October 3, 2018

Increased Funding for Strategic International Development Projects: Better Utilization of Investments Leading to Development Act of 2018

The BUILD Act of 2018 Replaces OPIC With a New Entity With Significantly Increased Resources and Expanded Capabilities Intended to Promote Private Sector Investment and U.S. Foreign Policy Interests in the Developing World

SUMMARY

Earlier today, October 3, 2018, the United States Senate joined the House of Representatives in passing the Better Utilization of Investments Leading to Development Act of 2018 (the "BUILD Act" or the "Act") as part of a larger piece of omnibus legislation. The BUILD Act, co-sponsored by Senators Robert Corker (R-Tenn.) and Chris Coons (D-Del.), enjoyed broad bipartisan support in both the House of Representatives and the Senate and is expected to be signed into law by President Trump, whose Fiscal Year 2019 budget request called for the steps taken by this legislation. The BUILD Act overhauls the Overseas Private Investment Corporation ("OPIC") and combines OPIC with the Development Credit Authority and several other programs run by the United States Agency for International Development ("USAID") into a newly formed successor entity, the United States International Development Finance Corporation ("IDFC"). Like OPIC, IDFC will have the authority to provide project financing, loan guaranties and investment insurance. Unlike OPIC, IDFC will also be permitted to make equity investments. The legislation provides IDFC with the authority to incur a maximum contingent liability of $60 billion—more than twice OPIC's total authorized exposure limit of $29 billion.[1]

The BUILD Act defines IDFC's purpose as both facilitating the participation of private sector capital in the economic development of "less developed countries and countries in transition from nonmarket to market economies"[2] and advancing U.S. foreign policy and national security interests. Although the Act does not mention China by name, Senator Coons and Secretary of Commerce Wilbur Ross have asserted that IDFC's robust financial capabilities would help the U.S. compete more effectively with China, in particular by offering an alternative to the influx of Chinese investment and influence in Africa.[3] From a Federal budgetary point of view, notwithstanding the increase in the maximum contingent liability, the Act's proponents have pointed out that the Congressional Budget Office estimates that, on a net basis, the BUILD Act would reduce Federal costs and spending.

It is expected that the legislation will be presented to President Trump for signature in the coming days. President Trump will have up to 120 days following enactment of the BUILD Act to submit to the appropriate Congressional committees a reorganization plan for the transition of functions, personnel, assets and liabilities from OPIC, the Development Credit Authority and other USAID programs to IDFC. The President's plan will specify an effective date (in no event earlier than 90 days after he has submitted his reorganization plan) for the transfer of functions, at which time IDFC will supplant OPIC, and the applicable USAID programs will be folded into IDFC.[4] Unless renewed, IDFC's authority will terminate after seven years, and IDFC will terminate when its portfolio is liquidated.

IDFC SUPPORT

The BUILD Act's policy statement makes clear that IDFC is designed to "mobilize private capital in support of sustainable, broad-based economic growth, poverty reduction, and development through demand-driven partnerships with the private sector that further the foreign policy interests of the United States." In addition, the Act lists its priorities as "overcom[ing] identifiable market gaps," "[p]rovid[ing] countries a robust alternative to state-directed investments by authoritarian governments and U.S. strategic competitors using best practices with respect to transparency and environmental and social safeguards" and complementing U.S. foreign policy and national security objectives. The BUILD Act authorizes IDFC to support projects in one or more of the six forms enumerated below, provided that such support is necessary either (i) to alleviate a credit market imperfection or (ii) to achieve specified development or foreign policy objectives of the U.S. By authorizing IDFC to provide the following forms of project support, the Act provides IDFC with significantly more authority than OPIC, which currently can only make and guaranty loans and insure against political risks. In cooperation with appropriate departments, agencies and instrumentalities of the U.S., as well as private entities and others, IDFC will undertake to broaden the participation of U.S. small businesses and cooperatives in the development of small private enterprise in less developed friendly countries. IDFC will also collect data on the involvement of minority- and women-owned businesses in projects it supports. As explained in further detail below, the support must be in one or more of the following forms: lending and guaranties, insurance and reinsurance, equity investments, feasibility studies, special projects and programs, or enterprise funds.

1. Lending and Guaranties

Like OPIC, IDFC is authorized to make direct loans and issue loan guaranties. Loans and guaranties issued by IDFC may be denominated in U.S. dollars or, if the Board of Directors of IDFC (the "Board") determines there is a foreign policy rationale, a non-U.S. currency. The final maturity of a loan made or guaranteed by IDFC may not exceed 25 years or the debt servicing capabilities of the project to be financed by the loan, whichever is less. Interest rates for direct loans and interest supplements on guaranteed loans will be set, in consultation with the Director of the Office of Management and Budget and the Secretary of the Treasury, with reference to a benchmark interest rate on marketable Treasury securities or other widely recognized or appropriate benchmarks with a similar maturity to the loans being made or guaranteed by IDFC. In addition, the BUILD Act requires that parties to a project bear the risk of loss for at least 20 percent of any loan guaranty provided by IDFC. Before making a loan or guaranty, IDFC is required to determine that the borrower or, in the case of a guaranty, the lender is responsible and that adequate provision has been made for servicing the loan on reasonable terms and protecting the financial interests of the U.S.

Under the OPIC program, financing commitments for new ventures have been limited to 50 percent of a project's total cost, and higher leverage has been permitted only in certain circumstances (*e.g.*, an expansion of a profitable, existing enterprise), though not beyond 75 percent of a project's total cost.[5] The BUILD Act places no such restrictions upon financing provided by IDFC. However, the BUILD Act requires that IDFC loans should be made on a senior basis or pari passu with other senior debt, unless providing financing on other terms would serve a substantive policy rationale. Furthermore, direct loans under OPIC have been available only for projects sponsored by, or significantly involving, U.S. small businesses or cooperatives. The BUILD Act expands the scope of potential support recipients, requiring merely that IDFC give preferential consideration to projects sponsored by or involving U.S. private-sector entities and that it make efforts to ensure that the proportion of projects sponsored by or involving U.S. small businesses is at least 50 percent of all projects involving U.S. persons for which IDFC provides support. This appears to mean that IDFC must make efforts to ensure that at least half of the total number of projects involve "United States small businesses," a term that is not defined in the Act.

2. Insurance and Reinsurance

IDFC may issue insurance or reinsurance to private sector entities and qualifying sovereign entities for the protection of their investments against political risks, such as currency inconvertibility and transfer restrictions, expropriation, war, terrorism, civil disturbance, breach of contract or non-honoring of financial obligations. For purposes of the BUILD Act, a "qualifying sovereign entity" means (i) any agency or instrumentality of a foreign state that has a purpose that is similar to IDFC's purpose or (ii) any of the

International Monetary Fund, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank for Economic Cooperation and Development in the Middle East and North Africa, or the Inter-American Investment Corporation. Compensation for insurance and reinsurance may not exceed the dollar value of tangible or intangible contributions or commitments made in a project, plus interest, earnings or profits actually accrued on such contributions or commitments.[6] The BUILD Act also limits the amount of insurance and reinsurance that IDFC may issue with respect to a project, such that the insured and its affiliates must bear the risk of loss for at least 10% of the amount of IDFC's exposure to the insured and its affiliates in the project; however, this limitation does not apply to direct insurance or reinsurance of loans provided by financial institutions to unrelated parties.

Although IDFC's insurance and reinsurance capabilities are similar to those of OPIC, the capabilities of IDFC go beyond those of OPIC. OPIC is currently permitted to insure only U.S. investors,[7] whereas IDFC is required to give preference to, but is not confined to support, U.S. sponsored projects. In addition, IDFC may insure qualifying sovereign entities. Moreover, the scope of political risks against which OPIC is authorized to insure was limited to currency inconvertibility (excluding devaluation of a country's currency), expropriation (*i.e.*, confiscation, seizure or nationalization by a foreign government of an investment without fair compensation) and political violence (*e.g.*, war, revolution, insurrection, or civil strife). The BUILD Act authorizes IDFC to insure against these risks, but its non-exhaustive list also authorizes coverage of losses stemming from transfer restrictions, breach of contract and non-honoring of financial obligations.

3. Equity Investments

IDFC may support projects by purchasing (and making and funding commitments to otherwise acquire) equity or quasi-equity securities, shares or financial interests of any entity, including as a limited partner or other investor in investment funds. Support may be denominated in U.S. dollars, or if the Board determines there is a substantive foreign policy rationale, a non-U.S. currency. IDFC may not own more than 30 percent of the aggregate amount of all equity investments (from any source) in any single project at the time IDFC approves support of the project. In addition, support for projects in the form of equity investments is limited to no more than 35 percent of IDFC's aggregate exposure on the date such support is provided.

Equity investments made by IDFC must adhere to guidelines and criteria it establishes to ensure that the investments have a clearly defined development and foreign policy purpose, taking into account, among other things, the significance of the support's developmental impact and whether the support for a project would be more likely than not to reduce substantially, or to overcome the effect of, an identified market failure in the country where the project is located. IDFC may sell its direct investments to private investors upon terms and conditions of IDFC's choosing. However, IDFC is required to seek to sell and liquidate its support for a project as soon as commercially feasible, commensurate with other similar investors in the project and taking into account U.S. national security interests.

IDFC's ability to establish and to hold equity positions marks a significant increase in authority from the current regime applicable to OPIC. Although OPIC has supported and sponsored privately owned and managed investment funds that make direct equity investments in projects, OPIC has lacked authority to make its own equity investments. Under the BUILD Act, IDFC has the ability to invest up to $21 billion in the equity securities of entities around the globe—including state-owned enterprises.

4. Feasibility Studies

IDFC may initiate and support (through financial participation, incentive grant or otherwise) feasibility studies related to planning, procuring, developing and managing bilateral and multilateral development projects—including training activities undertaken in connection with such projects—eligible for other types of support under the BUILD Act. To the extent feasible, IDFC must require any recipient of such funding to share the costs of feasibility studies and other project planning services and to reimburse IDFC if the recipient succeeds in project implementation.

5. Special Projects and Programs

IDFC may administer and manage special projects and programs in support of specific transactions it undertakes. Examples include programs of financial and advisory support that provide private technical, professional, or managerial assistance in the development of human resources, skills, technology, capital savings, or intermediate financial and investment institutions or cooperatives (such as initiation of incentives, grants and studies for energy, women's economic empowerment, microenterprise households or other small business activities).

6. Enterprise Funds

In consultation with the Secretary of State, the Administrator of USAID and the heads of other relevant departments and agencies, IDFC may establish and operate enterprise funds.[8] Enterprise funds are privately owned, privately managed investment funds, modeled after venture capital funds, with capital supplemented by governmental entities such as OPIC or IDFC that make direct equity and equity-related investments in projects that may be unviable for traditional financing. IDFC may designate, with Board approval, private, non-profit organizations as eligible to receive support in order to promote economic freedom, enhance private sector development (with an emphasis on small- and medium-sized enterprises), generate social benefits and build technical capacity. The board of directors of each enterprise fund must consist of private citizens of the U.S. or the host country (with a majority of the members of the board of directors being U.S. citizens) who will be appointed by the President after consultation with the chairman and ranking members of the appropriate Congressional committees. Each enterprise fund must submit annual reports to the appropriate Congressional committee and will be subject to oversight by the Inspector General of IDFC. Enterprise funds will terminate 10 years after the date of the first expenditure of amounts from the fund or on the date on which the fund is liquidated, whichever is earlier.

CONDITIONS, RESTRICTIONS AND PROHIBITIONS ON SUPPORT

1. Maximum Contingent Liability

The BUILD Act sets the maximum contingent liability of IDFC at $60 billion—more than twice OPIC's $29 billion total authorized exposure, and no entity receiving support from IDFC may receive more than 5 percent ($3 billion) of that amount.

2. Environmental and Social Impacts

The Act prohibits the Board from voting in favor of any project that is likely to have significant adverse environmental or social impacts that are "sensitive, diverse, or unprecedented" unless certain environmental and social impact assessments or audits are performed and made publicly available and unless mitigation provisions are included in the relevant contracts.

3. Terrorism and Human Rights Violations; Sanctions

IDFC is prohibited from providing support for a government (or an entity owned or controlled by a government) if the Secretary of State has determined that the government (i) has repeatedly provided support for acts of international terrorism[9] or (ii) has engaged in a consistent pattern of gross violations of internationally recognized human rights. IDFC is also prohibited from engaging in all dealings related to any project that would be prohibited for U.S. persons by operation of U.S. economic sanctions laws or regulations, including dealings with persons on the list of specially designated persons and blocked persons maintained by the Department of the Treasury's Office of Foreign Assets Control, or OFAC. These prohibitions apply unless the activity is separately authorized by the Secretary of State or the Secretary of the Treasury.

4. Preferences and Considerations for Support

Under the Act, IDFC is required to give preferential consideration to projects that involve certain parties or countries with particular attributes and to take into account certain attributes of a project and its participants in reaching a decision. These include the following:

1. **preference** for projects sponsored by, or involving, entities that are U.S. persons;[10]
2. **preference** for countries embracing private enterprise;[11]
3. **preference** for small businesses;[12]
4. **preference** for countries in compliance with or making substantial progress coming into compliance with their international trade obligations;

5. **preference** for countries taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country, including any designated zone in that country;
6. **consideration** of the impact of support on women's economic opportunities and outcomes;[13] and
7. **consideration** of whether a project is sponsored by or substantially affiliated with any person taking actions in the past three years that evidence intent to comply with or support any boycott described in the Export Control Reform Act.[14]

GOVERNANCE AND OVERSIGHT OF IDFC

IDFC is subject to a number of disclosure, engagement and oversight requirements.

1. Public Disclosure

IDFC must disclose information about support provided by it and performance metrics about such support on a country-by-country basis. In addition, IDFC must maintain a public database with detailed project-level information, including a description of the support provided and an internet link to information about each project receiving support.

2. Performance Metrics

In consultation with the Development Advisory Council, IDFC is required to develop a performance measurement system to evaluate and monitor projects it supports and to guide future projects. As part of its system, IDFC will, among other things, (i) develop a mechanism for ensuring that support provided by IDFC is in addition to private investment; (ii) develop standards for, and a method for ensuring, appropriate financial performance of IDFC's portfolio; and (iii) develop standards for, and a method for ensuring, appropriate development performance of IDFC's portfolio.

3. Annual Report

At the end of each fiscal year, IDFC must submit to the appropriate Congressional committees a complete and detailed report of its operations during that fiscal year addressing, among other things, the value of private sector assets brought to bear relative to the amount of support provided by IDFC and the value of any other public sector support.

4. Independent Accountability Mechanism

IDFC will have an internal independent accountability mechanism in addition to an inspector general. The independent accountability mechanism will evaluate and report to the Board and Congress annually regarding compliance with environmental, social, labor, human rights and transparency standards. The independent accountability mechanism will also serve to resolve concerns regarding the impacts of IDFC-supported projects and provide advice regarding IDFC's projects, policies and practices.

5. Notice by IDFC

The Chief Executive Officer of IDFC must provide a report to the appropriate Congressional committees 15 days in advance of IDFC's making a financial commitment in excess of $10 million.

6. Engagement with Investors

IDFC, acting through its Chief Development Officer, must, in cooperation with the Administrator for USAID, develop relationships with private sector entities focused at the nexus of business opportunities and development priorities and work to maintain and enhance those relationships. IDFC must also ensure that private sector entities are afforded an opportunity to support each project. As such, IDFC must develop safeguards, policies and guidelines to ensure that support provided by IDFC (i) supplements and encourages, but does not compete with, private sector support; (ii) operates according to internationally recognized best practices and standards with respect to ensuring the avoidance of market distorting government subsidies and the crowding out of private sector lending; and (iii) does not have a significant adverse impact on U.S. employment.

7. Dividends

The Board, in consultation with the Director of the Office of Management and Budget, will annually make a dividend payment to the Treasury if IDFC's insurance portfolio is more than 100 percent reserved.

STRUCTURE OF IDFC

IDFC will have a Board of Directors composed of nine members. These members include the following:

- the Chief Executive Officer of IDFC, appointed by the President with the advice and consent of the Senate (to serve at the President's pleasure);
- four individuals with relevant experience who are neither officers nor employees of the Federal government to be appointed by the President with the advice and consent of the Senate. These individuals will serve for a term of three years and may be reappointed for one additional term. One of these four directors will be selected by the President from a list of at least five individuals submitted by the Senate majority leader after consultation with the chairman of the Committee on Foreign Relations. A second will be selected by the President from a list of at least five individuals submitted by the Senate minority leader after consultation with the ranking member of the Committee on Foreign Relations. A third will be selected by the President from a list of at least five individuals submitted by the Speaker of the House after consultation with the chairman of the Committee on Foreign Affairs. The fourth will be selected by the President from a list of at least five individuals submitted by the House minority leader after consultation with the ranking member of the Committee on Foreign Affairs.[15]
- the Secretary of State (or a designee of the Secretary of State who has been appointed by and serves at the pleasure of the President in another role);
- the Secretary of the Treasury (or a designee of the Secretary of the Treasury who has been appointed by and serves at the pleasure of the President in another role);
- the Secretary of Commerce (or a designee of the Secretary of Commerce who has been appointed by and serves at the pleasure of the President in another role); and

- the Administrator for USAID.

A quorum of the Board consists of five members. The Chairman of the Board will be the Secretary of State (or his or her designee). The Board must hold two public hearings per year in order to afford the public an opportunity to present views with respect to whether IDFC is carrying out its mandate and whether support in any country should be suspended, expanded or extended. The Board must establish a risk committee and an audit committee.

IDFC will have the following executive officers and such other officers as the Board may determine:

- ***Chief Executive Officer:*** appointed by the President with the advice and consent of the Senate and serves at the pleasure of the President.
- ***Deputy Chief Executive Officer:*** appointed by the President with the advice and consent of the Senate and serves at the pleasure of the President.
- ***Chief Risk Officer:*** appointed by the Chief Executive Officer, with the approval of the Board. The Chief Risk Officer may be removed by a majority vote of the Board.
- ***Chief Development Officer:*** appointed by the Chief Executive Officer, in conjunction with the Administrator for USAID, with the approval of the Board. The Chief Development Officer is responsible for coordinating IDFC's development policies and implementation efforts with USAID, the Millennium Challenge Corporation and other U.S. departments and agencies. The Chief Development Officer will serve as an ex officio member of the Development Advisory Council (but may send a representative to each meeting of the Council).

In addition to the Board and IDFC's executive officers, the BUILD Act establishes the Development Advisory Council. The Development Advisory Council will advise the Board on development objectives of IDFC and whether IDFC is achieving its development mandate. Members of the Development Advisory Council will be appointed by the Board on recommendation by the Chief Executive Officer and the Chief Development Officer, and the Council will consist of no more than nine members, each with relevant experience in international development.

IMPLICATIONS

The BUILD Act marks a major commitment by the United States government to expand the footprint of the United States in making available resources for equity and debt investments in emerging markets, with preference given to projects that have U.S. sponsors or another substantial U.S. nexus. This commitment is likely to open up a broader scope of financing and financial support opportunities for projects and businesses with a connection to U.S. exports and investment than previously available. This depends in part on how IDFC interprets the criteria related to achieving a specified U.S. development and foreign policy objective and the existence of a substantial U.S. nexus (*e.g.,* whether IDFC will be in a position to give preferential consideration to non-U.S. projects that purchase substantial U.S. exports). If successfully structured and implemented, the various programs should facilitate investments by U.S. developers, strategic operators or investors in a wide range of projects, some of which might not otherwise have been viable absent such support, or which might have attracted only sponsors from outside the United States.

The Act will provide an incentive for founders of local companies and early-stage developers of local projects to seek the involvement of U.S. equity or debt investors or operating partners, to enhance the ability of the project to gain access to the resources made available under the Act. Whether the funding authorized by the Act will be attractive to developers and sponsors will turn, in part, on whether the due diligence and approval protocols, and the documentation process, that IDFC establishes will resemble those of private-sector providers of debt and equity funding, or, instead, be characterized by cumbersome procedures and non-commercial requirements that increase the timeline for, or reduce the certainty of, achieving closing.

Certain provisions of the Act are designed to facilitate the development of small business. In light of the risks involved in small businesses and early-stage development of small-scale enterprises coupled with the additional risk of operating in an emerging economy, potential U.S. sponsors may struggle to identify opportunities to make such investments in small businesses, making it difficult for IDFC to achieve those aggregate goals set forth in the Act. Those small businesses that are able to satisfy the eligibility criteria should find that IDFC is eager to fund those opportunities.

Supporters of the BUILD Act have argued that the Act is a major step to counter China's growing influence in global development. Whether the U.S. effort indeed achieves those goals will need to be evaluated over time.

The bipartisan agreement on the BUILD Act stands in stark contrast to the sharp disagreements in Congress over the best way to build a viable infrastructure policy in the United States. Reaching agreement in Congress that fostering development of industry abroad is a worthy policy objective, and, moreover, reaching agreement on how to foster that development, as demonstrated by the passage of the Act, may give rise to a hope that similar agreement might be reached—perhaps by some of the same supporters and sponsors of this legislation—with regard to the development of a viable infrastructure policy for the United States.

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ENDNOTES

1 According to its Annual Management Report for fiscal years 2016 and 2017, as of November 15, 2017, OPIC had a combined total exposure of $23.2 billion for the fiscal year 2017, which consisted of loan guaranties, direct lending and political risk insurance. *See* https://www.opic.gov/sites/default/files/files/OPIC_FY_2017_Annual_Management_Report.pdf.

2 Under the BUILD Act, "less developed country" means "a country with a low-income economy, lower-middle-income economy, or upper-middle-income economy, as defined by the International Bank for Reconstruction and Development and the International Development Association (collectively referred to as the World Bank)." However, IDFC is required to restrict support in a less developed country with an upper-middle-income economy unless (a) the President certifies to the appropriate Congressional committees that such support furthers the national economic or foreign policy interests of the U.S. and (b) such support is designed to produce significant developmental outcomes or provide developmental benefits to the poorest population of that country.

According to the World Bank, 34 countries have a low-income economy, including Madagascar, Mozambique and Tanzania.

According to the World Bank, 47 countries have a lower-middle-income economy, including Angola, Bolivia, Cambodia, Cameroon, the Republic of the Congo, Cote D'Ivoire, Ghana, India, Indonesia, Kenya, Kyrgyz Republic, Morocco, Myanmar, Nigeria, Pakistan, Papua New Guinea, the Philippines, Ukraine, Uzbekistan and Vietnam.

According to the World Bank, 56 countries have an upper-middle-income economy including Botswana, Brazil, China, Colombia, Ecuador, Kazakhstan, Mauritius, Mexico, Paraguay, Peru, the Russian Federation, South Africa, Thailand and Turkey.

3 Senator Coons and Secretary Ross wrote an op-ed making these arguments that was published on August 2, 2018. *See* https://www.cnbc.com/2018/08/02/china-is-pouring-money-into-in-africa-heres-why-the-us-must-compete.html.

4 Effective at the end of the transition period, the Act transfers to IDFC OPIC, the existing USAID Development Credit Authority and the existing Legacy Credit portfolio under the Urban Environment Program and any other direct loan programs and non-Development Credit Authority guaranty programs authorized by the Foreign Assistance Act of 1961. However, the permissive authority to transfer other functions (the Office of Private Capital and Microenterprise, enterprise funds, and sovereign loan guarantees) can be exercised only with the concurrence of the USAID Administrator.

5 *See* https://www.opic.gov/what-we-offer/financial-products/eligibility.

6 This restriction also applies to loan guaranties. As with insurance and reinsurance, in the case of loan guaranties, IDFC may provide for appropriate adjustments in the insured dollar value reflecting the replacement cost of project assets and compensation for a claim of loss under insurance of an equity investment may be computed on the basis of net book value attributable to the equity investment on the date of loss.

7 *See* https://www.opic.gov/what-we-offer/political-risk-insurance.

8 No more than 3 percent of the funds made available to an enterprise fund may be spent on administrative expenses.

9 The Secretary of State will make the determination of whether the government has repeatedly provided support for acts of international terrorism with reference to section 1754(c)(1)(A)(i) of the Export Control Reform Act; section 620A(a) of the Foreign Assistance Act of 1961; section 40(d) of the Arms Export Control Act; or any other relevant provision of law.

10 In order for OPIC to provide a direct loan, a project must be sponsored by, or significantly involve, U.S. small businesses or cooperatives. The Act's mere preference for U.S. sponsored projects therefore represents a significantly less U.S.-focused approach.

ENDNOTES (CONTINUED)

[11] IDFC is required to give preferential consideration to projects in countries with governments that have demonstrated consistent support for economic policies that promote the development of private enterprise. Factors IDFC should consider, according to the Act, in making this assessment include (i) market-based economic policies; (ii) protection of private property rights; (iii) respect for the rule of law; and (iv) systems to combat corruption and bribery.

[12] The BUILD Act requires that IDFC make significant efforts to ensure that the proportion of projects sponsored by or involving U.S. small businesses (including women-, minority- and veteran-owned small businesses) is at least 50 percent of all projects involving U.S. persons for which IDFC provides support.

[13] IDFC is required to make efforts to mitigate gender gaps and maximize development impact by working to improve women's economic opportunities.

[14] *See* Section 1773(a) of the Export Control Reform Act.

[15] These appointed individuals, representing four-ninths of the Board, could bridge administrations. However, at least a bare majority of the Board will always consist of individuals selected by the sitting President.

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