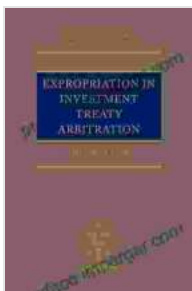


# Expropriation in Investment Treaty Arbitration: A Comprehensive Guide

Expropriation is one of the most important topics in investment treaty arbitration. It is a form of government action that can have a significant impact on foreign investors, and it is often the subject of disputes between investors and states.

This article provides a comprehensive overview of expropriation in investment treaty arbitration. We will discuss the definition of expropriation, the different types of expropriation, the defenses to expropriation claims, and the remedies available to investors who have been expropriated.



## Expropriation in Investment Treaty Arbitration (Oxford International Arbitration Series) by Dr Johanne M. Cox

★★★★★ 5 out of 5

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Enhanced typesetting	: Enabled
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## Definition of Expropriation

Expropriation is a term that is used to describe the taking of property by a government without compensation. It is a form of government action that

can have a significant impact on foreign investors, as it can deprive them of their investments and make it difficult for them to do business in a particular country.

There is no single definition of expropriation that is universally accepted by all investment tribunals. However, most tribunals have adopted a broad definition of expropriation that includes both direct and indirect takings of property.

**Direct expropriation** occurs when the government physically takes possession of an investor's property. This can include the seizure of land, buildings, or other physical assets.

**Indirect expropriation** occurs when the government takes action that has the effect of depriving an investor of the use or enjoyment of their property. This can include the imposition of burdensome regulations, the denial of permits, or the imposition of discriminatory taxes.

## **Types of Expropriation**

There are two main types of expropriation: lawful expropriation and unlawful expropriation.

**Lawful expropriation** occurs when the government takes property for a public purpose and pays compensation to the owner. This type of expropriation is generally permitted under international law, provided that the government meets certain requirements, such as providing adequate compensation and following due process.

**Unlawful expropriation** occurs when the government takes property without paying compensation or without following due process. This type of expropriation is illegal under international law and can give rise to a claim for damages by the investor.

## **Defenses to Expropriation Claims**

There are a number of defenses that states can raise to expropriation claims. These defenses include:

- **The public purpose defense:** This defense is based on the idea that the government has the right to take property for a public purpose, such as building a road or a school. In Free Download to succeed with this defense, the government must show that the taking was for a legitimate public purpose and that it paid adequate compensation to the investor.
- **The national security defense:** This defense is based on the idea that the government has the right to take property in Free Download to protect national security. In Free Download to succeed with this defense, the government must show that the taking was necessary to protect national security and that it paid adequate compensation to the investor.
- **The police powers defense:** This defense is based on the idea that the government has the right to regulate property in Free Download to protect the health, safety, and welfare of its citizens. In Free Download to succeed with this defense, the government must show that the regulation was necessary to protect the public interest and that it did not deprive the investor of all economically viable use of their property.

## Remedies for Expropriation

Investors who have been expropriated may be entitled to a number of remedies, including:

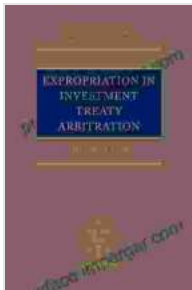
- **Compensation:** The most common remedy for expropriation is compensation. This remedy is designed to restore the investor to the position they would have been in if the expropriation had not occurred. Compensation can take a variety of forms, such as monetary damages, the return of the expropriated property, or the provision of alternative property.
- **Specific performance:** In some cases, an investor may be entitled to specific performance of the investment agreement. This remedy requires the government to take steps to comply with the terms of the agreement, such as by returning the expropriated property or by paying damages.
- **Injunctions:** In some cases, an investor may be entitled to an injunction to prevent the government from taking further action that would violate the investment agreement. This remedy can be used to prevent the government from expropriating property or from taking other actions that would harm the investor's investment.

Expropriation is a complex and important topic in investment treaty arbitration. It is a form of government action that can have a significant impact on foreign investors, and it is often the subject of disputes between investors and states.

This article has provided a comprehensive overview of expropriation in investment treaty arbitration. We have discussed the definition of

expropriation, the different types of expropriation, the defenses to expropriation claims, and the remedies available to investors who have been expropriated.

If you are an investor who has been expropriated, you should seek legal advice to discuss your rights and options.



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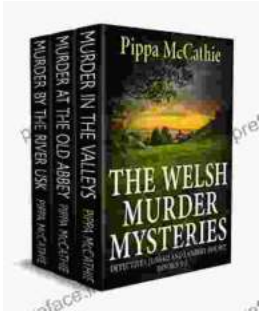
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