

## **ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**

### **Schedule of Costa Rica**

#### **Explanatory Note**

1. The Schedule of Costa Rica to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Costa Rica with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Costa Rica that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Costa Rica may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

### **ANNEX III, Schedule of Costa Rica**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
- 3. Each entry in Section B sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
- 4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
  - (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
- 5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
- 6. Where Costa Rica maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

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Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

## **ANNEX III, Schedule of Costa Rica**

### *Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify the Costa Rican commitment with respect to Article 12.4, juridical persons supplying banking or other financial services and constituted under the laws of Costa Rica are subject to non-discriminatory limitations on juridical form.<sup>1</sup>

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<sup>1</sup> For example, sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Costa Rica. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

### ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i></p> <p>Law No. 4646 of 20 October 1970</p> <p>Law No. 7558 of 3 November 1995, <i>Ley Orgánica del Banco Central de Costa Rica</i></p> <p>Law No. 7732 of 17 December 1997, <i>Ley de Regulación y Supervisión del Mercado de Valores</i></p> <p>Executive Decree No. 28985-H of 20 September 2000, <i>Reglamento al Artículo 59 de la Ley Orgánica del Sistema Bancario Nacional</i></p> <p>Law No. 8187 of 18 December 2001, <i>Reforma del Artículo 117 de la Ley Orgánica del Sistema Bancario Nacional, No. 1644</i></p> <p>Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i></p> <p>Law No. 4351 of 11 July 1969, <i>Ley Orgánica del Banco Popular y Desarrollo Comunal</i></p>
<b>Description:</b>	<p>The State guarantees the liabilities of the State Banks.</p> <p>Private banks that operate current accounts and saving sections have to meet the following requirements:</p> <p>(a) To maintain a minimum loan balance with the state banking system of 17 percent of total short-term deposits (30 days or less), once the corresponding reserve is deducted, both in domestic and foreign currencies. Such funds will be placed at a rate equivalent to 50 percent of either the basic passive rate calculated by the <i>Banco Central</i>, or the LIBOR rate at a one-month term.</p>

### **ANNEX III, Schedule of Costa Rica, Section A**

- (b) Alternatively, to establish at least four agencies or branches to provide basic banking services – both passive and active – in the following regions: Chorotega, Central Pacific, Brunca, Atlantic Huetar, and North Huetar, dedicating at least ten percent, once the corresponding reserve has been deducted, of total short-term deposits (30 days or less), in domestic or foreign currency, to credits for programs designated by the Executive Branch, with such funds to be placed at a rate not higher than the basic passive rate calculated by the *Banco Central*, in its placements in colones, and the LIBOR rate at a one-month term, for resources in foreign currency.

The State and public institutions with state character, as well as the public institutions the equity of which belongs mainly to the State or its institutions, may only make deposits and operations in current and savings accounts through State commercial banks.

### ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i>  Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	At least ten Costa Rican cooperative organizations are required to establish and operate a cooperative bank.

### **ANNEX III, Schedule of Costa Rica, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measure:</b>	Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	At least 25 Costa Rican solidarity associations are required to establish and operate a solidarity bank.

### ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measure:</b>	Law No. 4351 of 11 July 1969, <i>Ley Orgánica del Banco Popular y de Desarrollo Comunal</i>
<b>Description:</b>	Only <i>Banco Popular y de Desarrollo Comunal</i> will manage the funds of the mandatory contributions made by employers and employees pursuant to Law No. 4351.

### ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Law No. 1644 of 26 September 1953, <i>Ley Orgánica del Sistema Bancario Nacional</i>  Law No. 7107 of 4 November 1988, <i>Ley de Modernización del Sistema Financiero de la República</i>
<b>Description:</b>	Private banks in Costa Rica are required to be constituted or organized under Costa Rican law.

### ANNEX III, Schedule of Costa Rica, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Law No. 12 of 30 October 1924, <i>Ley Monopolios del Instituto Nacional de Seguros</i></p> <p>Law No. 33 of 23 December 1936, <i>Ley de Reorganización del Instituto Nacional de Seguros</i></p> <p>Law No. 6082 of 30 August 1977, <i>Ley de Monopolio de Reaseguros</i></p> <p>Law No. 7331 of 13 April 1993, <i>Ley de Tránsito</i>, Chapter Two</p>
<b>Description:</b>	<p>Insurance and reinsurance services in Costa Rica are reserved to a state monopoly, the <i>Instituto Nacional de Seguros</i> (INS).</p> <p>Notwithstanding the measures listed above, Costa Rica shall allow insurance service providers of any Party, on a non-discriminatory basis, to effectively compete to supply to the consumer insurance services as provided in the commitments and schedule set out in the “Specific Commitments of Costa Rica on Insurance Services” in Annex 12.9.2. Upon completion of the liberalization schedule on January 1, 2011, this non-conforming measure shall cease to exist.</p>

**ANNEX III, Schedule of Costa Rica, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligation Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Description:</b>	Costa Rica reserves the right to adopt or maintain measures requiring the incorporation in Costa Rica of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Costa Rica.

## **ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**

### **Schedule of El Salvador**

#### **Explanatory Note**

1. The Schedule of El Salvador to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of El Salvador with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of El Salvador that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which El Salvador may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

### **ANNEX III, Schedule of El Salvador**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
- 3. Each entry in Section B sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
- 4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
  - (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
- 5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
- 6. Where El Salvador maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

### **ANNEX III, Schedule of El Salvador**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

### **ANNEX III, Schedule of El Salvador**

#### *Headnotes*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify El Salvador's commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of El Salvador are subject to non-discriminatory limitations on juridical form.<sup>2</sup>

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<sup>2</sup> For example, partnerships and sole proprietorships are not acceptable juridical forms for depositary financial institutions in El Salvador. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

### ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Insurance and Insurance-Related Services
<b>Obligations Concerned :</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Sociedades de Seguros</i> , Arts. 1, 6, 41, and 111 <i>Reglamento de la Ley de Sociedades de Seguros</i> , Art. 29
<b>Description :</b>	<p>Insurance companies must be legally incorporated in El Salvador. Not later than three years after the date of entry into force of the Agreement, El Salvador shall permit foreign insurance companies to establish branches.<sup>3</sup></p> <p>For an enterprise to be established under Salvadoran law, at least 75 percent of its shares must be owned jointly or severally by:</p> <ul style="list-style-type: none"><li>(a) Salvadoran natural persons or natural persons of Guatemala, Nicaragua, Honduras or Costa Rica;</li><li>(b) legal persons organized under Salvadoran law whose majority, shareholders or partners are Salvadoran natural persons or natural persons of Guatemala, Nicaragua, Honduras or Costa Rica;</li><li>(c) Guatemalan, Nicaraguan, Honduran, Costa Rican insurance or reinsurance companies; or</li><li>(d) foreign insurance and reinsurance companies with a first rate Classification by an internationally recognized classification Institution (e.g. Moody's, A.M. Best or S&amp;P.)</li></ul>

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<sup>3</sup> El Salvador may require that the branch owners or shareholders meet the solvency and integrity requirements established in El Salvador's insurance legislation.

### ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Bancos</i> , Arts. 5, 10, 26, 27, and 150
<b>Description :</b>	<p>Banks incorporated in El Salvador must be organized and operate as corporations with fixed capital broken down into registered shares and with no fewer than ten partners.</p> <p>At least 51 percent of the shares in banks legally incorporated in El Salvador must be owned by any of the following types of investor:</p> <ul style="list-style-type: none"><li>(a) nationals of El Salvador or another Central American country;</li><li>(b) legal persons organized under the laws of El Salvador whose majority shareholders or partners are:<ul style="list-style-type: none"><li>(i) nationals of El Salvador or a Central American country or</li><li>(ii) other legal persons organized under the laws of El Salvador whose majority shareholders or partners are nationals of El Salvador or another Central American country;</li></ul></li><li>(c) banks established under the laws of a Central American country that<ul style="list-style-type: none"><li>(i) are subject to prudential regulation and supervision in that country, in accordance with relevant international practice,</li><li>(ii) have been approved by internationally recognized risk classification entities; and</li><li>(iii) that fully comply with the legal provisions and guidelines in force in those countries; or</li></ul></li></ul>

### **ANNEX III, Schedule of El Salvador, Section A**

- (d) banks and other foreign financial institutions that have been approved by internationally recognized risk classification entities as first-rate institutions and which meet other applicable requirements. Holding companies and other foreign financial institutions that fulfill these requirements are also covered by this subparagraph.

To operate in El Salvador, a foreign bank branches must be part of a bank meeting the requirements of subparagraph (c) or (d).

The operations of foreign branches in El Salvador are limited by their capital in El Salvador.

A bank organized under the laws of El Salvador in which over 50 percent of the shares are owned by foreign banks or financial conglomerates shall only share names, assets or infrastructure or offer joint services to the public with other companies of the same foreign conglomerate as laid down in the *Ley de Bancos*.

### ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Savings and Credit Institutions and Cooperatives
<b>Obligation Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures :</b>	<i>Ley de Intermediarios Financieros no Bancarios</i> , Art. 155 and 157 <i>Ley de Bancos</i> , Art. 10 <i>Ley General de Asociaciones Cooperativas</i> , Art. 1 and 16 <i>Código de Comercio</i> , Art. 17
<b>Description :</b>	<p>Savings and credit institutions shall be subject to the same ownership requirements as set forth for banks in the preceding entry regarding the Financial Services sector, Banking Services subsector.</p> <p>Savings and credit institutions and cooperatives must be incorporated in El Salvador.</p> <p>The share ownership limit set forth in Article 10 of the <i>Ley de Bancos</i> shall not apply to foreign not-for-profit foundations and associations with legal personality extended, according to the laws of their countries of origin, and duly inscribed in the <i>Registro de Fundaciones y Asociaciones</i> of the <i>Ministerio de Gobernación</i>, pursuant to the <i>Ley de Fundaciones y Asociaciones de El Salvador</i>.</p>

### **ANNEX III, Schedule of El Salvador, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Bureaux de change
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley de Casas de Cambio de Moneda Extranjera</i> , Art. 4
<b>Description:</b>	Bureaux de change must be incorporated in El Salvador. The shares of the bureaux de change shall be the property of national financial institutions or nationals of El Salvador or legal persons comprising exclusively Salvadorans.

### ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Pension Funds Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley del Sistema de Ahorro para Pensiones</i> , Art. 23 and 29
<b>Description:</b>	<p>Institutions that manage pension funds must be incorporated in El Salvador.</p> <p>The shares of such institutions, must be owned by the following persons who, severally or jointly, shall account for at least 50 percent of the capital:</p> <ul style="list-style-type: none"><li>(a) nationals of El Salvador or a Central American country;</li><li>(b) legal persons organized under the laws of El Salvador whose majority shareholders are natural persons described in subparagraph (a);</li><li>(c) foreign pension fund managers with three years experience in the field; and</li><li>(d) international financial entities and related investment institutions in which the <i>Banco Central de Reserva</i> has holdings.</li></ul>

### ANNEX III, Schedule of El Salvador, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Market Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Measures:</b>	<i>Ley del Mercado de Valores</i> , Arts. 21, 30, 56 and 58
<b>Description:</b>	<p>The directors or administrators of stock exchanges and the members of the boards of directors of brokerage firms must, in addition to satisfying prudential requirements, be nationals of El Salvador or a Central American country or in the case of other foreigners, have resided in the country for at least three years.</p> <p>Stock exchanges and brokerage firms must be incorporated in El Salvador.</p>

**ANNEX III, Schedule of El Salvador, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Measures:</b>	<i>Ley del Bancos</i> , Art. 156 <i>Ley del Banco de Fomento Agropecuario</i> , Art. 14
<b>Description:</b>	The <i>Banco de Fomento Agropecuario</i> will not be member of the <i>Instituto de Garantía de Depósitos</i> .

### **ANNEX III, Schedule of El Salvador, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3)
<b>Measures:</b>	<i>Tratado de Libre Comercio entre Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá</i> <i>Tratado de Libre Comercio entre Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y República Dominicana</i> (As set out in the Description element.)
<b>Description:</b>	Panama and the Dominican Republic may be treated as Central American Parties for the purposes of the Financial Services Chapter.

### **ANNEX III, Schedule of El Salvador, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	El Salvador reserves the right to adopt or maintain measures requiring the incorporation in El Salvador of foreign financial institutions, other than those seeking to operate as banks or insurance companies within El Salvador.

## **ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**

### **Schedule of Guatemala**

#### **Explanatory Note**

1. The Schedule of Guatemala to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Guatemala with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Guatemala that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Guatemala may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

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- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
- 3. Each entry in Section B sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
- 4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
  - (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
- 5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
- 6. Where Guatemala maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

### **ANNEX III, Schedule of Guatemala**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

### ANNEX III, Schedule of Guatemala

*Headnotes:*

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify Guatemala's commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of Guatemala are subject to non-discriminatory limitations on juridical form.<sup>4</sup>

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<sup>4</sup> For example, in Guatemala, the *sociedades de responsabilidad limitada, sociedades en comandita simple, sociedades en comandita por acciones and sociedad colectiva* are not acceptable juridical forms for financial institutions. Subsidiaries must be established as *Sociedades Anónimas*. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches, representative offices and subsidiaries.

### ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 19-2002 of the <i>Congreso de la República</i> , 29 April 2002, <i>Ley de Bancos y Grupos Financieros</i> , Arts. 6, 7, 18, 64, and 65 and its regulations
<b>Description:</b>	<p>A foreign bank may operate in Guatemala through:</p> <ul style="list-style-type: none"><li>(a) the establishment of branches in the Republic, and</li><li>(b) the registry of a representative office only for the promotion of business and granting of financing in the national territory.</li></ul> <p>Foreign nationals and enterprises organized under the laws of foreign countries (including banks) may also establish a bank in Guatemala in the form of a <i>Sociedad Anonima</i>.</p> <p>Operations of foreign bank branches are limited to the amount of net worth capital (shareholders' equity) related to their exposure to credit, market, and other risks. This amount may not be less than ten percent of assets and contingencies, weighted in accordance with their risk, pursuant to general regulations issued by the <i>Junta Monetaria</i>.</p>

### ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 19-2002 of the <i>Congreso de la República</i> , of 29 April 2002, <i>Ley de Bancos y Grupos Financieros</i> , Art. 70
<b>Description:</b>	A capital shortfall of a branch of a foreign bank must be made up for by its head office within 30 days after it receives notice from the <i>Superintendencia de Bancos</i> . In contrast, national banks have a longer period and may take other measures to remedy the shortfall in question.

### ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 25-79 of the <i>Congreso de la República, Ley Orgánica de El Crédito Hipotecario Nacional de Guatemala</i> Decree No. 46-72 of the <i>Congreso de la República, Ley Orgánica de la Corporación Financiera Nacional</i> Decree No. 1448 of the <i>Congreso de la República, Ley del Instituto de Fomento de Hipotecas Aseguradas</i>
<b>Description:</b>	The government may grant certain guarantees and advantages only to above-cited state-owned financial institutions, in accordance with the specific laws that regulate the operations of these institutions.

### ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree-Law No. 208, <i>Ley de Sociedades Financieras Privadas</i> , Arts. 1o., 2o.
<b>Description:</b>	To operate in Guatemala, Private Financial Companies that are banking institutions and act as specialized financial intermediaries in investment banking operations must be established as <i>sociedades anonimas</i> .

### ANNEX III, Schedule of Guatemala, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree-Law 473 of May 4 1966. Arts. 1, 17
<b>Description:</b>	<p>Private national insurance companies must be constituted and organized as <i>sociedades anonimas</i> and their original capital can be national or international.</p> <p>The functioning and operation of agencies and branches of foreign insurance companies is prohibited. Within four years of entry into force of this Agreement, Guatemala shall allow insurance companies to establish as branches.</p> <p>For greater certainty, only individuals and enterprises authorized by law may solicit, promote, or sell insurance, or perform any other insurance activity within the territory of Guatemala.</p> <p>Consumption abroad of insurance services not listed in Annex 12.5.1 by natural persons resident in Guatemala or juridical persons established in Guatemala is not permitted.</p>

### **ANNEX III, Schedule of Guatemala, Section B**

<b>Sector:</b>	Financial Services
<b>Subsectors:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	Guatemala reserves the right to adopt or maintain measures requiring the incorporation in Guatemala of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Guatemala.

#### **Explanatory Note**

1. The Schedule of Honduras to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Honduras with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Honduras that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Honduras may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;

### ANNEX III, Schedule of Honduras

- (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures 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 under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the

### **ANNEX III, Schedule of Honduras**

other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.

5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

6. Where Honduras maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

### **ANNEX III, Schedule of Honduras**

#### Headnotes

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify the Honduran commitment with respect to Article 12.4, juridical persons supplying financial services and constituted under the laws of the Honduras are subject to non-discriminatory limitations on juridical form.<sup>5</sup>

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<sup>5</sup> This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

### ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services, Banks, and Loan Associations, Financial Companies
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most Favored Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Instituciones del Sistema Financiero</i> , Decree No. 170-95, Arts. 5, 17, 18 (a) and (b), and 38  Decree No. 60-99 of 3 June 1999
<b>Description:</b>	Foreign financial institutions must establish as corporations ( <i>sociedades anonimas</i> ), as branches, or as representative offices in conformity with the above-cited measures.  Operations of branches or agencies of foreign banks is limited to the amount of capital assigned to the offices operating in Honduras. Branches or agencies of foreign banks may only publish the amount of capital effectively assigned to the offices operating in the country and their respective capital reserves.  The <i>Banco Central de Honduras</i> shall not permit the opening of branches or agencies of foreign banks when there is no reciprocity in their country of origin. <sup>2</sup>

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<sup>2</sup> In this context, a lack of reciprocity means that the law of another country completely excludes the possibility of establishing as a foreign branch.

### **ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Bureaus of Exchange
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Ley de Casas de Cambio</i> , Decree No. 16-92, Art. 4
<b>Description:</b>	Currency exchange bureaus in Honduras must be constituted as public corporations.  The shareholders of currency exchange bureaus must be natural persons with Honduran nationality.

### **ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Exchanges
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8- 2001, <i>Ley de Mercado de Valores</i> , Art. 21
<b>Description:</b>	A securities exchange operating in Honduras must be constituted as a public corporation.

**ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Securities Firms
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-2001, <i>Ley de Mercado de Valores</i> , Art. 49
<b>Description:</b>	Securities firms in Honduras must be constituted as public corporations.

### ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Fund Administration Companies
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-21, <i>Ley de Mercado de Valores</i> , Art. 82.  Art. 3 of the <i>Reglamento de las Sociedades Administradoras de Fondos</i> , approved under Resolution No. 171/11-02-2003
<b>Description:</b>	Fund Administration Companies in Honduras must be constituted as public corporations with the exclusive social purpose of administering one or more mutual funds and/or investment funds in accordance with the laws on that matter.

### **ANNEX III, Schedule of Honduras, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Centralized Depositories for the Custody, Compensation and Liquidation of Shares
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	Decree No. 8-2001, <i>Ley de Mercado de Valores</i> , Art. 139
<b>Description:</b>	Depositories for the custody, compensation and liquidation of shares in Honduras must be constituted as public corporations.

### ANNEX III, Schedule of Honduras, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance and Reinsurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<p>Decree No. 22-2001, <i>Ley de Instituciones de Seguros y Reaseguros</i>, Arts. 9, 21, 47, 58, 96, 97</p> <p><i>Reglamento de Establecimientos de Sucursales de Instituciones de Seguros Extranjeras, de la Comisión Nacional de Bancos y Seguros</i>, approved under Resolution No. 948/05-08-2003, Arts. 4 and 7, published in the <i>Diario Oficial "La Gaceta,"</i> 15 August 2003.</p> <p><i>Reglamento de Ajustadores de pérdidas y Auxiliadores de Seguros</i>, approved under Resolution No. 947/05-08-2003 of the <i>Comisión Nacional de Bancos y Seguros</i> on 8 August 2003, published in the <i>Diario Oficial "La Gaceta,"</i> 15 August 2003</p> <p>Resolution No. 443 of 11 December 2003, Art. 7, subparagraph (k)</p>
<b>Description:</b>	<p>Foreign insurance institutions seeking to establish in Honduras must deposit at least ten percent of the minimum capital of the proposed company in either the <i>Banco Central de Honduras</i> or invest the above amount in State securities. This deposit will be refunded once the application is approved or resolved.</p> <p>To act as an insurance agent or broker, a natural person must be a Honduran national or a resident of Honduras for at least three consecutive years.</p> <p>To serve as an adjustor or claim liquidator, accident investigator, or damage inspector, a natural person must be a Honduran national or legal resident in Honduras.</p>

### **ANNEX III, Schedule of Honduras, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Savings and Loan Cooperatives
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Central
<b>Description:</b>	Honduras reserves the right to adopt or maintain non-conforming measures with respect to the supply of services by Savings and Loan Cooperatives.

**ANNEX III, Schedule of Honduras, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Description:</b>	Honduras reserves the right to adopt or maintain measures requiring the incorporation in Honduras of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Honduras.

## **ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**

### **Schedule of Nicaragua**

#### **Explanatory Note**

1. The Schedule of Nicaragua to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of Nicaragua with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of Nicaragua that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Nicaragua may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

### **ANNEX III, Schedule of Nicaragua**

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) Description provides a general, nonbinding description of the Measures.
3. Each entry in Section B sets out the following elements:
- (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) Level of Government indicates the level of government maintaining the listed measure(s); and
  - (e) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:
- (a) the Measures element is qualified by a liberalization commitment from the Description element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the Measures element as so qualified shall prevail over all other elements; and
  - (b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of the discrepancy.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.
6. Where Nicaragua maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National

### **ANNEX III, Schedule of Nicaragua**

Treatment), 10.4 (Most-Favored-Nation Treatment) and 10.9 (Performance Requirements), to the extent of that measure.

## **ANNEX III, Schedule of Nicaragua**

### *Headnotes*

1. Commitments in these subsectors under the Agreement, are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. In order to clarify the Nicaraguan commitment with respect to Article 12.4, juridical persons supplying financial services and organized under the laws of Nicaragua are subject to non-discriminatory limitations on juridical form.

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<sup>6</sup> For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Nicaragua. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

### ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i>
<b>Description:</b>	<b><u>Bank Branches:</u></b> The capital that foreign banks assign to their branches in Nicaragua must be effectively paid and deposited in Nicaragua. Based on such capital, the branch will be able to grant loans. A branch of a bank established under the laws of a foreign country is not allowed to grant loans based on the capital and reserves of its headquarters.

### ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Non-Banking Financial Institutions and Other Financial Services (Excluding Insurance).
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Measures:</b>	<i>Ley Especial sobre Sociedades Financieras, de Inversiones y Otras. Decreto No. 15-L, (publicada en La Gaceta, Diario Oficial, No. 77 del 10 de abril de 1970, y modificada por Decreto No. 1698, publicado en La Gaceta, Diario Oficial, No. 138 del 22 de junio de 1970)</i>  <i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i>
<b>Description:</b>	The capital that foreign non-banking financial institutions assign to their branches in Nicaragua must be effectively paid and deposited in Nicaragua. Branches of such non-banking financial institutions that accept deposits from the public are not allowed to grant loans based on the capital and reserves of their headquarters.

### ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4) Cross-Border Trade (Article 12.5) Senior Management and Board of Directors (Article 12.8)
<b>Measures:</b>	<p><i>Ley General de Instituciones de Seguros. Decreto No. 1727 de 1970 (publicada en La Gaceta, Diario Oficial No. 270 del 26 de noviembre de 1970) y sus Reformas por Ley No. 227 de 1996 (publicada en La Gaceta, Diario Oficial No. 150 del 12 de agosto de 1996)</i></p> <p><i>Ley General de Bancos, Instituciones Financieras no Bancarias y Grupos Financieros. Ley No. 314 de 1999 (publicada en La Gaceta, Diario Oficial, Nos. 198, 199 y 200 del 18, 19 y 20 de octubre de 1999)</i></p> <p><i>Normas Regulatorias para la autorización de intermediarios de Seguros y el ejercicio de sus funciones de intermediación. Resolución: SIB-OIF-IV-26-96 (publicado en La Gaceta, Diario Oficial No. 13 del 20 de enero de 1997)</i></p>
<b>Description:</b>	<p>Insurance and reinsurance activities may only be practiced by juridical persons constituted and domiciled in Nicaragua in the form of public corporations (<i>sociedades anónimas</i>) or by an autonomous state entity authorized by its constitutive law.</p> <p>Natural or legal persons domiciled in Nicaragua are prohibited from contracting for insurance with institutions not duly authorized to operate in the country.</p> <p>Agencies or branches of insurance companies established in foreign countries are prohibited to operate in Nicaragua.</p> <p>Members of the Board of Directors of an insurance company must be residents of Nicaragua.</p> <p>An insurance company cannot retain net premiums issued for an amount three times superior than its capital.</p>

### ANNEX III, Schedule of Nicaragua, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Pension Funds
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Measures:</b>	<p><i>Ley Orgánica de la Superintendencia de Pensiones. Ley No. 388 (publicada en La Gaceta, Diario Oficial del 8 de mayo del 2001)</i></p> <p><i>Reglamento de la Ley Orgánica de la Superintendencia de Pensiones. Decreto No. 64-2001</i></p> <p><i>Ley del Sistema de Ahorro para Pensiones. Ley No-340 (La Gaceta, Diario Oficial, No. 72 del 11 de abril del 2000)</i></p> <p><i>Reglamento General de la Ley del Sistema de Ahorro para Pensiones. Decreto No. 55-22</i></p>
<b>Description:</b>	Only juridical persons constituted and domiciled in Nicaragua in the form of public corporations ( <i>sociedades anónimas</i> ) may administer pension funds.

### **ANNEX III, Schedule of Nicaragua, Section B**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	All Subsectors Other Than Banking and Insurance
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Description:</b>	Nicaragua reserves the right to adopt or maintain measures requiring the incorporation in Nicaragua of foreign financial institutions, excluding those seeking to operate as banks or insurance companies within Nicaragua.

### **ANNEX III, Schedule of Nicaragua, Section B**

<b>Sector:</b>	Financial Services
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Description:</b>	<p>Nicaragua reserves the right to accord benefits to financial institutions or public entities wholly or majority owned by the State that supply financial services and are established with a public interest purpose, including but not limited to agriculture production finance, housing credits for low income families, and credits for small and midsize enterprises.</p> <p>Such benefits shall not disadvantage the core operations of commercial competitors and include, but are not limited to: extension of State guarantees, tax exemptions, exceptions to the usual juridical form requirements, and the legal requirements to begin operations.</p>

## **ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES**

### **Schedule of the United States**

#### **Explanatory Note**

1. The Schedule of the United States to Annex III sets out:
  - (a) headnotes that limit or clarify the commitments of the United States with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
  - (b) in Section A, pursuant to Article 12.9, the existing measures of the United States that do not conform to some or all of the obligations imposed by:
    - (i) Article 12.2 (National Treatment);
    - (ii) Article 12.3 (Most-Favored-Nation Treatment);
    - (iii) Article 12.4 (Market Access for Financial Institutions);
    - (iv) Article 12.5 (Cross-Border Trade); or
    - (v) Article 12.8 (Senior Management and Boards of Directors); and
  - (c) in Section B, pursuant to Article 12.9, the specific sectors, subsectors, or activities for which the United States may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
2. Each entry in Section A sets out the following elements:
  - (a) Sector refers to the general sector for which the entry is made;
  - (b) Subsector refers to the specific sector for which the entry is made;
  - (c) Obligations Concerned specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);
  - (d) Level of Government indicates the level of government maintaining the listed measure(s);
  - (e) Measures identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:
    - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement, and

### ANNEX III, Schedule of the United States

- (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
  - (f) **Description**
    - (i) for entries related to banking and other non-insurance financial services, sets out the non-conforming aspects of the entry and the subsector, financial institution, or activities covered by the entry; and
    - (ii) for entries related to insurance, provides a general, nonbinding description of the **Measures**.
3. Each entry in Section B sets out the following elements:
- (a) **Sector** refers to the general sector for which the entry is made;
  - (b) **Subsector** refers to the specific sector for which the entry is made;
  - (c) **Obligations Concerned** specifies the obligation(s) referred to in subparagraph 1(c) that, pursuant to Article 12.9, do not apply to the sectors, subsectors, or activities listed in the entry;
  - (d) **Level of Government** indicates the level of government maintaining the listed measure(s); and
  - (e) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. For entries in Section A, in accordance with Article 12.9.1(a), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation or other measure identified in the **Measures** element or in the **Description** element of that entry, except to the extent the measure identified in the **Measures** or the **Description** element has been modified by a Specific Commitment in an Annex to the Financial Services Chapter.
5. For entries in Section B, in accordance with Article 12.9.4, the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.
6. Where the United States maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 12.2, 12.3, 12.4, or 12.5 shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), and 10.9 (Performance Requirements), to the extent of that measure.

### ANNEX III, Schedule of the United States

#### Headnotes

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. National treatment commitments in these subsectors are subject to the following limitations:
  - (a) National treatment with respect to banking will be provided based upon the foreign bank's "home state" in the United States, as that term is defined under the International Banking Act, where that Act is applicable. A domestic bank subsidiary of a foreign firm will have its own "home state," and national treatment will be provided based upon the subsidiary's home state, as determined under applicable law.<sup>1</sup>
  - (b) National treatment with respect to insurance financial institutions will be provided according to a non-U.S. insurance financial institution's state of domicile, where applicable, in the United States. State of domicile is defined by individual states, and is generally the state in which an insurer either is incorporated, is organized or maintains its principal office in the United States.
3. To clarify the U.S. commitment with respect to Article 12.4, juridical persons supplying banking or other financial services (excluding insurance) and constituted under the laws of the United States are subject to non-discriminatory limitations on juridical form.<sup>2</sup>
4. The United States limits its commitments under Article 12.9.1(c) with respect to Article 12.4 (Market Access) in the following manner:
  - (a) With regard to banking and other financial services (excluding insurance), Article 12.9.1(c) shall apply only to non-conforming measures relating to Article 12.4(a) and not to those non-conforming measures relating to Article 12.4(b); and
  - (b) With regard to insurance, Article 12.9.1(c) shall not apply to non-conforming measures relating to Article 12.4.

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<sup>1</sup> Foreign banking organizations are generally subject to geographic and other limitations in the United States on a national treatment basis. Where such limitations do not conform to national treatment, they have been listed as non-conforming measures. For purposes of illustration, under this approach, the following situation does not accord national treatment and would therefore be listed as a non-conforming measure: a foreign bank from a particular home state is accorded less favorable treatment than that accorded to a domestic bank from that state with respect to expansion by branching.

<sup>2</sup> For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in the United States. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Senior Management & Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 72
<b>Description:</b>	All directors of a national bank must be U.S. citizens, except that the Comptroller of the Currency may waive the citizenship requirement for not more than a minority of the total number of directors.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 619
<b>Description:</b>	Foreign ownership of Edge corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations.

### ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1463 <i>et seq.</i> & 12 U.S.C. § 1751 <i>et seq.</i>
<b>Description:</b>	Federal and state laws do not permit a credit union, savings bank, or savings association (both of the latter two entities may be also called thrift institutions) in the United States to be established through branches of corporations organized under a foreign country's law.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 3104(d)
<b>Description:</b>	In order to accept or maintain domestic retail deposits of less than \$100,000, a foreign bank must establish an insured banking subsidiary. This requirement does not apply to a foreign bank branch that was engaged in insured deposit-taking activities on December 19, 1991.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. §§ 80b-2, 80b-3
<b>Description:</b>	Foreign banks are required to register as investment advisers under the Investment Advisers Act of 1940 to engage in securities advisory and investment management services in the United States, while domestic banks* (or a separately identifiable department or division of the bank) are exempt from registration unless they advise registered investment companies. The registration requirement involves record maintenance, inspections, submission of reports, and payment of a fee.

\* For greater clarity, “domestic banks” include U.S. bank subsidiaries of foreign banks.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. §§ 221, 302, 321
<b>Description:</b>	Foreign banks cannot be members of the Federal Reserve System, and thus may not vote for directors of a Federal Reserve Bank. Foreign-owned bank subsidiaries are not subject to this measure.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 36(g); 12 U.S.C. § 1828(d)(4); 12 U.S.C. § 1831u(a)(4)
<b>Description:</b>	The United States undertakes no commitment with respect to Article 12.4(b) (Market Access) in relation to the expansion, via the establishment of a branch or the acquisition of one or more branches of a bank without acquisition of the entire bank, by a foreign bank into another state from its “home state,” as that term is defined under applicable law. Except as provided elsewhere in this schedule, such expansion shall be accorded on a national treatment basis in accordance with headnote 2(a).

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1831u
<b>Description:</b>	Interstate expansion by a foreign bank through the establishment of branches by merger with a bank located outside the “home state,” as that term is defined under applicable law, of a foreign bank shall be accorded on a national treatment basis in accordance with headnote 2(a), except as provided elsewhere in this schedule.

### ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 3102(a)(1); 12 U.S.C. § 3103(a); 12 U.S.C. § 3102(d)
<b>Description:</b>	<p>Establishment of a federal branch or agency by a foreign bank is not available in the following states that may prohibit establishment of a branch or agency by a foreign bank:</p> <ul style="list-style-type: none"><li>• Branches and agencies may be prohibited in Alabama, Kansas, Maryland, North Dakota, and Wyoming.</li><li>• Branches, but not agencies, may be prohibited in Delaware, Florida, Georgia, Idaho, Louisiana, Mississippi, Missouri, Oklahoma, Texas, and West Virginia.</li></ul> <p>Certain restrictions on fiduciary powers apply to federal agencies.</p> <p>Note: The cited federal measures provide that certain state law restrictions shall apply to the establishment of federal branches or agencies.</p>

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. § 77jjj(a)(1)
<b>Description:</b>	The authority to act as a sole trustee of an indenture for a bond offering in the United States is subject to a reciprocity test.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4)
<b>Level of Government:</b>	Central
<b>Measures:</b>	22 U.S.C. §§ 5341-5342
<b>Description:</b>	Designation as a primary dealer in U.S. government debt securities is conditioned on reciprocity.

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	Most-Favored-Nation Treatment (Article 12.3)
<b>Level of Government:</b>	Central
<b>Measures:</b>	15 U.S.C. § 78o(c)
<b>Description:</b>	A broker-dealer registered under U.S. law that has its principal place of business in Canada may maintain its required reserves in a bank in Canada subject to the supervision of Canada.

### ANNEX III, Schedule of the United States, Section A

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2)
<b>Level of Government:</b>	Central
<b>Measures:</b>	12 U.S.C. § 1421 <i>et seq.</i> (Federal Home Loan Banks); 12 U.S.C. § 1451 <i>et seq.</i> (Federal Home Loan Mortgage Corporation); 12 U.S.C. § 1717 <i>et seq.</i> (Federal National Mortgage Association); 12 U.S.C. § 2011 <i>et seq.</i> (Farm Credit Banks); 12 U.S.C. § 2279aa-1 <i>et seq.</i> (Federal Agricultural Mortgage Corporation); 20 U.S.C. § 1087-2 <i>et seq.</i> (Student Loan Marketing Association)
<b>Description:</b>	<p>The United States may grant advantages, including but not limited to the following, to one or more of the Government-Sponsored Enterprises (GSEs) listed above:</p> <ul style="list-style-type: none"><li>• Capital, reserves and income of the GSE are exempt from certain taxation.</li><li>• Securities issued by the GSE are exempt from registration and periodic reporting requirements under federal securities laws.</li><li>• The U.S. Treasury may, in its discretion, purchase obligations issued by the GSE.</li></ul>

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Market Access (Article 12.4) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Regional
<b>Measures:</b>	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
<b>Description:</b>	

**ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	31 U.S.C. § 9304
<b>Description:</b>	Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Cross-Border Trade (Article 12.5)
<b>Level of Government:</b>	Central
<b>Measures:</b>	46 C.F.R. § 249.9
<b>Description:</b>	When more than 50 percent of the value of a maritime vessel whose hull was built under federally guaranteed mortgage funds is insured by a non-U.S. insurer, the insured must demonstrate that the risk was substantially first offered in the U.S. market.

### **ANNEX III, Schedule of the United States, Section A**

<b>Sector:</b>	Financial Services
<b>Subsector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment (Article 12.2) Most-Favored-Nation Treatment (Article 12.3) Cross-Border Trade (Article 12.5) Senior Management and Boards of Directors (Article 12.8)
<b>Level of Government:</b>	Regional
<b>Measures:</b>	All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico
<b>Description:</b>	

**ANNEX III, Schedule of the United States, Section B**

**Sector:** Financial Services

**Subsector:** Insurance

**Obligations Concerned:** Market Access (Article 12.4)

**Level of Government:** All

**Description:** The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the GATS.