

United States Johnson Debt Default Act

The Johnson Debt Default Act (the “Act”) generally provides that it shall be a federal criminal offense for any person or corporation subject to the jurisdiction of the United States to engage in the sale of securities of any foreign government which is in default on the payment of its obligations to the United States Government.¹ The language of the Act states, in part: “Hereafter, it shall be unlawful within the United States or any place subject to the jurisdiction of the United States for any person to purchase or sell the bonds, securities, or other obligations of, any foreign government or political subdivision thereof, issued after the passage of this Act, or to make any loan to such foreign government, political subdivision, organization, or association, except a renewal or adjustment of existing indebtedness while such government, political subdivision, organization, or association, is in default in the payment of its obligations, or any part thereof, to the Government of the United States”.² Under the Act, any debt obligations issued by the Government of the People’s Republic of China or any instrumentalities thereof, which have been sold in the United States, either publicly or on a private placement basis subsequent to the date of default or repudiation of the series of bonds referenced herein and presently held in trust for collection, represents a violation or violations of the Act. Under the Act, culpability for any such violations shall apply to any seller, underwriter or broker of such securities within the United States.

The Act may be applicable in the specific instance described herein for the following reasons:

1. Officials of the United States Government have confirmed that the U.S. Government is presently in possession of a substantial quantity of defaulted full faith and credit Chinese government bonds substantially similar to the series held by individual bondholders affiliated with the ABF. According to members of the Judiciary Committee of the United States Congress, such bonds were acquired by the U.S. Government through the Office of the Alien Property Custodian pursuant to the Trading with the Enemy Act, and are presently held in the vaults of the U.S. Department of Justice.³
2. The existence of direct loans provided by the United States Government to the Government of China which subsequently entered into default prior to repayment, and which remain in default. For example, the Export-Import Bank loan of 1946.⁴

Under the Act, it is a federal criminal offence for any party subject to the jurisdiction of the United States to sell the securities of, or engage in the provision of loans or extending of credit to, any foreign government, or organization thereof, which is in default on debt owed to the Government of the United States. The language of the Act may reasonably be construed to prohibit the underwriting, offer or sale of securities of the Government of the People’s Republic of China or its state-owned enterprises, including the provision of trade credit. Through their activities involving underwriting of Chinese Government securities and providing or arranging trade credit on behalf of its state-owned enterprises, the major financial houses (e.g., Morgan Stanley Dean Witter, Goldman Sachs, Merrill Lynch, J.P. Morgan, etc.), are constituted as criminals under the Act. Included within this group of firms which continue their practice of dealing in Chinese Government securities are two of the same institutions which sold the aforementioned defaulted securities to the investing public (i.e., Deutsche Bank and HSBC). The most recent example of which the ABF is aware pertaining to the offer and sale of Chinese Government securities in the United States is the offering of \$1 billion of notes of the Government of the People’s Republic of China (prospectus dated October 2003). No disclosure appears in the prospectus regarding possible violations of the Johnson Debt Default Act in connection with the offering. Upon a closer examination of the relevant fact pattern, it would appear that by virtue of their practice of engaging in a repetitive practice of assisting in the issuance and subsequent serial defaults of Chinese Government securities (as specified in detail under the section pertaining to deceptive practices), such financial houses may be subject to the penalties specified pursuant to the Racketeer Influenced Corrupt Organizations (“RICO”) statute. Selectively ignoring repeated violations of the Act, as well as egregious violations of accepted conventions of international law, is a dangerous precedent and acts as a destabilizing influence on global affairs of trade and commerce.

¹ 48 Stat. 574, 31 U.S.C.A. §804a (April 13, 1934).

² As used in the Act, the term “person” includes individuals, partnerships, and corporations.

³ In effect, held by the “public-at-large”.

⁴ In addition, the United States Government lent in excess of \$670 million in pre-war, wartime, and post-war loans to the Government of China, including the \$500 million “Wilson Loan” in 1942. Sources: “Kimber’s Record of Government Debts” (Overseas Statistics, Inc., 1934). “Foreign Loans to China , Kao Ping-Shu (Sino-International Economic Research Center, 1946). “China ’s Foreign Debt”, W. Kuhlmann (no publisher information available, 1984).