United States Set to Launch New International Development Finance Corporation

On October 5, 2018, President Trump signed into law the Better Utilization of Investments Leading to Development Act (BUILD Act), which was enacted by the United States Congress with broad bipartisan support. The BUILD Act is intended in large measure to counter China's growing influence in the developing world, as exemplified by China's Belt and Road investment initiative. The BUILD Act creates a new corporation, the International Development Finance Corporation (IDFC), wholly owned and controlled by the United States federal government. The IDFC will take over, refocus and expand development finance programs currently administered by the Overseas Private Investment Corporation (OPIC) and the United States Agency for International Development (USAID). The IDFC is scheduled to become operational on October 1, 2019.

Like that of its predecessor agencies, the IDFC's aim is to facilitate market-based private sector investment in developing countries that will yield positive societal benefit and economic growth. IDFC will provide support – in the form of loans, loan guarantees, political risk insurance, and equity investments – to private-sector project companies and investors, as well as to certain state entities, for commercial development in key sectors, including agriculture, water, health, education, power, transportation, and telecommunications.

The BUILD Act specifies that IDFC support will be targeted to countries rated by the World Bank as having low or lower-middle income economies. As of June 2019, these include, among others, Afghanistan, Egypt, Ghana, India, Indonesia, Kenya, Nigeria, Pakistan, the Philippines, Uganda and Vietnam. Countries ranked by the World Bank as having upper-middle income economies also can benefit from IDFC support provided the President certifies to Congress that the IDFC support "furthers the national economic or foreign policy interests of the United States" and "is designed to produce significant developmental outcomes or provide developmental benefits to the poorest population of that country." These countries include, among others, Argentina, Brazil, Colombia, Kazakhstan, Libya, Malaysia, Mexico and Turkmenistan. The government of a qualifying country is required to enter into a bilateral agreement with the United States authorizing the IDFC to provide support in that country.

While the IDFC will inherit the existing development finance programs and portfolios of OPIC and USAID, the IDFC will differ in a number of important ways which shift the strategic objective of U.S. development finance efforts and enhance the toolkit available to deliver impactful support.

Alignment with United States Foreign Policy Objectives

OPIC was designed primarily to advance the commercial interests of U.S. companies investing in the developing world. The BUILD Act, on the other hand, specifically provides that the IDFC's purpose is to "advance the foreign policy interests of the United States." Two of the specific objectives for IDFC identified in the BUILD Act are to provide developing countries with "a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors" and to "complement and be guided by overall United States foreign policy, development, and national security objectives, taking into account the priorities and needs of countries receiving support." The BUILD Act emphasizes the intent to promote governmental transparency, social and environmental safeguards, the development of market-based economies, the creation of opportunity for minority and women-owned businesses, compliance with international trade obligations, and the avoidance of debt dependency on the part of countries receiving IDFC support. IDFC will operate "under the foreign policy guidance of the Secretary of State."

In line with this reorientation toward U.S. foreign policy objectives, while OPIC's programs included specific and substantial U.S. ownership and investment requirements, the IDFC is required under the BUILD Act to give only preferential consideration to projects in which U.S. companies participate. Participation by U.S. persons will no longer be a prerequisite to receiving development finance support. This opens the IDFC to investments sponsored by a developing country's own private-sector entities and governmental agencies. Although participation by U.S. private-sector entities – whether as sponsor, lender, insurer, supplier or operator – certainly will remain an important, positive IDFC consideration, beneficiary country participants now can drive the process. Developing country actors can fashion their own projects, invite and select any U.S. private-sector participants, and apply directly to the IDFC for financial support without reliance on U.S. commercial players.

The BUILD Act's shift in focus to the use of development aid as a U.S. foreign policy tool provides developing country private-sector entities and state agencies whose strategic interests align with those of the United States the opportunity to tap into IDFC's programs. In particular, national development banks and sovereign wealth funds seeking to leverage their own project investments can themselves lead the IDFC process. Consequently, it may be expected that there will be a fundamental pivot away from development projects driven by U.S. business interests to projects initiated, structured and driven by beneficiary countries seeking United States development finance support.

New and Strengthened Financial Aid Tools

Together with its new set of objectives and priorities, the BUILD Act provides IDFC with a more diverse and robust set of development finance tools. These include the following new and expanded investment authorities:

- The BUILD Act doubles the authorized investment capacity from OPIC's US$30 billion to a portfolio of up to US$60 billion for the IDFC. From this amount, IDFC will have authority to invest as much as $3 billion in a single project. Although such an outsized investment presumably would occur only in the most compelling circumstances, OPIC investments rarely exceeded several hundred million dollars and generally have been a fraction of that. IDFC has the balance sheet capacity and regulatory latitude to participate in world-scale projects.

- Risk sharing requirements also have been relaxed. Project participants other than IDFC now will be required to bear risk of loss in an amount equal at least to 20% of IDFC's exposure amount, whereas OPIC generally required 50% risk sharing. Also, the tenor of a loan can be up to 25 years.

- IDFC is authorized to make investments denominated not only in U.S. dollars but now also in foreign currencies, mitigating the considerable exchange rate risk associated with development projects and enterprises that generate only local currency revenues.

- IDFC will continue OPIC's offerings of direct loans, loan guarantees, political risk insurance, and non-amortizing loans to private equity funds that invest in development projects. The BUILD Act, however, gives IDFC new authority to make direct, minority equity and quasi-equity investments in project companies and in development-related funds, including "as a limited partner or other investor." As is the case for loans, guarantees, and insurance, IDFC equity investments are intended to supplement and encourage, but not compete with, investment by the private sector.

- The BUILD Act also authorizes IDFC to establish new "enterprise funds" – private, nonprofit entities organized by IDFC which will be eligible to receive loans, guarantees, insurance, and equity investments for the purpose of promoting economic freedom and private sector development, with an emphasis on small and medium-sized enterprises. The board of an enterprise fund is required to be composed of experienced U.S. and host country individuals, the majority of whom are US citizens, appointed by the President after consultation with Congress. A number of such enterprise funds were established years ago under authority granted to USAID in 1989, the last of which now are in the process of being wound up. Those funds each were targeted to particular regions and countries – originally supporting the emerging market economies of Poland and Hungary, and later the newly independent states of the former Soviet Union, as well as Egypt and Tunisia early this decade. The BUILD Act effectively reauthorizes the establishment of enterprise funds which will be created on a case by case basis through an inter-agency process.

- In addition to investment, the BUILD Act authorizes IDFC to initiate and support, on either a grant or cost-sharing basis, feasibility studies for the "planning, development and management" of projects eligible for IDFC financial support. This includes the "identification, assessment, surveying, and promotion of private investment opportunities" for funding a project alongside IDFC. IDFC is also authorized to undertake special projects and programs that provide private technical, professional, or managerial assistance for specific transactions.

Transition to the New IDFC Model

The broad parameters of IDFC's mandate are well established by the BUILD Act, as too is IDFC's organizational structure. It remains to be seen, however, just how IDFC will apply the BUILD Act's multiple prescriptions to the disposition of applications for development finance support. The Trump Administration has submitted a reorganization plan to Congress, and a further report is due to be submitted detailing procedures for inter-agency coordination after IDFC becomes operational. These documents, however, address only the procedural aspects of the BUILD Act's implementation. Moreover, the implementation of the BUILD Act and establishment of the IDFC do not require the Administration to undertake a rulemaking process resulting in implementing regulations, as would be typical for most federal programs and agencies.

Substantive guidance on the application submission and review process likely will be derived only over time after IDFC becomes operational. OPIC's existing website materials and application forms and instructions presumably will be substantially revised, providing some insight into IDFC's analytical process. In addition, the minutes of the IDFC's quarterly board of directors meetings, to be chaired by the Secretary of State or his designee, and any policy statements the board may adopt, also will provide guidance, as will advice offered to the board by a Development Advisory Council established under the BUILD Act.

All of this notwithstanding, given the primacy of U.S. foreign policy as IDFC's guiding directive, and in light of the considerable uncertainties inherently associated with United States foreign affairs and national security objectives, the degree to which IDFC support is influenced by particular foreign policy considerations – including regional and country-specific goals – may be revealed only as the IDFC's portfolio grows. In any event, it seems almost a certainty that the IDFC's focus will evolve over time in response to shifting U.S. perspectives on ever-changing world events.

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