

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.