

Annex III
referred to in Article 11

1. The Contracting Parties confirm their shared understanding that paragraph 1 of Article 11 addresses the following two situations:

- (a) the first situation is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and
- (b) the second situation is indirect expropriation, where a measure or a series of measures of a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

2. The determination of whether a government measure or a series of government measures of a Contracting 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 measure or series of government measures, although the fact that such measure or series of such measures has an adverse effect on the economic value of investments, standing alone, does not establish that an indirect expropriation has occurred;
- (b) the extent to which the government measure or series of government measures interferes with distinct and reasonable expectations arising out of investments;
- (c) the character of the government measure or series of government measures, including whether such measure is non-discriminatory; and
- (d) the objectives of the government measure or series of government measures including whether such measure is taken for legitimate public objectives.

3. Except in such circumstances as when a measure or a series of measures is so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Contracting Party that are designed and applied to protect legitimate public welfare objectives in accordance with paragraph 1 of Article 15 do not constitute indirect expropriation.