

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

ANNEX III
TEMPORARY SCHEDULE OF NON-CONFORMING MEASURES OF MOROCCO
IN THE FINANCIAL SERVICES SECTOR

Headnotes:

1. Morocco hereby extends its commitments under the terms of the chapter on financial services, subject to the limitations and conditions set forth below and to the attached schedule of non-confirming measures (Annexes III and IV).
2. To clarify the Moroccan commitments made pursuant to Article 12.4(b) of the Agreement (market access), legal persons constituted under the laws of Morocco and offering financial services shall be subject to non-discriminatory limitations on juridical form.¹
3. Morocco hereby limits its commitment under Article 12.9.1(c) (Non-Conforming Measures) with respect to Article 12.4 (Market Access) as follows: Article 12.9.1(c) shall not apply:
 - (a) with respect to Article 12.4(a)(i), to the non-conforming measures relating to the Casablanca Stock Exchange and to the central depository (currently Maroclear) for securities; and
 - (b) with respect to Article 12.4(b), to any non-conforming measure.
4. (a) Solely in the context of regulation of non-insurance financial institutions with respect to:
 - (i) financial services supplied in Morocco but not previously regulated, such as asset management by *societes de gestion*, or
 - (ii) financial services previously neither supplied nor regulated in Morocco, such as trading in derivatives products,

Morocco may adopt or maintain new non-conforming measures that are inconsistent with Article 12.4 but that are not inconsistent with other obligations of this Chapter.

 - (b) Prior to imposition of any new non-conforming measure described in subparagraph (a), Morocco shall:

¹ 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 31, 2004

- (i) notify the authority of the United States responsible for non-insurance financial services of its intent at least 45 days in advance of implementation of the measure, and
 - (ii) at the request of the United States, consult concerning the measure and give due consideration to the views expressed by the United States in this respect.
- (c) Any new non-conforming measure described in subparagraph (a) shall be subject to the following limitations:
- (i) the measure shall not significantly disadvantage the core activities or competitive positions of financial institutions of the United States or other enterprises of the United States supplying a financial service that are operating within Morocco, or that have been authorized to operate in Morocco, at the time of such new measure;
 - (ii) financial institutions or enterprises of the United States as are at the time of such new measure operating, or are authorized to operate, as branches or agencies shall not be required to incorporate in Morocco;
 - (iii) Morocco shall not authorize or designate an exclusive supplier of management or administration services with respect to privately managed pension or retirement savings; and
 - (iv) at such time as Morocco authorizes the conduct of financial services by more than one financial institution, Morocco shall comply with the obligations of Article 12.4 (a).
- (d) If Morocco adopts or maintains a new non-conforming measure described in subparagraph (a) at any time between the signing of this Agreement and its entry into force, Morocco shall act in a manner consistent with the obligations of subparagraph (c).

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

SCHEDULE OF MOROCCO APPENDED TO CHAPTER TWELVE
ANNEX III

BANKING AND OTHER FINANCIAL SERVICES

Obligation Concerned:	Market Access National Treatment
Level of Government:	National
Measures:	Articles 29 and 26 of the Dahir –Law- No. 1-93-147 of 15 moharrem 1414 (July 6, 1993) on the exercise of credit institution activities and on the monitoring thereof.
Description:	<p>The operations of credit institutions² incorporated abroad and functioning as branches or agencies in Morocco are limited by the amount effectively allocated by those institutions to their operations in Morocco (dotation en capital), in conformity with the provisions in force, under applicable law.</p> <p>Morocco may grant certain credit institutions the right to establish in a juridical form other than that usually required of credit institutions under the cited measures. Such institutions, which currently include regional mutual banks, mutual guarantee associations, and the Fond d'Equipment Communal (FEC) shall be established with a public interest purpose.</p>

² Credit institutions, as defined in the cited measures, include banks and financing companies.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Article 3 of the Royal Decree -Law- No. 552-67 of Ramadan 26, 1388 (December 17, 1968) on credit extended in the building and hotel industries, as said decree has been amended and supplemented.
Description:	Advantages may be accorded to credit institutions that carry out credit operations in favor of the real estate, building, and hotel industries. Only credit institutions incorporated in Morocco may receive such advantages and only if they are specifically licensed by the relevant Moroccan authorities to carry out such operations.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	National Treatment
Level of Government:	National
Measures:	Article 17 of Law No. 12-96 of 19 rejev 1421 (October 17, 2000) on reform of the <i>Crédit Populaire du Maroc</i> .
Description:	At least 51% of the share capital belonging to the <i>Banque Centrale Populaire</i> shall be held by the State and the regional mutual banks. No other natural or legal person may hold, directly or indirectly, an interest of more than 5% in the share capital of the <i>Banque Centrale Populaire</i> .

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Article 7 of Law 35/94 of 24 chaabane 1415 (January 26, 1995) on negotiable debt securities.
Description:	Foreign banks or financing companies operating through branches or other entities not incorporated in Morocco are not permitted to issue negotiable debt securities, including certificates of deposit or bonds, in Morocco.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Articles 1, 7, 8 and 75 of the Dahir –Law- No. 1-93-211, of 4 rabii II 1414 (September 21, 1993) on the stock exchange, as modified or supplemented.
Description:	All transactions involving capital stock issued by legal persons listed or desiring to list on a stock exchange in Morocco are required to be carried out only on the Casablanca Stock Exchange. Administration of the stock exchange is assigned to a limited liability corporation incorporated in Morocco in which stock brokerage firms must be equal shareholders.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Article 36 of the Dahir- Law- no. 1-93-211 of 4 rabii II 1414 (September 21, 1993) on the Stock Exchange, as modified or supplemented.
Description:	Stock brokerage firms must be incorporated in Morocco.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Articles 2 and 3 of Law No. 35/96 of 29 chaabane 1417 (January 9, 1997) on creation of a central depository and on the institution of an all-encompassing system for registration of certain specific securities.
Description:	Morocco reserves the right to maintain a single entity empowered to ensure: (i) the safekeeping of the securities covered under its operations; and (ii) the administration of the current securities accounts opened on behalf of its affiliated entities.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Industry:	Banking and other financial services
Obligation Concerned:	National Treatment
Level of Government:	National
Measures	<p>Dahir No. 1-59-074 of 1st chaabane 1378 (February 10, 1959) establishing the <i>Caisse de Dépôt et de Gestion</i>, as amended or supplemented, and subsequent regulations;</p> <p>Law No. 47-95, of 21st rabii I (August 7, 1996) on reorganisation of the <i>Caisse Centrale de Garantie</i>, and subsequent regulations;</p> <p>Law No. 31-90, of safar 5th, 1413 (August 5, 1992) on reorganisation of the “<i>Fonds d’Equipement Communal</i>” and subsequent regulations;</p> <p>Law No. 15-99, of Ramadan 16th, 1424 (November 11, 2003) on Reform of the <i>Credit Agricole</i> and subsequent regulations;</p> <p>Decision of the Finance Minister, No. 1641-91, of 12 jourmada I, 1412 (November 20, 1991) related to uses in CNCA bonds;</p> <p>Royal Decree –Law- No. 552-67 of Ramadan 26, 1388 (December 17, 1968) on credit extended in the building and hotel industries, as amended and supplemented;</p> <p>Law No. 24-96, of rabii II 2, 1418 (August 7, 1997) related to Post and Telecommunications and subsequent regulations.</p>
Description:	<p>Morocco reserves the right to grant advantages to the wholly or majority government-owned financial institutions listed below, including, but not limited to, the following:</p> <ul style="list-style-type: none">- Extension of State guarantees- Institution of mechanisms facilitating collection of receivables- Potential ability to have financial resources available in deposit form- Tax exemptions for specific acts linked to ongoing activities.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Institutions:

Caisse de depot et de gestion
Caisse centrale de garantie
Fonds d'equipement communal
Caisse nationale de credit agricole
Credit immobilier et hotelier
Caisse d'epargne nationale

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Industry: Banking and other financial services

Obligation concerned: Cross-Border Trade

Level of government: Central

Measures: Exchange Control Law of 1939 and subsequent regulations

Description: The purchase of non-insurance financial services from financial service suppliers of the United States by persons located within the territory of Morocco and by Moroccan nationals wherever located is subject to restrictions imposed by exchange control regulations.

Four years after date of entry into force, these restrictions shall not apply to U.S. investors and investments located within the territory of Morocco.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Insurance and Related Services

Obligation Concerned:	Market Access
Level of Government:	Central
Measures:	Article 165 of Law No. 17-99 (the Insurance Code) of 25 Rejeb 1423 (October 3, 2002).
Description:	<p>Reinsurance companies may establish as branches, whereas insurance companies must be incorporated in Morocco.</p> <p>No later than four years after entry into force of this Agreement, Morocco shall also allow insurance companies to establish as branches.</p> <p>Morocco reserves the right to regulate branches mainly in terms of:³</p> <ul style="list-style-type: none">• their capital requirements and reserves• location of assets and patrimony,• investment policy and placements,• product commercialization, and• transfer of profits. <p>In particular, the operations of a branch of a U.S. insurance company in Morocco will be based only on the dotation capital effectively paid off and transferred to Morocco.</p> <p>Morocco may also require that a person representing the branch in Morocco be professionally qualified and be sufficiently empowered to effectively represent the branch vis-à-vis third parties and to respond in a legal action.</p> <p>The abovementioned organization and management rules will also apply to reinsurance companies seeking to establish or established in Morocco as branches.</p>

³ For greater clarity, Morocco reserves the right to apply to branches of insurance companies operating or desiring to operate in its territory licensing, management, operating and control rules applied to any insurance company incorporated in Morocco under the terms of Law 17-99 and its related regulations except for the requirement of incorporation and to have a board of directors in Morocco.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Morocco acknowledges the importance of consultation in the Financial Services Committee on branching issues, including ways to promote market-enhancing regulatory and supervisory approaches in Morocco, without prejudice to the outcome of such consultations.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Market Access National Treatment Senior Management and Board of Directors
Level of Government:	Central
Measures:	Articles 299 and 304 of Law No. 17-99 (the Insurance Code) of 25 Rejeb 1423 (October 3, 2002).
Description:	Natural persons working in the capacity of insurance agents must be Moroccan nationals. Legal persons working as insurance agents and as insurance-brokerage firms must be incorporated in Morocco. Furthermore, at least 49 percent of such legal persons must be held by natural persons of Moroccan nationality or by legal persons coming under Moroccan law, and their duly authorized representatives must be Moroccan nationals.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Cross-Border
Level of Government:	Central
Measures:	<p>Dahir No. 1-61-085 of April 20, 1960 approving the agreement signed March 9, 1960 for the purpose of creating the Societe Centrale de Reassurances (SCR) and mandating cession to said company of a portion of the premiums paid to the insurance entities.</p> <p>Order of the Finance Minister No. 389-68 of June 28, 1968, establishing the mandatory legal reinsurance terms and conditions imposed on the SCR.</p>
Description:	<p>Insurance companies established in Morocco are required to cede a portion of the premiums arising from their operations in the territory of Morocco to the SCR. This percentage shall be set by decree of the Financial Minister and may not exceed 10 percent. This percentage has been set at 10 percent since 01/01/1969. Morocco shall eliminate this restriction no later than 8 years after entry into force of this Agreement with regard to cross-border trade in reinsurance between a U.S reinsurance company and an insurance company established in Morocco, and no later than 5 years after entry into force of this Agreement with regard to a U.S. insurance company established in Morocco.</p>

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Obligation Concerned:	Cross-Border
Level of Government:	Central
Measures:	Exchange Control Law of 1939 and subsequent regulations and Law 17-99 (Insurance Law)
Description:	The purchase of insurance financial services, other than those set out in paragraphs 3 and 4 of Annex 12.5.1, from financial service suppliers of the United States by persons located within the territory of Morocco and by Moroccan nationals wherever located is subject to restrictions imposed by exchange control regulations and by insurance regulations.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Schedule of Morocco Appended to Chapter Twelve
Annex IV

Industry:	All
Obligation Concerned:	National Treatment Market Access
Level of Government:	National
Measure:	
Description:	<p>Morocco reserves the right to accord advantages to financial institutions, other than insurance companies, wholly or majority owned by the State, or controlled by the State, that are established for a public interest purpose, such as improving access to financing by small and medium enterprises. Such advantages shall not significantly disadvantage the operations of commercial competitors and include, but are not limited to, the following:</p> <ul style="list-style-type: none">-- Extension of State guarantees-- Tax exemptions.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Industry: Banking and other financial services

Obligation Concerned: National Treatment

Level of Government: National

Description: Morocco reserves the right to limit interests held by foreign entities in the share capital of any major bank, or of a bank holding company having a majority interest in a major bank, if holding or acquiring such interests would involve an acquisition of control.

For the purposes of this non-conforming measure:

- (a) a “major bank” means any bank: (a) of which the assets, deposits or credits granted represent at least 12 percent, respectively, of at least two of the following three factors: total assets, deposits or credits of the entire Moroccan banking system, and (b) that is controlled by Moroccan nationals or enterprises controlled by Moroccan nationals;
- (b) “control” has the meaning specified in Article 24 of the Banking Law as of the date of entry into force of this Agreement.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Sector:	Banking and other financial services
Obligation Concerned:	Market Access
Level of Government:	National
Measures:	Articles 23 and 29 of the Dahir-Law- No. 1-93-213 of 4 rabii II 1414 (September 21, 1993) on unit investment trusts; and others.
Description:	<p>Morocco reserves the right to maintain or adopt measures that require incorporation in Morocco of institutions conducting, either directly or through delegation, the management of a mutual fund.</p> <p>Morocco reserves the right to maintain or adopt measures that require incorporation in Morocco of the custodian of a mutual fund.</p>

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Sector: Insurance

Obligation Concerned: National Treatment

Level of Government: Central

Measure

Description: Morocco reserves the right to accord advantages to wholly or majority state-owned or controlled insurance companies that are established for the public interest purpose of providing insurance for risks that are not adequately covered by the private sector, including insurance for natural disaster risks.

For greater certainty, in the event that Morocco were to consider invoking this provision, or if it decides to reconsider such invocation based on changes in the market, Morocco affirms that it would include this issue as part of the regular consultations it undertakes with its industry within the framework of the Insurance Consultative Committee as outlined under its Insurance Code (Article 285) and its related regulations. Within the framework of these consultations, the opportunity is given to the private sector to demonstrate whether the risk coverage is available and if this coverage is adequate and if not, whether it is in a position to adequately cover the particular risk.

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

Sector: Insurance

Obligation Concerned: Market Access

Level of Government: Central

Measure

Description: Morocco does not currently regulate services auxiliary to insurance, such as claim settlement, risk assessment, insurance consultancy or actuarial services, as financial services. However, in the event that Morocco would choose to regulate any of the suppliers of such services as a financial institution, Morocco may adopt or maintain new market access [Financial Services Chapter - Article 12.4] restrictions on such services. The measure shall not significantly affect the activities or competitive positions of financial institutions already operating within Morocco. Morocco shall notify the United States of its intent at least 45 days in advance of implementation of any such new measure; and, at the request of the United States, consult concerning the measure and give due consideration to the views expressed by the United States in this regard.

For greater certainty, this non-conforming measure does not apply to the supply of insurance services.