

Expropriation (Annex 3)

1. The Parties confirm the following understanding with respect to the interpretation and/or implementation of Chapter 6 on Investment of the India-Singapore Comprehensive Economic Cooperation Agreement (the “Agreement”):

- (a) Article 6.5 of the Agreement is intended to reflect customary international law concerning the obligations of States with respect to expropriation;
- (b) a measure of expropriation includes, apart from direct expropriation or nationalisation through formal transfer of title or outright seizure, a measure or series of measures taken by a Party that has an effect equivalent to direct expropriation or nationalization, without a formal transfer of title or outright seizure;
- (c) an action or 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;
- (d) the determination of whether a measure or series of measures of a Party in a specific factual situation, constitute measures as referred to in paragraph (b) above requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the measure or series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that measures having effect equivalent to nationalization or expropriation, has occurred;
 - (ii) the extent to which the measure or series of measure interfere with distinct, reasonable, investment-backed expectations;
 - (iii) character of the measure or series of measures, including inter alia, their intent, objectives, purpose, and degree of nexus between the measures and outcome or effects that forms the basis of the expropriation claim; and
- (e) except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied for legitimate public welfare objectives such as health, safety and the environment, do not constitute measures having effect equivalent to nationalization or expropriation.