

Annex 10
Referred to in Chapter 8

Expropriation

The Parties confirm their shared understanding on paragraph 1 of Article 92 as follows:

Any measure tantamount to expropriation or nationalisation is an action or a series of actions by a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure (hereinafter referred to as "indirect expropriation"). The determination of whether an action or a 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 such action 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 expectations arising out of investment;
- (c) the character of the government action, including whether such action is non-discriminatory; and
- (d) the objectives of the government action, including whether such action is taken for legitimate public objectives such as protecting the public welfare, safety and health, and protecting and preserving the environment.