

ANNEX 7

EXPROPRIATION

1. An action or a series of related actions by a Party shall not constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Expropriation may be either direct or indirect:
 - (a) direct expropriation occurs when a State takes an investor's property outright, including by nationalisation, compulsion of law or seizure;
 - (b) indirect expropriation occurs when a State takes an investor's property in a manner equivalent to direct expropriation, in that it deprives the investor in substance of the use of the investor's property, although the means used fall short of those specified in subparagraph (a).
3. In order to constitute indirect expropriation, the State's deprivation of the investor's property must be:
 - (a) either severe or for an indefinite period; and
 - (b) disproportionate to the public purpose.
4. A deprivation of property shall be particularly likely to constitute indirect expropriation where it is either:
 - (a) discriminatory in its effect, either as against the particular investor or against a class of which the investor forms part; or
 - (b) in breach of the State's prior binding written commitment to the investor, whether by contract, licence, or other legal document.
5. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute indirect expropriation.

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