

## ANNEX B

## Clarification of Indirect Expropriation

Article VIII (Expropriation) of this Agreement states that:

Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation...

The Contracting Parties confirm their shared understanding that:

- (a) The concept of "measures having an effect equivalent to nationalization or expropriation" can also be termed "indirect expropriation." Indirect expropriation results from a measure or series of measures of a Contracting Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) The determination of whether a measure or series of measures of a Contracting Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (i) the severity of the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Contracting Party have 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 measure or series of measures interfere with distinct, reasonable, investment-backed expectations, and
  - (iii) the character of the measure or series of measures, including their purpose and rationale; and