

ANNEX 10A : EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 10.10 (Expropriation and Nationalisation) addresses two situations:

- (a) direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and
- (b) indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
- (b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
- (c) the character of the government action.

4. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.