

§ 707.32

The Corporation, to the maximum extent permitted by law, may delete information from copies of any records furnished to any individual under this part 707.

§ 707.32 Specific exemptions.

The provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) shall not apply to any system of records maintained by the Corporation that is—

(a) Subject to the provisions of 5 U.S.C. 552(b)(1);

(b) Investigatory material compiled for law enforcement purposes other than those specified in 5 U.S.C. 552a (j)(2);

(c) Required by statute to be maintained and used solely as statistical records;

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that the Corporation may determine, in its sole discretion, that the disclosure of such material would reveal the identity of the source who, subsequent to September 27, 1975, furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to such date, under an implied promise to such effect; and

(e) Testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and the Corporation determines, in its sole discretion, that disclosure of such materials would compromise the fairness of the testing or examination process.

PART 708—SUNSHINE REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 42 FR 13110, Mar. 9, 1977, unless otherwise noted.

22 CFR Ch. VII (4-1-00 Edition)

§ 708.1 Purpose and applicability.

The purpose of this part is to effectuate the provisions of the Government in the Sunshine Act. This part applies to the deliberations of a quorum of the Directors of the Corporation required to take action on behalf of the Corporation where such deliberations determine or result in the joint conduct or disposition of official Corporation business, but does not apply to deliberations to take action to open or close a meeting or to release or withhold information under § 708.5. Any deliberation to which this part applies is hereinafter in this part referred to as a meeting of the Board of Directors.

§ 708.2 Open meeting policy.

(a) It is the policy of the Corporation to provide the public with the fullest practicable information regarding the decisionmaking process of the Board of Directors of the Corporation while protecting the rights of individuals and the ability of the Corporation to carry out its responsibilities. In order to effect this policy, every meeting of the Board of Directors shall be open to public observation and will only be closed to public observation if justified under one of the provisions of § 708.5. The public is invited to observe and listen to all meetings of the Board of Directors, or portions thereof, open to public observation, but may not participate or record any of the discussions by means of electronic or other devices or cameras. Documents being considered at meetings of the Board of Directors may be obtained subject to the procedures and exemptions set forth in part 706 of this chapter.

(b) Directors of the Corporation shall not jointly conduct or dispose of agency business other than in accordance with this part. This prohibition shall not prevent Directors from considering individually business that is circulated to them sequentially in writing.

(c) The Secretary of the Corporation shall be responsible for assuring that ample space, sufficient visibility, and adequate acoustics are provided for public observation of meetings of the Board of Directors.

§ 708.3 Scheduling of a meeting.

A decision to hold a meeting of the Board of Directors should be made as provided in the By-laws of the Corporation and at least eight days prior to the scheduled meeting date in order for the Secretary of the Corporation to give the public notice required by § 708.4. However in special cases, a majority of the Directors may decide to hold a meeting less than eight days prior to the scheduled meeting date if they determine by a recorded vote that Corporation business requires such meeting at such earlier date. After public announcement of a meeting of the Board of Directors under the provisions of § 708.4, the subject matter thereof, or the determination to open or close a meeting, or portion thereof, may only be changed if a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change is possible.

§ 708.4 Public announcement.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 708.5, in the case of each meeting of the Board of Directors, the Secretary shall make public announcement at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the Corporation to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the Directors determines by a recorded vote that Corporation business requires that such meeting be called at an earlier date, in which case the Secretary shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(b) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Corporation to open or close a meeting, or portion of a meeting, to

the public, may be changed following the public announcement required by this section only if (1) a majority of the Directors determines by a recorded vote that business so requires and that no earlier announcement of the change was possible, and (2) the Secretary publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(c) The *earliest practicable time*, as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(d) The Secretary shall use reasonable means to assure that the public is fully informed of the public announcements required by this section. Such public announcements may be made by posting notices in the public areas of the Corporation's headquarters and mailing notices to the persons on a list maintained for those who want to receive such announcements.

(e) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements, and the name and telephone number of the official designated by the Corporation to respond to requests for information about the meeting shall also be submitted by the Secretary for publication in the FEDERAL REGISTER.

§ 708.5 Closed meetings.

(a) Meetings of the Board of Directors will be closed to public observation where the Corporation properly determines, according to the procedures set forth in paragraph (c) of this section, that such portion or portions of the meeting or disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of an agency;

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(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), *Provided*, That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final Corporation action on such proposal; or

(9) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court

or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal Corporation adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) Meetings of the Board of Directors shall not be closed pursuant to paragraph (a) of this section when the Corporation finds that the public interest requires that they be open.

(c)(1) Action to close a meeting, or portion thereof, pursuant to the exemptions defined in paragraph (a) of this section may be initiated by the President or any Director of the Corporation by presentation of a request for closure to the Board of Directors. The person initiating the request for closure shall give the Board of Directors a statement specifying the extent of the proposed closure, the relevant exemptive provisions and the circumstances pertinent to such request, and how the public interest will be served by closure. Such statement shall also be given to the General Counsel of the Corporation to serve as a basis for the certification the General Counsel may determine can be issued in accordance with § 708.6. The General Counsel's determination shall be given to the Board of Directors. Action to close a meeting, or portion thereof, shall be taken only when a majority of the entire membership of the Board of Directors votes to take such action. A separate vote of the Board of Directors shall be taken with respect to each meeting of the Board of Directors a portion or portions of which are proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be

held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Corporation close such portion to the public for any of the reasons referred to in paragraph (a)(5), (a)(6), or (a)(7) of this section, the Corporation, upon request of any one of its Directors, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (c)(1) or (c)(2) of this section, the Secretary shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, by the close of the business day next succeeding the day of the vote taken pursuant to paragraph (c)(1) or (c)(2) of this section, make publicly available a full written explanation of the Corporation's action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this subparagraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of paragraph (a) of this section.

§ 708.6 Records of closed meetings.

(a) For every meeting of the Board of Directors closed pursuant to § 708.5, the General Counsel of the Corporation shall publicly certify prior to such meeting that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary as part of the transcript, recording, or minutes required by paragraph (b) of this section.

(b) The Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, ex-

cept that in the case of a meeting, or portion of a meeting, closed to the public pursuant to § 708.5(a)(9), the Secretary shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote (reflecting the vote of each member on the question). All documents considered in connection with any Corporation action shall be identified in such minutes.

(c) The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of the proceeding of the Board of Directors with respect to which the meeting or portion was held, whichever occurs later.

(d) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Corporation shall make available to the public, in the Office of Secretary of the Corporation, Washington, DC, the transcript, electronic recording, or minutes (as required by paragraph (b) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Secretary determines to contain information which may be withheld under the provisions of § 708.5. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(e) The determination of the Secretary to withhold information pursuant to paragraph (d) of this section may be appealed to the President of the Corporation, in his or her capacity

as administrative head of the Corporation. The President will make a determination to withhold or release the requested information within twenty days from the date of receipt of the request for review (excluding Saturdays, Sundays, and legal public holidays).

PART 709—FOREIGN CORRUPT PRACTICES ACT OF 1977

Sec.

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AUTHORITY: Sec. 237(1), Foreign Assistance Act of 1961, added by Pub. L. 95-268.

SOURCE: 43 FR 36064, Aug. 15, 1978, unless otherwise noted.

§ 709.1 Authority and purpose.

(a) These regulations are issued under the general powers of the Overseas Private Investment Corporation ("OPIC") and pursuant to section 237(1) of the Foreign Assistance Act of 1961, added by Pub. L. 95-268.¹ The Board of Directors of OPIC has authorized the

¹Section 237(1) of that Act states:

(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.

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.

§ 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