

ANNEX 9A EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 9.7.1 is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. 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.
3. Article 9.7.1 addresses 2 situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through the formal transfer of title or outright seizure.
4. The second situation addressed by Article 9.7.1 is 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.
 - (a) The determination of whether an action or series actions by a Party, in a specific fact situation, constitutes a measure equivalent to expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) 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 a measure equivalent to expropriation has occurred;
 - (i) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
 - (i i) the character of the government action.
 - (b) 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.

List of Panama

Sector:	Social Services
Obligations Concerned:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Local Presence (Article 10.6) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9) Market Access (Article 10.5)
Description:	<u>Cross-Border Services and Investment</u> Panama reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, water supply, public training, health, and child care.

Sector:	All
Obligations Concerned:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Local Presence (Article 10.6) Market Access (Article 10.5)
Description:	<u>Cross-Border Services and Investment</u> Panama reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay, subject to the provisions of Annex 10A (<i>Movement of Business Persons</i>).

Sector:	Issues related to native populations
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Market Access (Article 10.5) Local Presence (Article 10.6) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measure denying foreign investors and their investments or foreign service suppliers any right or preference granted to native populations in their reservation areas.

Sector:	Minority related issues
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Market Access (Article 10.5) Local Presence (Article 10.6) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9)
Description:	<u>Investment and Cross-Border Trade of Services.</u> Panama reserves the right to adopt or maintain any measure with respect to the rights or preferences granted to minorities with social or economical disadvantages.

Sector:	Issues related to the Panama Canal
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Market Access (Article 10.5) Local Presence (Article 10.6) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measure related to the use, management, administration, operation, maintenance, conservation, modernization, exploitation, administration, development and ownership of the Panama Canal and the reverted areas, that restrict the rights of foreign investors and service providers. The Panama Canal includes the aquatic route proper, as well as its anchorages, dock berths and entrances; lands and marine, lacustrine and fluvial waters; locks; auxiliary dams; docks; and water control structures. The reverted areas include the lands, buildings and facilities and other goods that have reverted to the Republic of Panama according to the Treaty of the Panama Canal of 1977 and its Annexes (Torrijos-Carter Treaty)

Sector: organizations	Issues related to State enterprises or governmental organizations
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Local Presence (Article 10.6) Market Access (Article 10.5) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9)
Description:	<u>Investment and Cross-Border Trade in Services</u> When selling or disposing shareholding interests or goods of an existing State enterprise or governmental organization, Panama reserves the right to prohibit or impose limitations on: • the rendering of services; • the ownership of such interests or goods and; • the technical, financial capacity and experience of the owners of such interests or goods, to control foreign participation in the resulting enterprise. In relation to the sale or other forms of disposition, Panama can adopt or maintain any measure related to the nationality of senior executives or members of the Board of Directors.

Sector:	Communications
Sub-sector:	National postal and telegraphic activities
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Local Presence (Article 10.6) Market Access (Article 10.5)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to maintain any measure related to receiving, transporting, dispatching and delivering extra-postal mail or urgent documents to Panama from abroad or from Panama to points abroad.

Sector:	Construction Services
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Local Presence (Article 10.6) Market Access (Article 10.5)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measure related to the provision of construction services by foreign natural, juridical persons or organizations, in the sense of imposing requirements of residence, registry and/or any other form of local presence, or establishing the obligation to give financial guarantee for the work as a condition for the provision of construction services.

Sector:	Road transportation services
Type of Reservation:	National Treatment (Article 10.3) Most-Favored-Nation Treatment (Article 10.4) Local Presence (Article 10.6)
Description:	<u>Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measure related to the cross-border trade in the transportation of goods.

Sector:	Fisheries and services incidental to fishing
Type of Reservation:	National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measures relating to requirements for investments in, ownership or control of, and operation of, vessels engaged in fishing and related activities in Panamanian jurisdictional waters.

Sector:	Broadcasting services
Type of Reservation:	Market Access (Articles 10.5) National Treatment (Articles 9.3 and 10.3) Most-Favored-Nation Treatment (Articles 9.4 and 10.4) Local Presence (Articles 10.6) Performance Requirements (Article 9.6) Senior Management and Boards of Directors (Article 9.9)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to maintain or adopt any measure relating to: - the creative arts, cultural heritage and other cultural industries, including entertainment services and other cultural services; “Creative arts” include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete artform divisions. “Cultural heritage” includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions. - broadcasting services, including measures relating to planning, licensing and spectrum management, and including services offered in Panama and international services originating from Panama.

Sector:	All sectors
Type of Reservation:	Most-Favored-Nation Treatment (Articles 9.4 and 10.4)
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain any measure that give different treatment to countries in conformity with any bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement. Panama reserves the right to adopt or maintain any measure that give different treatment to countries in conformity with any bilateral or multilateral international agreements in force or signed after the date of entry into effect of this Agreement, in the matter of: (a) Air Services (b) Environmental matters (c) Maritime and services auxiliary to maritime (d) Land Transport matters (e) Telecommunications and Information Technology matters (f) Postal and Courier matters (h) Professional Services (Legal Service)