

ANNEX 10-B

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 in an investment.
2. Expropriation may be either direct or indirect:
 - (a) direct expropriation occurs when a Party takes an investor's property outright, by nationalisation or other direct expropriation through formal transfer of title or outright seizure; and
 - (b) indirect expropriation occurs when a Party takes an investor's property through an action or a series of actions which have an effect equivalent to direct expropriation, without formal transfer of title or outright seizure.
3. The determination of whether an action or a 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 a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and
 - (c) the character of the government action including its objectives and context.¹
4. In order to constitute indirect expropriation, the Party's deprivation of the investor's property must be so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith.
5. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilisation (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations.²

¹ For actions taken by Korea, a relevant consideration could include whether the investor bears a disproportionate burden such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest.

² For greater certainty, the list of "legitimate public welfare objectives" in this paragraph is not exhaustive.