

Annex 12.9

Specific Commitments

Section A: Right of Establishment with Respect to Certain Financial Services

1. In lieu of Article 12.4 with respect to banking and other financial services (excluding insurance):

(a) Each Party shall permit an investor of the other Party

(i) that does not own or control a financial institution in the Party's territory to establish in that territory a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions, and

(ii) that owns or controls a financial institution in the Party's territory to establish in that territory such additional financial institutions as may be necessary to permit the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions.

The right of establishment shall include the acquisition of existing entities.

(b) Neither Party may restrict or require specific types of juridical form with respect to the initial financial institution that the investor seeks to establish pursuant to subparagraph (a)(i).

(c) Except with respect to the imposition of numerical or juridical form restrictions on establishment of the initial financial institution described in subparagraph (a)(i), a Party may, consistent with Article 12.2, impose terms and conditions on establishment of additional financial institutions described in subparagraph (a)(ii) and determine the institutional and juridical form through which particular permitted financial services or activities are supplied.

(d) A Party may, consistent with Article 12.2, prohibit a particular financial service or activity.⁶

2. For purposes of this Annex:

(a) an "investor of the other Party" means an investor of the other Party engaged in the business of providing banking and other financial services (excluding insurance) in the territory of that Party.

(b) “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of the Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test.

3. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, Chile, with respect to the establishment by an investor of the United States of an *Administradora de Fondos de Pensiones* under *Decreto Ley 3.500*, shall:

(a) apply subparagraph 1(a) of Section A of this Annex, and

(b) not apply an economic needs test.

No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.

4. The specific commitments of the United States under paragraph 1 are subject to the headnotes and non-conforming measures set forth in Sections A and B of Annex III with respect to banking and other financial services (excluding insurance).

5. The specific commitments of Chile under paragraphs 1 and 3 are subject to the headnotes and non-conforming measures set forth in Annex III of Chile with respect to banking and other financial services (excluding insurance).

Section B: Voluntary Savings Plans; Non-Discriminatory Treatment of U.S. Investors

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, with respect to voluntary savings pension plans established under *Ley 19.768*, Chile shall extend the obligations of Article 12.2(1) and (2) and of Article 12.3 to financial institutions of the United States, investors of the United States, and investments of such investors in financial institutions established in Chile. The specific commitment contained in this paragraph shall enter into force by March 1, 2005.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to U.S. investors in *Administradoras de Fondos de Pensiones* under *Decreto Ley 3.500*.

Section C: Portfolio Management

1. Each Party shall allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 12.1 and to the provisions of Article 12.5(3) regarding the right to require registration, without prejudice to other means of prudential regulation. 2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means:

(a) in the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*; and

(b) in Chile, the following fund management companies subject to supervision by the *Superintendencia de Valores y Seguros*:

(i) *Compañías Administradoras de Fondos Mutuos (Decreto Ley 1.328 de 1976)*;

(ii) *Compañías Administradoras de Fondos de Inversión (Ley 18.815 de 1989)*;

(iii) *Compañías Administradoras de Fondos de Inversión de Capital Extranjero (Ley 18.657 de 1987)*;

(iv) *Compañías Administradoras de Fondos para la Vivienda (Ley 18.281 de 1993)*; and

(v) *Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981)*.

Section D: Expedited Availability of Insurance Services

Each Party should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions. This Section does not apply to the specific category of Chilean government-supported insurance programs, such as climate insurance.

Section E: Insurance Branching

1. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to insurance market access, excluding any portion of those nonconforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, Chile shall allow U.S. insurance suppliers to establish in its territory through branches. Chile may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.⁷

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-US insurance company as a branch to supply life, accident, health (excluding worker's compensation) insurance, non-life insurance, or reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Hawaii (branching allowed for reinsurance), Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.