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# The New US International Development Finance Corporation (DFC): Enhancing Opportunities for Emerging Market Sponsors and Investors (Updated)

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## The New US DFC

In October 2018, the landmark bipartisan *Better Utilization of Investments Leading to Development (BUILD) Act*[1] was signed into law. It has been described as "the most significant [US] foreign assistance legislation in 15 years."[2] The BUILD Act implements a reorganization of US government development finance and aid programs, creating a single, consolidated development agency called the **US International Development Finance Corporation (DFC)**. Grounded by legislation that allows it to participate in private sector, market-based transactions,[3] the DFC's mission is to address both "development challenges and foreign policy priorities of the United States."[4]

In September 2019, Adam S. Boehler was confirmed by the US Senate as the first CEO of the DFC, and on January 2, 2020, DFC officially commenced operations.[5] Just two months later, on March 12, 2020, the DFC Board of Directors approved $881 million in financing and political risk insurance for multiple projects in several regions of the globe.[6]

Structurally, the DFC merged the programs (and personnel) of the existing primary sources of US government development finance—OPIC (the US Overseas Private Investment Corporation) and the Development Credit Authority of USAID (the United States Agency for International Development).[7] Further, the DFC is able to offer new development finance products that have not been previously available to OPIC or other US government agencies.

## DFC Policies and Support Criteria

The DFC offers support under a variety of statutory directives applicable to its programs.[8] Investors and sponsors will want to be aware of these considerations and their impact on the availability of DFC support for any specific project or investment:

- **Targeting Lower-Income Countries** Low- and lower-middle income countries (as defined by the World Bank,[9] and previously the recipient of about 46 percent of OPIC-backed financing)[10] are the express priority of the DFC by the terms of the BUILD Act.[11] This will initially mean a focus on the 78 countries with 2018 per capita gross national income below US$3,996 as shown in Table 1[12] (attached to this article).
- **Preference for US Sponsors** The BUILD Act retains a US nexus, modified from OPIC's requirement of a "US connection" based on US citizenship or US equity ownership[13] to a

"preferential" consideration of projects involving private sector entities that are "US persons" (US citizens or entities owned or controlled by US citizens).[14]

- **Additionality Requirement** DFC support must not compete with or supplant available sources of private-sector support or crowd-out private sector lending.[15]
- **Policies Supporting Private Sector** The DFC is directed to give preferential consideration to projects in countries where the government supports private-sector economic principles, including market-based economic policies, protection of private property rights, respect for the rule of law and systems to combat corruption.[16]
- **International Trade Obligations** The DFC is directed to provide preferential consideration to investments in countries in compliance (or making substantial progress in coming into compliance) with their international trade obligations.[17]
- **International Terrorism and Human Rights** The DFC is prohibited from providing support to a foreign government—or an entity owned or controlled by a foreign government—if such government has repeatedly supported international terrorism or engaged in serious human rights violations.[18]
- **Women's Economic Empowerment** The DFC is required to consider the impact of potential investments on, and seek to improve, women's economic opportunities.[19]
- **Boycott Restriction** The DFC must take into account whether a project is sponsored by or substantially affiliated with persons involved in boycotting a country that is "friendly" with the United States and is not subject to a boycott under US law or regulation.[20]
- **Continuing Requirements—Worker Rights, Child Labor, Environmental and Social, Sanctions, Small Business** The DFC will operate under similar considerations as OPIC in several areas: The DFC can only support projects in countries taking steps to protect worker rights and prevent child labor[21] and must not support projects that have a significant adverse environmental or social impact.[22] The DFC also is prohibited from all dealings with projects involving persons or entities subject to US sanctions laws or regulations.[23] The DFC must afford preferential consideration to projects sponsored by or involving small business and ensure that small business-related projects are not less than 50 percent of all DFC-supported projects involving US persons (an increase from OPIC's 30-percent target).[24]

## DFC Offerings—Enhanced Capability and Flexibility

The DFC offers new or enhanced financial tools, as well as continue to provide existing support offerings that have long been favored by emerging market investors and project sponsors. As with the predecessor OPIC and USAID programs, the DFC's obligations are backed by the full faith and credit of the US government.[25] Importantly, the DFC is authorized for an initial seven-year term[26] (as opposed to the recent annual cycle for OPIC[27]), affording market participants with reassurance of its continued existence and program availability.

A summary comparison of the DFC's major programs with OPIC's major programs is provided in Table 2 below. As these details show, the DFC can provide investors and sponsors seeking capital for emerging market projects with enhanced resources and flexibility.

## TABLE 2 – DFC VS. OPIC MAJOR PROGRAMS

| Offering or Criteria | DFC | OPIC | Details | Significance |
|---|---|---|---|---|
| **Investment Cap Limit**[28] | Higher | Lower | The DFC has an investment limit of US$60 billion, more than double the OPIC limit of US$29 billion. | The DFC can participate in many more transactions with more companies, mobilizing substantially more capital across the developing world. |
| **US Nexus** | Preference | Requirement | Preferential consideration will be given to projects sponsored by or involving private sector entities that are "US persons" (US citizens or entities owned or controlled by US citizens).[29] | OPIC's requirement for projects to have a "US connection" based on US citizenship or US ownership shares have been eased. Change to a "preference" makes it possible for the DFC to support projects by non-US sponsors. |
| **Direct Equity Investment**[30] | Yes | No | The DFC can make minority equity investments of up to 30% in a project company or partnership venture. Equity investments and returns can be denominated in US Dollars or in foreign currency (subject to Board approval).[31] | Will help complete capital structure needs for project companies and development startups. Provides a very stable investor for co-sponsors and future lenders. Foreign currency capability allows for an enhanced scope of potential company investments. |
| **Local Currency Loans**[32] | Yes | No[33] | The DFC will be able to make loans in local currencies (subject to Board approval)[34], a key attribute of other DFIs. | New source of debt that can be matched to local currency revenue sources, especially useful in infrastructure and other local currency-based sectors. Increases potential reach of DFC participation. |
| **US$ Loans**[35] | Yes, but possible funding structural changes | Yes | The DFC will continue to make US Dollar loans, but may have more flexibility in funding methods for larger loan amounts, which may reduce structural complexity.[36] In addition to traditional financing, DFC has created a Portfolio for Impact and Innovation that can support early stage social enterprises. | Easier integration of DFC senior debt with *pari passu* senior debt from other DFIs, export credit agencies and commercial bank lenders. |
| **Loan Guarantees**[37] | Yes, but with reduced risk-sharing | Yes | Loan guarantee risk-sharing requirements will be reduced to 20% (from the typical 50%). | Higher absorption of risk by DFC will increase the appetite of other parties, increasing potential capital availability. Also should lead to an increase in the number of projects able to be supported with lower costs for the risk-sharing capital. |
| **Political Risk Insurance (and Reinsurance)**[38] | Yes | Yes | PRI programs remain available with coverage of up to US$1 billion. | Continued access to highly beneficial development finance tool for investors with PRI needs. |
| **Technical Assistance/ Feasibility Studies**[39] | Expanded | Limited | The DFC will offer this support as a core program. | Such programs often are the initial step for investors contemplating a potential project. Wider availability should catalyze more early-stage exploration, potentially resulting in an expansion of completed projects. |

| | | | | |
|---|---|---|---|---|
| **Equity Enterprise Funds**[40] | Yes | No; debt investments in funds were the only option[41] | The DFC can act as an equity sponsor of new enterprise funds. | Although the DFC can make direct equity investments, the addition of investment authority for private equity and similar fund platforms may result in an expansion of fund capital resources, with parallel increases in downstream investments. |

Other details regarding the DFC's loan and guarantees—such as tenors, interest rates, premia and fee structures—will be essential to an assessment of DFC's benefits to any specific transaction. [42]

## US EXIM Bank and Other US Government Development Programs

Many parties involved in emerging market finance and development have wondered what impact the new "US Super DFI" will have on the export finance mission of US EXIM Bank and the programs of various other US government programs supporting global development activities. For investors and sponsors familiar with EXIM Bank and these other programs, the news is good—EXIM Bank will remain in operation as the US government's export credit agency, and (for the most part) the other entities and programs also will continue. (As many will know, after several years of uncertainty regarding its continued existence, in December 2019, EXIM Bank was reauthorized for a seven-year term, the longest re-authorization period in EXIM Bank's 85-year history.)[43] Total US government resources available for emerging market private-sector development and finance will therefore increase post-DFC, and the feared fratricide that might have occurred within its development program portfolio seems to have been avoided.

The DFC's impact on the US government's development and related finance program structure is shown schematically in the attached Table 3, summarizing the pre- and post-DFC location of the major US government programs. In the case of EXIM Bank, in particular, its export finance and credit insurance programs will remain in place and continue to support export-driven emerging market transactions. In addition, the export-oriented feasibility study capability of US TDA (the US Trade and Development Agency)[44] will remain in that agency, so sponsors that have been able to pair front-end TDA support followed by EXIM Bank (or other) project financing can continue to access these programs.

## Opportunities for Investors and Sponsors

The robust menu of financial support offered by the DFC will undoubtedly put more and better tools in the hands of emerging market infrastructure investors and sponsors. We see a number of enhanced opportunities, such as:

- **Filling Equity Gaps:** In circumstances where debt may be available but equity demands are harder to meet, the DFC will be a new, experienced and stable equity participant in transactions.
- **Multi-DFI Deals:** The DFC's broader programmatic menu brings it into closer alignment with other DFIs' offerings, allowing investors/sponsors to structure larger tranches of similar support for projects.[45]
- **Expansion of Available Sectors:** Local currency lending opens a range of investment projects that generate only (or predominately) local currency revenue, allowing investors and sponsors in such deals to access a source of stable, long-term local currency funding.
- **"One-Stop" Feasibility-to-Funding Opportunities:** Combining front-end feasibility study funding with potential back-end, long-term lending enhances efficiency

and allows investors and sponsors to concentrate their efforts on one agency, benefitting both sides with iterative development of a project from concept to financial closing.

- **Keystone Agency:** The DFC's greatly expanded budget and presumed increased deal flow enables investors and sponsors to consider the DFC as more of a "base-load" participant in series investment, such as strings of solar projects in one country or a multi-country wind sector investment program.
- **Better Coordination of Project Funding:** Adjustments to the current OPIC debt funding structures will simplify the integration of DFC senior loans into multi-tranche project finance structures, decreasing documentation complexity and increasing debt funding efficiency.
- **Enterprise Funding—A New "P3" Tool:** Many, if not most, of the countries that the DFC must prioritize face significant issues absorbing large or even medium-sized standalone investments.[46] Private investor collaboration with the DFC through the establishment of new equity enterprise funds will expand development capital deployment and allow the DFC to further leverage its impact.

These are just a handful of many new benefits that the DFC can provide in emerging market investments. Investors and project sponsors should start considering these opportunities in their development planning processes if they are ready for a future that includes this new and likely powerful player on the world's development stage.

## TABLE 1: WORLD BANK-DESIGNATED LOW-INCOME AND LOWER-MIDDLE INCOME ECONOMIES[47]

### *LOW-INCOME ECONOMIES ($1,025 OR LESS) - 31*

| | | |
|---|---|---|
| Afghanistan | Guinea-Bissau | Sierra Leone |
| Benin | Haiti | Somalia |
| Burkina Faso | Korea, Dem. People's Rep. | South Sudan |
| Burundi | Liberia | Syrian Arab Republic |
| Central African Republic | Madagascar | Tajikistan |
| Chad | Malawi | Tanzania |
| Congo, Dem. Rep | Mali | Togo |
| Eritrea | Mozambique | Uganda |
| Ethiopia | Nepal | Yemen, Rep. |
| Gambia, The | Niger | |
| Guinea | Rwanda | |

### *LOWER-MIDDLE INCOME ECONOMIES ($1,026 TO $3,995) - 47*

| | | | | | |
|---|---|---|---|---|---|
| Angola | Côte d'Ivoire | Kenya | Morocco | Solomon Islands | Zambia |
| Bangladesh | Djibouti | Kiribati | Myanmar | Sudan | Zimbabwe |
| Bhutan | Egypt, Arab Rep. | Kyrgyz Republic | Nicaragua | Timor-Leste | |
| Bolivia | El Salvador | Lao PDR | Nigeria | Tunisia | |
| Cabo Verde | Eswatini | Lesotho | Pakistan | Ukraine | |
| Cambodia | Ghana | Mauritania | Papua New Guinea | Uzbekistan | |
| Cameroon | Honduras | Micronesia, Fed. Sta. | Philippines | Vanuatu | |
| Comoros | India | Moldova | São Tomé and Principe | Vietnam | |
| Congo, Rep. | Indonesia | Mongolia | Senegal | West Bank and Gaza | |

## TABLE 3 - US GOVERNMENT DEVELOPMENT FINANCE REORGANIZATION STRUCTURE (FOR MAJOR PRODUCTS)[48]

| PRODUCT | AGENCY LOCATION Pre-BUILD ACT | AGENCY LOCATION Post-BUILD ACT |
|---|---|---|
| **Direct Equity Investment** | NEW | DFC |
| **Enterprise Funds** (New) | FROM USAID | |
| **Development Lending** | FROM OPIC | |
| **Project Feasibility Studies** (to support overseas US investment projects) | NEW | |
| **Political Risk Insurance** | FROM OPIC | |
| **Export Finance** | NO CHANGE | EXIM Bank |
| **Export Credit Insurance** | NO CHANGE | |
| **Project Feasibility Studies** (to support US exports) | NO CHANGE | USTDA |
| **Enterprise Funds** (Existing) | NO CHANGE | USAID |

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## Endnotes

[1] *BUILD Act of* 2018, H.R.. 302-1, 115th Cong., 2nd Sess. Division F of the *FAA Reauthorization Act of 2018*, H.R. 302-1, 115th Cong., 2nd sess., signed into law October 5, 2018. Public Law No: 115-324 (10/05/2018) (hereafter, "BUILD Act").

[2] Strategic Directions for the United States International Development Finance Corporation (DFC), Daniel F. Runde, Romina Bandura and Owen Murphy, Center for Strategic & International Studies, September 2019.

[3] The Build Act Has Passed: What's Next, Daniel F. Runde and Romina Bandura, Center for Strategic & International Studies, October 12, 2018, available at: https://www.csis.org/analysis/build-act-has-passed-whats-next.

[4] Overseas Private Investment Corporation, THE BUILD ACT, available at https://www.opic.gov/build-act/overview.

[5] See https://www.dfc.gov/media/press-releases/us-international-development-finance-corporation-begins-operations.

[6] See https://www.dfc.gov/media/press-releases/dfc-approves-nearly-900-million-global-development-projects.

[7] BUILD Act: Frequently Asked Questions About the New U.S. International Development Finance Corporation, Shayerah Ilias Akhtar and Marian L. Lawson. Congressional Research Service, R45461, January 15, 2019 (hereafter, "CRS Report").

[8] Per the BUILD Act, additional criteria will apply to a number of DFC programs depending upon the amounts requested or DFC portfolio considerations.

[9] BUILD Act, Sec. 1411. For 2020, the World Bank defines Low-Income Countries as those with Gross National Income (GNI) per capita of US1,025 or less and Lower Middle Income-Countries as those with a GNI per capita of between US$1,026 and US$3,955. A complete list of countries by income classification can be found at: https://datahelpdesk.worldbank.org/knowledgebase/articles/906519 (hereafter, "World Bank Country Data"). Also, see Table 1.

[10] Can the US Development Finance Corporation Compete?, Charles Kenney, Center for Global Development, CGD Policy Paper 158, October 2019, p.1., available at: https://www.cgdev.org/sites/default/files/Kenny-Can-USDFC-Compete-Formatted.pdf (hereafter "Kenney").

[11] BUILD Act, Sec. 1411.

[12] DFC support for countries with greater income economies is restricted unless the President can make certain certifications of need and transactional impact value. See BUILD Act, Sec. 1412(c).

[13] An overview of OPIC's 'U.S. Nexus" requirements can be found at: https://www.opic.gov/sites/default/files/files/us-nexus-fact-sheet-2017.pdf.

[14] BUILD Act, Sec. 1451(b).

[15] BUILD Act, Sec. 1452(b).

[16] BUILD Act, Sec. 1451(g).

[17] BUILD Act, Sec. 1451(c).

[18] BUILD Act, Sec. 1453(a).

[19] BUILD Act, Sec. 1451(f).

[20] BUILD Act, Sec. 1451(h). This provision would address circumstances such as boycotts of Israel.

[21] BUILD Act, Sec. 1451(d).

[22] BUILD Act, Sec. 1451(e).

[23] BUILD Act, Secs. 1453(b) and (c).

[24] BUILD Act, Sec. 1451(i).

[25] BUILD Act, Sec. 1434(e).

[26] BUILD Act, Sec. 1424(a).

[27]See https://www.devex.com/news/inside-the-fight-for-opic-reauthorization-89612.

[28] Build Act, Sec. 1424(a); OPIC 2018 Report.

[29] BUILD Act, Sec. 1451(b).

[30] BUILD Act, Sec. 1421(c). Other sub-limits may apply in certain circumstances. In addition, equity support is limited to no more than 35% of the DFC's total exposure.

[31] "Foreign currency [equity] support should only be provided if the Board determines there is substantive policy rationale for such loans and guaranties." BUILD Act, Sec. 1421(c)(2).

[32] BUILD Act, Sec. 1421(a)

[33] OPIC has supported local currency financing transactions through US Dollar loan guaranties issued to entities that then provide downstream local currency-denominated loans. See, e.g.,

https://www.opic.gov/press-releases/2015/opic-and-tunisian-banks-support-economic-growth-tunisia (Tunisian transaction); https://www.opic.gov/press-releases/2018/opic-provides-5-million-financing-grameen-impact-investments-india (Indian transaction); https://www.opic.gov/press-releases/2017/opic-board-directors-approved-two-projects-developing-countries (Guaranty to MFX Solutions Inc., Washington DC).

[34] "Foreign currency denominated loans and guaranties should only be provided if the Board determines there is substantive policy rationale for such loans and guaranties." BUILD Act, Sec. 1421(b)(2). Considering that foreign currency lending is well established in the broader DFI market, such capability would be a key tool to increase attractiveness of the DFC in many potential transactions. Therefore, it seems likely that the Board will be faced with such requests promptly and repeatedly.

[35] BUILD Act, Sec. 1422(b).

[36] DFC loans (and loan guarantees) must be made on a senior or *pari passu* basis with other senior credit support for a project "unless there is a substantive policy rationale to provide such support otherwise." BUILD Act, Sec. 1422(b)(12).

[37] BUILD Act, Sec. 1422(b).

[38] BUILD Act, 1421(d).

[39] BUILD Act, Sec 1445(c).

[40] BUILD Act, Sec. 1421(g).

[41] OPIC's debt support for emerging market investment funds has been quite significant: "OPIC has committed $4.1 billion to 62 private equity funds in emerging markets since 1987. These funds in turn have invested $5.6 billion in more than 570 privately-owned and managed companies across 65 countries." OPIC, What We Offer, Support for Private Equity Funds, available at: https://www.opic.gov/what-we-offer/investment-funds. These proceeds have been provided in the form of non-amortizing loans to the various funds, see OPIC, What We Offer, How The Investment Process Works, available at: https://www.opic.gov/what-we-offer/investment-funds/how-investment-process-works.

[42] DFC tenors will be 25 years or the length of the debt servicing ability of the project, if less. BUILD Act, Sec. 1422(b).

[43] See https://www.exim.gov/news/president-donald-j-trump-signs-historic-seven-year-long-term-reauthorization-exim-0.

[44] See US Trade and Development Authority, Programs & Activities, available at: https://www.ustda.gov/program.

[45] This is a specific priority of the legislation, BUILD Act, Sec. 1411(5). In the last few years, OPIC has been accelerating arrangements with other DFIs, and has entered into collaboration agreements, for example, with the International Finance Corporation (IFC), the Inter-American Development Bank (IADB), Japan, Australia, FinDev Canada and a group of European DFIs (the latter creating what is called the "DFI Alliance"), see, e.g., https://www.opic.gov/press-releases/2018/opic-and-ifc-sign-memorandum-understanding-promote-resource-efficiency-building-projects-emerging-markets;

https://www.opic.gov/press-releases/2019/idb-invest-and-opic-partner-catalyze-billions-development-latin-america-and-caribbean;

https://www.opic.gov/press-releases/2019/opic-jbic-and-dfatefic-reaffirm-commitment-indo-pacific-infrastructure-development;

https://www.opic.gov/press-releases/2019/opic-signs-mou-establishing-dfi-alliance-key-allies.
The effort is needed: According to one study, "Over the 2012-2016 period, only 2 percent of OPIC's portfolio was co-financed by any of the CDC, DEG, FMO, Proparco or IFC, compared to 20 percent of CDC [Commonwealth Development Corporation of the U.K.] deals that were co-financed by OPIC, DEG, FMO, Proparco or the IFC. With relaxed constraints on project sponsor nationality faced by the new USDFC, it may be able to catch up." Kenney, p.10.

[46] See Kenney, pp. 2-6.

[47] World Bank Country Data.

[48] Developed by Authors. Sources: Text of BUILD Act and CRS Report.