

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

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FILE: B-173240

DATE: June 16, 1975

MATTER OF: Overseas Private Investment Corporation

DIGEST:

Overseas Private Investment Corporation's proposed program for sharing insurance and reinsurance risks of inconvertibility and expropriation with private insurance industry pursuant to Public Law 93-390 involves contractual arrangements which are in the nature of cooperative agreements. Inasmuch as those agreements are not contracts for the procurement or supply of personal property or nonpersonal services, they are not subject to the Federal Property and Administrative Services Act or its implementing regulations.

By letter dated January 6, 1975, the Overseas Private Investment Corporation (OPIC) requests an advance decision regarding the applicability of Federal procurement statutes and regulations to its proposal to form an unincorporated group, including itself and members of the private insurance industry, for the purpose of pooling risks under OPIC's program of foreign investment insurance.

OPIC is a wholly owned Government corporation created in 1969 by amendment to the Foreign Assistance Act of 1961 to carry on certain programs formerly administered by the Agency for International Development and predecessor Federal agencies. One of the principal programs administered by OPIC is the program of foreign investment insurance authorized under section 234(a) of the Foreign Assistance Act of 1969, Pub. L. 91-175, 83 Stat. 805, 22 U. S. C. 2194(a) (1970) under which OPIC insures U. S. investors in less developed friendly countries against losses due to three kinds of risks: currency inconvertibility; expropriation; and war, revolution and insurrection.

In the 1969 legislation that created OPIC, Congress directed OPIC to "conduct its insurance operations with due regard to principles of risk management including, when appropriate, efforts to share its insurance risks." In 1973, the House Subcommittee on Foreign Economic Policy and the Senate Subcommittee on Multi-national Corporations reviewed OPIC's operations, as a result of

which Congress passed the Overseas Private Investment Corporation Amendments Act of 1974, Pub. L. 93-390, 88 Stat. 763. A new subsection (f) was added to section 234 of the Foreign Assistance Act of 1969 authorizing OPIC:

"(1) To make and carry out contracts of insurance or reinsurance, or agreements to associate or share risks, with insurance companies, financial institutions, any other persons, or groups thereof, and employing the same, where appropriate, as its agent, or acting as their agent, in the issuance and servicing of insurance, the adjustment of claims, the exercise of subrogation rights, the ceding and accepting of reinsurance, and in any other matter incident to an insurance business.

"(2) To enter into pooling or other risk-sharing arrangements with other national or multinational insurance or financing agencies or groups of such agencies.

"(3) To hold an ownership interest in any association or other entity established for the purpose of sharing risks under investment insurance.

"(4) To issue, upon such terms and conditions as it may determine, reinsurance of liabilities assumed by other insurers or groups thereof in respect of risks referred to in subsection (a)(1)." 22 U. S. C. A. 2194(f).

The 1974 amendments also provide that:

"* * * the Corporation achieve participation by private insurance companies, multilateral organizations, or others in liabilities incurred in respect of [inconvertibility and expropriation] risks * * * under contracts issued on and after January 1, 1975, of at least 25 per centum, and, under contracts issued on and after January 1, 1978, of at least 50 per centum." 22 U. S. C. A. 2194(a)(4)(A).

We are informed that OPIC proposes to carry out the above Congressional mandate through the formation of the Overseas Investment Insurance Group (OIIG), an unincorporated group of insurers whose members will be OPIC and private commercial insurers. OPIC, under a management agreement with OIIG will act as OIIG's agent for the writing of insurance and settlement of insurance claims. It is OPIC's intent that after January 1, 1975, all inconvertibility and expropriation insurance, with the exception of certain specified countries, will be written by OIIG on behalf of its members, each of which will be severally and not jointly bound for a share of the risks insured. Under a reinsurance policy, OPIC will reinsure a portion of the risk of loss under inconvertibility and expropriation insurance to be written after December 31, 1974, by OIIG on behalf of its members. In addition, OIIG, on behalf of its members will enter into a second reinsurance policy with OPIC pursuant to which the OIIG members will reinsure a portion of OPIC's then existing inconvertibility and expropriation insurance portfolio, consisting of policies previously written by OPIC and its predecessors under the Foreign Assistance Act and earlier statutes. Together these two reinsurance policies will establish a pool of first-loss liabilities to be borne by OIIG, with the risk of any excess liability to be borne by OPIC alone. Premiums on existing and future insurance contracts will be shared by OPIC and the other OIIG members on the basis of their respective shares of the insured risk, with an additional portion of the premiums being paid to OPIC for its management services.

With respect to its program of reinsurance, OPIC reports that work began as early as 1972 to interest domestic insurance companies in reinsuring part of its portfolio. For some time OPIC was unable to interest companies on terms that OPIC believed to be acceptable. However, OPIC succeeded in reinsuring part of its expropriation portfolio, beginning December 31, 1971, with syndicates of Lloyd's of London and various insurance companies in the London market. By mid-1974, after extensive discussions with representatives of leading domestic insurance companies and after extensive review by its management and its Board of Directors, OPIC developed a plan for risk sharing for inconvertibility and expropriation insurance that it thought would be acceptable to a significant number of private insurance companies.

We are advised that all the major casualty and property insurance associations were contacted and meetings were held with the

officers of those associations in order to have them disseminate notice of the meeting and its purpose to their members. OPIC sent specific invitations to the 100 largest casualty and property insurance companies and to all other companies that it was aware might have an interest in participation. Various trade publications were advised and requested to publicize the meeting and the meeting was also advertised in the Commerce Business Daily and the Federal Register. All who attended were asked to indicate whether they were interested in the proposal and those who indicated such interest were invited to meet with OPIC on October 9, 1974, to discuss drafts of the proposed OIIG constitution, reinsurance policies and management agreement.


As to standards for participation, we are advised that OPIC in concert with the other initial members of OIIG, will establish reasonable qualifications and standards of financial responsibility for entry into OIIG at the time of its formation. OPIC itself will reserve the right to deny participation to any insurer whose participation, in OPIC's reasonable judgment, would not be consistent with the public purpose that OPIC's participation in the group is intended to further. Otherwise, no financially qualified insurer, domestic or foreign, will be denied the opportunity to participate within the limits of the pool, in whatever amount it chooses over a prescribed minimum, when OIIG is formed. After formation and for the initial three-year experimental period, new members may be admitted to OIIG to assume participations ceded by member companies or by OPIC itself. New members may be admitted if they meet the eligibility standards established for the original members and are acceptable to OPIC.

As indicated above, it is the intent of Congress that OPIC achieve 25 percent participation by private insurance companies in contracts issued on and after January 1, 1975, and 50 percent participation in contracts issued on and after January 1, 1978. With respect to contracts entered into after December 31, 1980, it is the long range goal of Congress that OPIC no longer participate as a direct insurer but that all risks be wholly underwritten by the private insurance industry. As of this point in time, it is contemplated that OPIC participate in a reinsurance capacity only. Thus, OPIC's immediate obligation is to foster maximum participation in risk sharing by the private insurance industry.



The Federal Property and Administrative Services Act, by its terms applies to the procurement and supply of personal property and nonpersonal services. OPIC urges that its proposed insurance program in fact is not the type of transaction envisioned by Federal procurement laws, policies and regulations. In support of this position OPIC cites the absence of any indication in the Federal Property and Administrative Services Act, its pertinent legislative history or implementing regulations, that it is for application to the type of cooperative arrangement envisioned by Congress for OPIC's investment insurance program.

On the basis of our review of the pertinent statutory authority for its investment insurance program, we are in agreement with OPIC's view that its proposed insurance program is in the nature of a "cooperative agreement" to which the Federal Property and Administrative Services Act and its implementing regulations are not applicable.


Deputy Comptroller General
of the United States