

## Annex 8-B

### Expropriation

The Parties confirm their shared understanding that:

- (a) indirect expropriation results from an action or a series of actions by a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) an action or series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment and eliminates all or nearly all of its value;
- (c) the determination of whether an action or a series of actions by a Party, in a specific fact situation, constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
  - (i) the economic impact of the government action, although the sole fact that an action or a series of actions by a Party, in a specific fact situation, has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
  - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations<sup>13</sup>; and
  - (iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest; and

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<sup>13</sup> For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part, on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.