

ANNEX III

Non-Conforming Measures: of Australia

1. Commitments under this Chapter are undertaken subject to the limitations and conditions set forth in these headnotes and the schedule below.
2. A Party's Schedule to this Annex sets out, pursuant to Articles 13.9 (Non-conforming measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:
 - (a) Article 13.2 (National Treatment);
 - (b) Article 13.3 (Most-Favoured-Nation Treatment);
 - (c) Article 13.4 (Market Access for Financial Institutions);
 - (d) Article 13.5 (Cross-Border Trade); and
 - (e) Article 13.6 (Senior Management and Boards of Directors).
3. Each Annex entry sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 2 that, pursuant to Article 13.9 (Non-Conforming Measures) do not apply to the listed measure(s);
 - (c) **Source of Measure** identifies the laws, regulations, rules, procedures, decisions, administrative actions or any other forms in relation to the non-conforming measure for which the entry is made. A measure cited in the source of measure element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained thereunder; and
 - (d) **Description** sets out the non-conforming aspects of the measure for which the entry is made.
4. In accordance with Article 13.9 (Non-Conforming Measures), the articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the measures identified in the "Description" element of that entry. In the interpretation of an entry, all elements shall be considered in their totality.
5. To clarify Australia's commitment with respect to Article 13.4 of the Agreement (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form.¹
6. Australia limits its commitment under Article 13.9.1(c) (Non-Conforming Measures) with respect to Article 13.4 (Market Access for Financial Institutions) in the following manner: Article 13.9.1(c) shall apply only to measures concerning banking and other financial services (excluding insurance) which do not conform with Article 13.4(a).

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector:	Financial services
Obligations Concerned:	National treatment Market Access for Financial Institutions
Source of Measure:	<i>Banking Act 1959</i> <i>Payment Systems (Regulation) Act 1998</i>
Description:	<p>A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$A250,000.</p> <p>A foreign bank that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.</p>

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector:	Financial Services
Obligations Concerned:	National Treatment Senior Management and Boards of Directors
Level of Government:	Central
Source of Measure:	<i>Corporations Act 2001</i>
Description:	At least two of the directors of a public company must be ordinarily resident in Australia.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector:	Financial Services
Obligations Concerned:	National Treatment
Level of Government:	Central
Source of Measure:	Banking Act 1959
Description:	Foreign banks located overseas may only raise funds in Australia through the issue of debt securities if those securities are offered/traded in parcels of not less than \$A500,000 and the securities and any associated information memoranda clearly state the issuing bank is not authorised under the <i>Banking Act 1959</i> in Australia. ²

² This entry does not imply that the obligations of Chapter Thirteen (Financial Services) apply to the cross-border supply of securities or to the act of raising funds other than participation in issues of securities, such as underwriting.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector:	Financial services
Obligations Concerned:	Market Access for Financial Institutions National Treatment Most-Favoured-Nation Treatment Cross-Border Trade Senior Management and Boards of Directors
Level of Government	Regional
Source of Measure:	All existing laws, regulations, rules, procedures, decisions, administrative actions or any other forms at the regional level of government: (i) as amended, continued, or renewed as of the date of entry into force of this Agreement, and (ii) including any subordinate measure adopted or maintained thereunder.
Description:	All existing non-conforming measures at the regional level of government.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

Sector: Financial services

Obligations Concerned: National treatment

Source of Measure: *Commonwealth Banks Act 1959.*
AIDC Sale Act 1997
Australian Industry Development Corporation Act 1970

Description: Liabilities of the Commonwealth Bank and the Australian Industry Development Corporation (AIDC), previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.