

## MEMORANDUM OF DETERMINATIONS

Political Violence Claim of Sector Resources, Ltd. and Sector  
Capital Corporation

Contract of Insurance No. F030  
Contract of Insurance No. F074

### I. The Claim

By letters dated May 5 and June 21, 2004, copies attached, Sector Resources, Ltd.<sup>1</sup> (the "Insured") filed an application for compensation pursuant to Contract of Insurance No. F074 for the period January 1 through January 5, 2004 for defaulted lease payments and pursuant to Contract of Insurance No. F030 for physical damage to the Project that occurred at some time during the period May 19, 2001 to January 6, 2004, the date that the Insured was able to regain possession and restart the Project. The Insured alleges that an act of political violence, as more fully described below, occurred on May 19, 2001, at the site of the Las Animas precious minerals mine in the State of Tolima, Colombia (the "Project") and continued until January 6, 2004. The Insured advised OPIC that, as a result of the political violence, it ceased all operations at the Project and sustained covered losses, but, as of January 6, 2004, it was able resume operations.

OPIC has determined that the claim is valid and that compensation is now payable in the combined amount of \$36,923.17, including interest.

### II. The Insurance Contract

The Contracts of Insurance were entered into with the Insured in 1999.

Contract of Insurance No. F030, an OPIC Form 234 KGT 12-85 (Second Revised) NS, ("Contract F030") was issued effective August 18, 1999, to cover the Insured's \$3,500,000 equity investment in the Project. The maximum coverage under this policy is \$7,522,062. The active amount coverage is currently \$3,150,000.

Contract of Insurance F074, an OPIC Form 234 LP 7-86A PL (Rev. 9/89), (the "Contract") was issued effective August 18, 1999, to cover the Insured's \$2 million lease payments for equipment used at the Project. The maximum coverage under this policy is \$2,314,843. The active amount of coverage is currently \$363,354.

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<sup>1</sup> The Insured has submitted the claim on its own behalf under Contract No. F030 and on behalf of its affiliate, Sector Capital Corporation with respect to Contract No. F074. Both companies are referred to as the "Insured."

### III. Factual Background

#### A. The Project and the Insured.

The Project involves the acquisition and expansion of the Las Animas underground quartz, gold and silver mine ("Las Animas") in the State of Tolima, Colombia. Sector Resources, Ltd. ("Sector Resources"), a U.S.-owned Cayman Islands company, has made up to a \$3.5 million equity investment into its Colombian branch ("Sector Resources Colombia"), as well as a \$2 million equipment lease to the Colombian branch through one of its U.S. affiliates, Sector Capital Corporation ("Sector Capital").

A complete discussion of the factual background of the Project, the events triggering the political violence, the remedial steps taken by the Insured and the Insured's compliance with the Contract are contained in the August 2, 2002 Memorandum of Determinations (the "MOD"). The MOD considered and approved the initial claim by the Insured for the period May 19, 2001 through May 18, 2002. The MOD found the claim to be valid and, at page 10, concluded that, if the political violence continued, the Insured would be entitled to receive additional compensation pursuant to the Contract for claims for defaults on lease payments, which claims were to be submitted quarterly. OPIC retained the accounting firm of Deloitte & Touche ("Deloitte") to assist it in analyzing the Insured's initial claim. Deloitte prepared a report to OPIC. That report included an analysis and model of the lease claims throughout the term of all thirteen leases with payment schedules on an actual and accrued basis. The Insured was not able to file a claim for the physical damage to the Project until it had regained control of the Project and assessed the loss or damage.

#### IV. Determinations Under the Contracts

A determination under an OPIC insurance contract addresses three categories of issues: (1) whether the acts complained of satisfy all the elements required to bring them within the scope of coverage; (2) the amount of compensation payable; and (3) whether the insured fulfilled its duties under the insurance contracts.

As stated above, the August 2, 2002 MOD concluded that the loss was due to political violence. Accordingly, as the instant application alleges a consecutive default arising from a continuation of the political violence, Section 8.01(c) of the Contract provides that OPIC shall be liable for subsequent consecutive defaults unless it determines that the latter defaults were not caused by political violence. OPIC also paid subsequent claims, pursuant to separate Memoranda of Determinations, for defaulted lease payments for the periods May 19 through September 30, 2002, October 1 through December 31, 2002, January 1 through March 31, 2003, April 1 through June 30, 2003, July 1 through September 30, 2003 and October 1 through December 31, 2003. The Insured, in its letter of May 5, 2004, stated that the Colombian military has provided increased security in the

area where the project is located by establishing a military presence in a nearby town, thus enabling the Insured to resume operations. The Insured has completed its assessment of the damage caused by previous guerrilla visits, completed repairs and, as of April 15, 2004, processed 10,000 tons of ore. The Insured has provided to OPIC evidence of the costs incurred by it to effect the repairs in order to restart the project. OPIC has no basis for determining that the previous closure of the Project and losses covered under the Contracts for the period covered by the claim were not the result of political violence. As will be discussed more fully, below, it is further determined that the Insured fulfilled its duties under the Contract, and compensation should now be paid in the total amount of \$36,923.17, including interest.

1. Section 6.01(b) of Contract F030 – That the loss was due to political violence.

(a) The evidence submitted by the Insured regarding the activities of the FARC clearly satisfies all of the elements required to bring them within the scope of the definition of “political violence” set forth in Section 6.01(b) of Contract F030 with respect to the damage to the assets of the Project.

2. Section 6.01 Section 6.01 of Contract F074 – that political violence has been the direct and immediate cause of defaults on scheduled lease payments.

(a) The requirement of coverage pursuant to the provisions of Section 6.01 of the Contract “is the direct and immediate cause of a default on a scheduled payment and such default continues for one month.” Accordingly, the scope of coverage condition has clearly been met.

3. Section 6.02(a)-(e) of Contract F030 and Section 6.02 of Contract F074 – That none of the Exclusions applies.

(a) Contract F030 lists five possible exclusions of which only two, failure to take reasonable measures to protect or preserve the property and provocation on the part of the Insured, are potentially applicable. Contract F074 has, as a single exclusion, provocation on the part of the Insured. The evidence submitted by the Insured clearly demonstrates that it engaged in no activity that would bring it within the Exclusions provisions of the Contracts.

## V. Basis of Compensation Under the Contracts

Section 7.01(a)(3) of Contract F030 provides that, subject to the limitations of Article 7.02, and assuming that the requirements of Article VI of the Contract are satisfied, OPIC shall pay the reasonable cost of repair. The Insured has provided to OPIC documentary evidence of the reasonable cost of repair.

Section 7.01 of Contract F074 provides that, assuming the requirements of Article VI are satisfied, OPIC shall pay compensation in the amount of the insured portion of the scheduled payment in default “plus interest accruing from the later of (i) the date of the

scheduled payment or (ii) the date occurring one month prior to the date of receipt by OPIC of the completed application for political violence compensation, through the date of payment of compensation by OPIC, at the average daily federal funds rate in effect for such period.”

Because there are thirteen separate lease contracts with different commencement and payment dates, OPIC, for its administrative convenience, and with the consent of the Insured, concluded that it would consider applications for compensation on a quarterly, accrued basis. This procedure avoids the Insured having to submit, and OPIC to consider, a multiplicity of small claims. While this procedure is not consistent with the language of Section 7.01 of the Contract, it reaches the same result with fewer burdens on both the Insured and OPIC.

## VI. Analysis of the Compensation Claimed

### a. Application of the Contracts to the Claim

The Insured is entitled to compensation, pursuant to Section 7.01 of Contract F074, in the amount of \$7,040.66, the insured portion of lease payments for the period in default. From that amount OPIC will deduct \$704.06, which represents the 10% self-insurance requirement of the Contract. The Insured is entitled to compensation, pursuant to Section 7.01(a)(3) of Contract F030, in the amount of \$33,844.61 for the physical damage to the project. From that amount OPIC will deduct \$3,384.46, which represents the 10% self-insurance requirement of the Contract. The total of the two claims before interest therefore is \$36,796.75. To that will be added interest in the amount of \$126.42 computed at the average daily federal funds rate for the defaulted lease payments as required by Section 3.01(a)(ii) of Contract F074, for a total of \$36,923.17.

#### (1). Adjustments to Compensation

The adjustment to compensation set forth in Section 7.02 of the Contracts, which authorizes OPIC to “reduce its compensation by the amount of any compensation received by the Insured from any other sources on account of the political violence,” does not apply, as the Insured has not received any other compensation.

The adjustment to compensation set forth in Section 7.02.3 of Contract F074 does not apply, as the Insured has not leased any other assets to the lessee.

#### (2). Limitations to Compensation

The limitations to compensation set forth in Sections 7.02(a) and (c) of Contract F030 and Sections 7.03(a) and (b) of Contract F074 do not apply, as the proposed compensation will not exceed the covered amount and the claim does not include any penalty interest or penalty fees. The active amount for Contract F030 is \$3,150,000 and for Contract F074 is \$363,354. The active amount will be reduced by the amount of compensation paid.

#### (3). Assignment of Leases

Section 8.02 of Contract F074, as amended by Section 10.14 requires the Insured to either transfer to OPIC, within ten days after OPIC notifies the Insured of the amount of compensation it will pay, the lease agreement in respect of which compensation is to be paid or, at OPIC's option, to "transfer to OPIC a beneficial interest in such lease and related rights." Because of the continuing nature of the political violence, OPIC was not in a position to remove the equipment. Therefore, OPIC determined, in the August 2, 2002 MOD, that, it would require an assignment of rights, rather than an assignment of the leases, as a condition precedent to payment of compensation, pursuant to Section 8.02 of the Contract. The Insured entered into that assignment of rights.

b. The Insured's Duties Pursuant to the Contracts

Article IX of each Contract establishes the duties of the Insured.

OPIC determines that the Insured has fully complied with all of its obligations pursuant to the provisions of Article IX of each Contract. In particular, the Insured is in compliance with regard to its eligibility. It gave prompt notice to OPIC of the events of political violence that gave rise to the claim and has taken reasonable measures to preserve the property. The Insured has fully cooperated with OPIC by giving it complete access to its books and records, which OPIC has determined to be adequate, and made available for interviews executives and other employees with direct knowledge of the Project. Section 10.18 of Contract No. F074 amended Article IX of the Contract to add additional duties including, among others, Environmental Compliance and Workers Rights. OPIC, in the August 2, 2002 MOD determined that the Insured had fully complied with its obligations with respect to those duties.

**VII. Conclusion**

For the foregoing reasons, OPIC concludes that the claim of the Insured is valid. The combined amount of compensation to be paid for the lease coverage for the period January 1 through January 5, 2004 with respect to lease payment defaults and from May 19, 2001 through January 5, 2004, for physical damage is determined to be \$36,923.17, including interest.

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

By: Peter S. Watson

Peter S. Watson

President and Chief Executive Officer

Date: July 15, 2004