

## MEMORANDUM OF DETERMINATIONS

Political Violence Claim of [REDACTED] (the "Investor")\*

Afghanistan – Contract of Ins. No. F377 (the "Contract" (Tab A))

### I. CLAIM

By a letter dated February 17, 2004 (Tab B), the Investor filed a political violence claim with OPIC under the Contract. The claim is based on [REDACTED] \* owned by the Investor by members of the Taliban, a group which once ruled Afghanistan and is currently attempting to regain power there. OPIC finds that the claim is valid and that the Investor is entitled to compensation in the amount of up to \$59,713 to replace [REDACTED] \*

### II. FACTUAL BACKGROUND

The Taliban government rose to power in Afghanistan during a period of relative anarchy in the late 1990s. They occupied the capital city, Kabul, in 1996, and controlled 90% of the country by the end of 1998. In the mid-1990s, the Taliban began harboring members of the Al Qaeda terrorist network, including its leader, Osama Bin Laden. In reaction to terrorist attacks on New York and Washington on September 11, 2001, and the increasing threat of terrorism worldwide, the United States led an international coalition to remove the Taliban regime. The coalition intervention in Afghanistan began on October 7, 2001, with Kabul falling on November 13, 2001.

At the same time, the United Nations helped facilitate the formation of a new interim authority to replace the Taliban government, with members drawn from diverse ethnic and geographic backgrounds. Under the terms of the so-called "Bonn Agreement," the interim authority ruled for six months before ceding power to the Transitional Authority, headed now by President Hamid Karzai.

The current government's authority outside the capital Kabul is still relatively weak. In the absence of a strong central government, remnants of the Taliban political movement have resurfaced in the southern part of the country, particularly in [REDACTED] \* where the event that is the subject of the claim occurred. U.S. Lt. Gen. John Vines, commanding general of U.S. and coalition forces in Afghanistan, has estimated that as many 1,000 members of the Taliban are operating in this area. Many Taliban fighters have been able to avoid U.S. forces by hiding in the mountainous areas along the border between Afghanistan and Pakistan.<sup>1</sup> Vines said that these Taliban fighters are "attempting to regain power."

In an attempt to weaken the authority of the government in Kabul, Taliban fighters have claimed responsibility for numerous shootings, kidnappings and bomb attacks on soldiers and civilians in the southern and eastern parts of the country. In

<sup>1</sup> Taliban Pouring Into Afghanistan, Associated Press, Sept. 7, 2003.

particular, Kofi Annan, Secretary General of the United Nations, has noted that in the past three months there have been more attacks on civilians in Afghanistan than in the previous 20 months. Annan was quoted as saying that because of this situation, "much of the south and southeast of the country is now effectively off limits to the United Nations."<sup>2</sup>

### III. THE CONTRACT

[REDACTED]

The Contract was entered into between the Overseas Private Investment Corporation ("OPIC") and the Investor on June 24, 2003 and covers certain property against the risks of expropriation and political violence. The Contract insures ninety percent of the Investor's interest in "covered property," defined as \$554,915 worth of equipment and up to \$4,445,085 of additional equipment in an amount not to exceed \$5,000,000 to be used by the Investor in carrying out its activities in Afghanistan. The covered property will be [REDACTED]

### IV. DETERMINATIONS UNDER THE CONTRACT

OPIC hereby makes the following determinations:

#### A. Section 4.01 Loss Due to Political Violence

Compensation is payable, subject to the exclusions (§4.02) and limitations (§5.02), if political violence is the direct and immediate cause of the permanent loss (including loss of value by damage or destruction) of all or some of the covered property.

The Contract defines "Political violence" as:

"...a violent act undertaken with the primary intent of achieving a political objective, such as declared or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, civil strife, terrorism or sabotage. However, acts undertaken primarily to achieve labor or student objectives are not covered."

<sup>2</sup> 27 Dead in Afghan Attacks, Associated Press, Jan. 7, 2004.

<sup>3</sup> Taliban Militants Kidnap Aid Worker, Associated Press, Jan. 5, 2004.

The issues raised by this provision of the Contract are: (1) whether the act causing the loss was an act of political violence; (2) whether such action was the direct or immediate cause of such loss; and (3) whether the loss was covered property.

1. The events leading to the loss constitute civil strife.

Based on published reports in the media discussed above, OPIC determines that the activities of Taliban fighters constitute at least civil strife. In recent months there has been a genuine resurgence in the strength of those loyal to the former Taliban government. They have been operating primarily in the southern part of the country. These fighters have claimed responsibility for numerous kidnappings and other violent acts in the countryside. Their objective is to weaken support for the new government and eventually regain power.

2. Political violence was the direct or immediate cause of the loss.

OPIC finds that direct causation is established. The resurgence in Taliban activities has been particularly concentrated in [REDACTED] where the political violence in this claim occurred.

3. The property lost constituted covered property under the Contract, and none of the Exclusions apply.

Covered property is defined in section 1.01 as the \$554,915 worth of equipment with an additional \$4,445,085 of equipment in an amount not to exceed \$5,000,000, to be used by the Investor to carry out its activities in Afghanistan. The lost property in question was [REDACTED]

[REDACTED] is clearly not excluded property, defined in section 4.02(a) of the Contract as "loss of precious metals, gems, works of art, money or documents." The loss is above the \$5,000 minimum provided for in section 4.02(b). There is also no evidence that the property may be excluded under 4.02(c) for "failure of the Investor to take reasonable measures to protect or preserve the property." Nor is there any evidence that under section 4.02(d), actions by the Investor other than in the ordinary course of business were the preponderant cause of the political violence.

B. Section 5.01. That total compensation to be paid is up to \$59,713.

Section 5.01 of the Contract states that compensation shall be in the amount of historical cost or replacement cost. Under 5.01(b) of the Contract, the Investor may request that OPIC pay the reasonable cost of replacing the covered property, provided that such compensation does not exceed 200% of the original cost of the property, and that the Investor intends to replace the covered property within three years. The Investor has elected to be compensated for the replacement cost of the covered property. Under the Contract, OPIC would pay up to \$59,713, if the Investor replaces the lost covered

property with equivalent property. The Investor has asked whether [REDACTED] \*  
[REDACTED] Considering the level of violence in  
Afghanistan, OPIC would consider [REDACTED] and \*  
will pay compensation for its purchase, subject to the 200% limit.

1. Section 1.03. That the compensation determined to be due does not exceed the Maximum Insured Amount.

Section 1.03 states that the Maximum Aggregate Compensation amount is \$4,500,000. Here, compensation to be paid is up to \$59,713, well below the maximum amount.

2. Section 6.06. That the Maximum Insured Amount shall be reduced permanently and automatically by up to \$59,713.

Section 6.06 states that the Maximum Insured Amount shall be reduced permanently and automatically by compensation paid by OPIC. The reduction will be in the amount of compensation that is paid, up to \$59,713.

3. Section 5.02(a). Compensation does not exceed the Current Insured Amount.

The Current Insured Amount equals \$674,165. Compensation of up to \$59,713 does not exceed this amount. The Current Insured Amount will be reduced for the remainder of the current election period by the amount of compensation that is paid.

4. Section 5.02(b). There is no violation of the duty to be self-insured.

Under Section 5.02(b), a violation of the duty to be self-insured (§7.01.3) shall result in a corresponding reduction of compensation otherwise payable. Section 7.01.3 requires the Investor to continue to bear the risk of loss of at least 10% of the historical cost of the covered property (§1.01). Section 1.01 defines "covered property" to include up to \$5,000,000 worth of equipment, and the "insured investment" is defined as ninety percent of the Investor's interest in the covered property. Here, [REDACTED] \*  
[REDACTED] has maintained at least 10% self-insurance for covered property in the aggregate, and thus has not violated the duty to be self-insured. The risk retention requirement does not apply to each item of covered property.

5. Section 7.01. That Investor promptly notified OPIC of the loss.

Section 7.01 defines the duties of Investor. The Investor has a duty to promptly notify OPIC that an act may come within the scope of the political violence coverage. [REDACTED] \*  
[REDACTED] promptly notified OPIC in writing on [REDACTED] \*  
that the act described in the claim above might come within the scope of its political violence coverage.

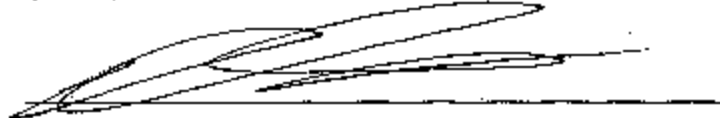
6. Section 6.02. That Investor will transfer to OPIC, within sixty days after OPIC notifies the Investor of the amount of compensation OPIC will pay under political violence coverage, all interests attributable to the lost item of covered property, including all claims arising out of the loss due to political violence.

Section 6.02 describes the obligation of Investor to assign to OPIC all interests in, and claims for loss of, the item of covered property lost due to political violence. Investor shall transfer the interests and claims free and clear of, and shall agree to indemnify OPIC against, claims, defenses, counterclaims, rights of set off and other encumbrances.

#### V. CONCLUSION

Based on the foregoing determinations and subject to the execution of the Certificate, Assignment, and Receipt and Release, I find that the political violence claim of the Investor is valid and that OPIC is liable for up to \$59,713 in compensation. The actual amount will be established and paid based upon subsequent documentation and in consideration of the Investor's release of OPIC from further liability for this incident.

OVERSEAS PRIVATE INVESTMENT CORPORATION



Peter S. Watson  
President and Chief Executive Officer

Date: March 5, 2004