

## MEMORANDUM OF DETERMINATIONS

Political Violence Claim of Sector Capital Corporation

Contract of Insurance No. F074

### I. The Claim

By letter dated October 6, 2003, (Exhibit A), Sector Capital Corporation (the "Insured" or "Investor") filed an application for compensation pursuant to Contract of Insurance No. F074 for the period July 1 through September 30, 2003. 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 is continuing. The Insured has advised OPIC that, as a result of the political violence, it has ceased all operations at the Project and has sustained covered losses.

OPIC has determined that the claim is valid and that compensation is now payable in the amount of \$114,432.75, including interest.

### II. The Insurance Contract

The Contract of Insurance was entered into with the Insured in 1999.

Contract of Insurance F074, an OPIC Form 234 LP 7-86A PL (Rev. 9/89), (the "Contract") (Exhibit B) 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 \$3,500,000. The active amount of coverage is currently \$725,513.

### 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.

#### IV. Determinations Under the Contract

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 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 and April 1 through June 30, 2003, pursuant to separate Memoranda of Determinations. The Insured submitted a statement that the political violence is continuing and further states that since the Colombian Government has established a military presence in a nearby town, it has begun maintenance work at the mine and to assess and repair damage caused by previous guerrilla visits. The Insured states that "[w]hen all maintenance and repairs of damages are complete, we will forward a listing of work performed. Once we feel that security conditions are acceptable to bring our employees back, Sector will consider reactivation of the mine". The United States Embassy in Bogotá has confirmed that political violence is continuing in the area where the Project is located and that the Insured has been in contact with the Embassy seeking assistance to arrange meetings with Colombian Government officials. Accordingly, OPIC has no basis for determining that the continuing closure of the Project and losses covered under the Contract 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 \$114,432.75.

1. Section 6.01 of the Contract – 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 of the Contract.

2. Section 6.01 of the Contract - 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 of the Contract – That none of the Exclusions applies.

(a) The Contract 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 Section 6.02 of the Contract.

#### V. **Basis of Compensation Under the Contract**

Section 7.01 of the Contract 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 Contract to the Claim

The Insured is entitled to compensation, pursuant to Section 7.01, in the amount of \$126,732, the insured portion of lease payments for the period in default. Attached hereto as Exhibit C is a schedule of lease payments prepared on an accrual basis through the term of each of the thirteen leases. From that amount OPIC will deduct \$12,673, which represents the 10% self-insurance requirement of the Contract. To that will be added

interest in the amount of \$373.75 computed at the average daily federal funds rate for the period as required by the Contract, for a total of \$114,432.75.

(1). Adjustments to Compensation

The adjustment to compensation set forth in Section 7.02.2 of the Contract, 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 the Contract 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 7.03(a) and (b) of the Contract 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 is \$725,513. The active amount will be reduced by the amount of compensation paid.

(3). Assignment of Leases

Section 8.02 of the Contract, 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 is not in a position to remove the equipment. Additionally, it is possible that the political violence will cease and the Insured will be able to resume operations. If that were to occur, then OPIC would be relieved of making further payments pursuant to the Contract. 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 Contract

Article IX of the 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 the 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. The mine has been closed since, May 19, 2001. Therefore these provisions are not applicable to the instant determination.

## VII. Conclusion

For the foregoing reasons, OPIC concludes that the claim of the Investor is valid. The amount of compensation to be paid for the lease coverage for the period July 1 through September 30, 2003 is determined to be \$114,432.75, including interest.

### OVERSEAS PRIVATE INVESTMENT CORPORATION

By: Peter S. Watson for JEF

Peter S. Watson

President and Chief Executive Officer

Date: 22 OCT 2003