



March 22, 2010

Dr. Lawrence Spinelli  
Acting President

Ms. Mary Boomgard  
Director, Environmental Affairs

US Overseas Private Investment Corporation (OPIC)  
1100 New York Avenue, NW  
Washington, D.C. 20527

*Via email*

Dear Dr. Spinelli & Ms. Boomgard:

Thank you for the opportunity to comment on the Overseas Private Investment Corporation's (OPIC) draft Environmental and Social Policy. Friends of the Earth – US is a national environmental advocacy organization, and the U.S. voice of Friends of the Earth International, the world's largest federation of grassroots groups in 77 countries around the world.

### **Human rights**

We understand that OPIC is drafting a human rights policy separately from the Environmental and Social Policy revision. As the agency develops its human rights approach, we encourage you to examine root causes of conflict and human rights abuses, including how the provision of political risk insurance may, in certain cases, exacerbate human rights risks. We hope that OPIC will ultimately adopt a robust and detailed set of procedures and standards governing human rights, and that it will make all necessary efforts to update and rationalize the Environmental and Social Policy (ESP) to synch with the new human rights framework.

We also note that the agency plans to link to the International Finance Corporation (IFC) Performance Standards. However, the IFC standards are currently under review and may not ultimately reflect international best practices. For example, with respect to indigenous peoples, it is unclear whether the IFC will adopt the standard of Free, Prior and Informed Consent in line with the UN Declaration on Rights of Indigenous Peoples.

### **Financial intermediaries**

We welcome the ESP's new provisions for Financial Intermediaries (FIs), as FIs have become an increasingly important part of OPIC's financing portfolio. The agency should clarify

that all FI transactions and sub-projects must comply with the agency's environmental and social standards and procedures. For example, the ESP's sections on Conditions and Compliance and Audits include provisions which apply to Category A projects, but not to FIs such as investment funds. OPIC should elucidate specific processes by which it will audit and ensure compliance from FIs.

In the interest of addressing banking secrecy and fighting tax havens, OPIC should not invest in funds based in secrecy jurisdictions. The Tax Justice Network's Financial Secrecy Index may provide some helpful guidance in this regard: <http://www.financialsecrecyindex.com/>

For those investment funds in which OPIC does invest, OPIC should require that they present their accounts on a country-by-country basis to help ensure that taxes are being duly paid. Also, the agency should require funds to publish a list of investments in their portfolio, as not all OPIC investment funds make this information publicly available.

### **Environmental and social standards**

While Friends of the Earth appreciates OPIC's desire to apply additional standards and best practice as appropriate to particular transactions, adopting a policy that allows the agency to pick and choose standards seems rather ad hoc. OPIC should instead make a presumption in favor of implementing industry best practices.

For example, mining projects should avoid the use of cyanide, and riverine and submarine tailings disposal methods. Although these industry best practices are not required in the current IFC mining sector guidelines, and may not be integrated into the new IFC standards, OPIC should nevertheless require them for its own mining transactions. Similarly, we encourage the agency to require full contract transparency and "publish what you pay" disclosure for all extractive industries, a standard that is only partially adopted in the current IFC guidelines.

### **Transparency**

In general, OPIC should commit to openness and transparency as a "default position," rather than as an exception. OPIC and its clients currently assume that all client and project information is confidential unless otherwise stated. Specifically, OPIC should require disclosure of environmental and social action plans, monitoring reports, audits, and environmental and social loan covenants. Project affected communities can benefit greatly from knowing what environmental and social obligations clients and projects are supposed to fulfill, and what safeguards should be afforded through proper implementation of OPIC covenants.

### **Climate change**

Friends of the Earth has a particular interest in seeing that OPIC adopts the strongest possible standards relating to climate change.

With respect to greenhouse gas accounting, we urge the agency to calculate not only the indirect and lifecycle emissions associated with its projects, but to also lower the accounting

threshold. Currently, the agency measures direct emissions for projects that emit over 100,000 tons of CO<sub>2</sub> equivalent annually. In contrast, the EPA accounts for projects emitting 25,000 tons or more, and we urge OPIC to adopt that lower threshold.

Finally, we encourage the agency to include coal projects as a type of Categorically Prohibited project. In particular, OPIC should particularly avoid some of the dirtiest types of coal projects, such as power plants relying on lignite (brown coal) or high sulfur coal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michelle Chan", followed by a horizontal line extending to the right.

Michelle Chan  
Friends of the Earth - US