject entity and report his findings and recommendations to the President. The President shall determine whether the subject entity shall be suspended and, if so, the President shall issue a suspension determination specifying the duration of such suspension. Notice of such suspension determination shall be forwarded by registered mail to the subject entity and any entity so notified shall be advised that such suspension may be reduced as provided in section 5(b) or voided as provided in section 8.

(b) The duration of any suspension may be reduced by the President at any time for good cause, including the submission by the suspended entity of an application for relief, supported by evidence and setting forth appropriate grounds for granting such relief, such as the institution of measures designed to preclude the recurrence of the actions with respect to which the suspension was initially imposed. Notice of each such reduction shall be forwarded to the suspended entity by registered mail.

(c) The duration of any suspension may be increased by the President at any time for good cause, subject to providing the subject entity with notice and opportunity to submit evidence in accordance with section 5(a). In no event shall any such increase result in a period of suspension exceeding 5

years with respect to any single conviction.

#### § 709.6 Suspension duration criteria.

Factors which the President may consider in setting or amending the duration of any suspension imposed pursuant to these regulations include, but are not limited to, the following:

(a) Whether the offense with respect to which suspension has been imposed or is being considered was committed with the knowledge or consent of the board of directors or other group or officer or individual responsible for the overall management of the subject entity;

(b) Whether or not such offense was committed under pressure of extortion, political intervention, or other duress exerted by the government, or any official of the government, of the country in which such offense was committed;

(c) Quantitative factors relating to the seriousness of the offense, such as the amounts of any improper payments and the frequency with which, and period of time over which, they were made;

(d) The purpose of any such offense;

(e) Whether such offense violated the laws of the country in which it was committed;

(f) The extent to which the offense was related to the establishment or operation of a project supported by OPIC; and

(g) Any factors relating to the effect of suspension on the national interest of the United States.

#### § 709.7 Effect of suspension.

(a) Any entity suspended pursuant to a suspension determination shall not, for the duration of such suspension, and subject to the provisions of section 7(b), be eligible to receive any additional insurance, reinsurance, guaranty, loan, or other financial support from OPIC.

(b) Suspended entities:

(1) May be retained on the OPIC mailing list only for the purpose of receiving informational mailings;

(2) May register projects with OPIC but may not submit project applications to OPIC;

(3) May continue to deal with OPIC with respect to agreements entered