

Annex 10-1

Indirect Expropriation

1. 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.
2. Article 10.7(1) addresses two situations:
 - (a) the first situation is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) the second situation 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.
3. 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 such an expropriation has occurred;
 - (b) the extent to which the government's action interferes with the distinct, reasonable investment-backed expectations;
 - (c) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and
 - (d) the character of the government action, including, its objective and whether the action is disproportionate to such objective.
4. Non-discriminatory regulatory actions as well as actions and awards by judicial bodies by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment do not constitute indirect expropriation as referred to in paragraph 2 (b).