

DRAFT
Subject to Legal Review for Accuracy, Clarity, and Consistency
February 25, 2004

ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES
Schedule for 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 section A and Section B.
2. To clarify Guatemala's commitment with respect to Article 4 of the Agreement (Market Access), juridical persons supplying financial services and constituted under the laws of Guatemala are subject to non-discriminatory limitations on juridical form.^o

^oFor 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.

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ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES
Schedule for Guatemala, Section A

Sector:	Banking
Reserve Types:	Market Access (Article 4)
Government Level:	National
Measures:	Decreto Número 19-2002 del Congreso de la República, del 29 de Abril de 2002. Ley de Bancos y Grupos Financieros. Articles 6, 7,18, 64 and 65 and its regulations.
Description:	<p>The foreign banks that wish to operate in Guatemala can do so, as follows:</p> <ul style="list-style-type: none">a) The establishment of branches in the Republic, andb) The registry of a representative office only for the promotion of business and granting of financing in the national territory. <p>Foreign investors (including banks) may also establish a bank in Guatemala in the form of a Sociedad Anonima.</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 10% of assets and contingencies, weighted in accordance with their risk, pursuant to general regulations issued by the Monetary Board.</p>

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ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES
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Sector:	Banking
Type of Reservation:	National Treatment (Article 2)
Level of Government:	National
Measures:	Decreto Número 19-2002 del Congreso de la República, del 29 de Abril de 2002. Ley de Bancos y Grupos Financieros, Artículo 70.
Description	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 Bank Examiner's Office. In contrast, national banks have a longer period and may take other measures to remedy the shortfall in question.

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Sector:	Banking
Reserve Types:	National Treatment (Article 2)
Government Level:	National
Measures:	Decreto Número 25-79 del Congreso de la República, Ley Orgánica de El Crédito Hipotecario Nacional de Guatemala; Decreto Número 46-72 del Congreso de la República, Ley Orgánica de la Corporación Financiera Nacional; Decreto Número 1448 del Congreso de la República, Ley del Instituto de Fomento de Hipotecas Aseguradas.
Description:	The government may grant certain guarantees and advantages only to the state-owned financial institutions, in accordance with the specific laws that regulate the operations of these financial institution.

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Sector:	Banking
Reserve Types:	Market Access (Article 4)
Government Level:	National
Measures:	Decreto-Ley Número 208 Ley de Sociedades Financieras Privadas. Artículos 1o., 2o.
Description:	Private Financial Companies, that are banking institutions and act as specialized financial intermediaries in investment banking operations, can only operate in Guatemala constituted as Sociedades Anonimas.

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ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES
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Sector:	Insurance
Reserve Types:	National Treatment (Article 2) Market Access (Article 4) Cross-Border Trade (Article 5)
Government Level:	National
Measures:	Decreto Ley 473 del 4 de Mayo de 1966. Articles 1, 17.
Description:	<p>Private national insurance companies must be constituted and organized as Sociedades Anonimas 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 4 years of entry into force of this Agreement, Guatemala shall allow insurance companies to establish as branches.</p> <p>Consumption abroad of insurance services not listed in Annex 5.1 is not permitted by natural or juridical persons resident in Guatemala.</p>

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ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURES
Schedule for Guatemala, Section B

Sector:	Financial Services
Reserve Types:	Market Access for Financial Institutions (Article 4)
Description:	Guatemala reserves the right to adopt or maintain measures requiring the incorporation of foreign financial institutions, other than those seeking to operate as banks or insurance companies within Guatemala.