

[Cursory Translation]

Annex 3

Expropriation

The two sides confirm their shared understanding that:

1. Paragraph 1 of Article 11 (Expropriation) addresses two situations. The first situation is direct expropriation, in which an investment is directly expropriated through formal transfer of title or outright seizure. The second situation is indirect expropriation, in which an action or a series of actions by one side has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
2. The determination of whether an action or a series of actions by one side, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the action by one side, although the fact that an action or a series of actions by one side has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the action or the series of actions interferes with distinct, reasonable investment-backed expectations; and
 - (iii) the character and objective of the action or the series of actions.

3. Except in rare circumstances, a non-discriminatory measure of one side that is designed and applied to protect legitimate public welfare objectives, such as public morals, public health, safety and the environment, does not constitute an indirect expropriation.