

ANNEX 9B
EXPROPRIATION

The Parties confirm their shared understanding that:

- (a) An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.
- (b) Article 9.12.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
- (c) The second situation addressed by Article 9.12.1 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.
 - (i) 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, including its objectives and context. Relevant considerations could include whether the investor bears a disproportionate burden, such as a special sacrifice, that exceeds what the investor or investment should be expected to endure for the public interest.
 - (ii) Except in rare circumstances, such as, for example, when a measure or series of measures have an extremely severe or disproportionate effect in light of its purpose, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate policy measures (for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations¹.

¹ For greater certainty, the list of “legitimate public welfare objectives” in subparagraph (c)(ii) is not exhaustive.