SUBSTANTIVE PROVISIONS OF IIAS

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3 Main Standards of Protection

- Expropriation
- Standards of Treatment
- Transfer of Funds

EXPROPRIATION PROTECTION

Overview

- Core element of investor protections in IIAs.
- Historically, an important protection.
- States have a right to expropriate under certain conditions.
- The right against expropriation is part of international law, and some argue that it is a protection available to investors even if there is no specific provision in an IIA.

Scope of Expropriation Protection

- In order for protection to be triggered, Gov’t action must pertain to ownership rights in an investment
  - tangible (*e.g*. real property), or
  - intangible asset (*e.g.* IPRs).

- Most IIAs protect against both direct and indirect expropriations.

Direct vs. Indirect Expropriation

- Direct Expropriation: Formal transfer of ownership or title; outright seizure of investment.
- Indirect Expropriation: No formal transfer of title or outright seizure, but effect of government actions is equivalent to direct expropriation.
- Most APEC IIAs explicitly address indirect expropriation.

Direct Expropriation

- Formal decree taking specific property.
- Law nationalizing an industry (*e.g.* telecom).
- Seizure by the army of a company’s assets.

Indirect Expropriation

ıat is excessive or arbitrary adversely
alue of investment.

:e with management of the investment.

al or revocation of permits, licenses or
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ale of a company’s shares or assets.