

PUBLIC INFORMATION STATEMENT
BANK OF AMERICA (COLOMBIA)
CONTRACT Nos. E967 and F100

On March 24, 2004, OPIC and Bank of America (BofA) concluded a settlement agreement relating to BofA's claims for payment defaults on insured project loans and an interest rate swap agreement as a result of political violence or expropriation.

In July 1999, OPIC issued two institutional lenders insurance contracts to Bank of America with respect to the TermoCandelaria gas-fired power plant in Cartegena, Colombia. Contract No. E967 covered a secured project loan, whereas Contract No. F100 was issued with respect to an interest rate swap.

In February 2001, guerilla groups began destroying power transmission lines connecting key hydroelectric plants with the heaviest demand segment of the national power grid, including Cartegena, thereby creating isolated service areas that could be supplied with power only by more expensive thermal power producers, such as TermoCandelaria. To maintain price stability, the Colombian regulatory authority, CREG, enacted a measure, Resolution 34, that imposed a cap on the rates that a generator could charge. BofA contended, among other things, that by preventing recovery of actual costs, Resolution 34 caused operating losses that undermined the project's ability to service the OPIC-insured debt. In August 2001, BofA advised OPIC of a potential claim.

In the context of U.S. regulatory systems, which generally provide for actual cost recovery plus a modest profit, Resolution 34 appeared to be a regulatory taking. Accordingly, the U.S. Embassy, OPIC and other USG agencies expressed concern to the Government of Colombia (GOC) and engaged in efforts to persuade the GOC to mitigate the impact of Resolution 34. These efforts, which extended from September 2001 through October 2002, included letters to the President of Colombia, as well as demarches by the American ambassador.

The project had not made a scheduled payment since December 2001, and in April 2002, BofA filed an expropriation claim under Contract E967 on the theory that enactment of Resolution 34 was an expropriatory act. In August 2002, BofA supplemented its application on the alternative theory that Resolution 34 was the direct and immediate result of political violence. In January 2003, BofA filed an application for compensation under Contract No. F100, advancing both the expropriation and the political violence theories of recovery. In support of its claims, BofA submitted an economic expert report.

In the interim, OPIC had been analyzing the project, with assistance of outside engineering and financial experts. It appeared to OPIC that the project's inability to meet debt service may have been due to commercial factors and not any covered political risk. OPIC also sought advice from Colombian counsel as to local law and regulatory practice.

On the basis of its analysis of the economics of the project and the regulatory environment in which the project was established, OPIC reached a preliminary determination that BofA's claim should be denied. In July 2003, BofA representatives presented to OPIC a rebuttal to OPIC's preliminary analysis and a cash-flow simulation demonstrating the impact of the Resolution 34 price caps upon the project, and, in August 2003, BofA submitted a further rebuttal, supported by a Colombian legal expert report, and including a settlement proposal.

The parties considered all of the analyses available to them as well as the risks and uncertainties they would face if BofA submitted its claims to arbitration. In lieu of the usual claim determination, OPIC concluded a settlement with BofA in an agreed amount.

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