

Annex III

Financial Services Non-Conforming Measures

1. A Party's Schedule to this Annex sets out:
 - (a) headnotes that limit or clarify the commitments of a Party with respect to the obligations described in subparagraphs (b) and (c);
 - (b) in Section I, the reservations taken by that Party pursuant to paragraphs 1 and 2 of Article 1109 with respect to existing measures that do not conform with obligations imposed by articles relating to:
 - (i)# National Treatment (Article 1102),
 - (ii)# Most-Favoured-Nation Treatment (Article 1103),
 - (iii)# Establishment of Financial Institutions (Article 1104),
 - (iv)# Cross-Border Trade (Article 1105), or
 - (v)# Senior Management and Boards of Directors (Article 1108);
 - (c) in Section II, the reservations taken by the Party, pursuant to paragraph 3 of Article 1109, for measures the Party may adopt or maintain that do not conform with obligations imposed by Article 1102, 1103, 1104, 1105 or 1108; and
 - (d) in Section III, the specific commitments to liberalize measures undertaken by that Party pursuant to paragraph 4 of Article 1109.

2. Each reservation in Section I sets out the following elements:
- (a)# **Sector** refers to the general sector in which the reservation is taken;
 - (b)# **Sub-Sector** refers to the specific sector in which the reservation is taken;
 - (c)# **Type of Reservation** specifies the obligation referred to in paragraph 1(b) for which the reservation is taken;
 - (d)# **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken;
 - (e) **Measures** identifies the laws, regulations or other measures, as qualified by the **Description** element, for which the reservation is taken. 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** sets out references, if any, for liberalization on the date of entry into force of this Agreement pursuant to other sections of a Party's Schedule to this Annex, and the remaining non-conforming aspects of the existing measures for which the reservation is taken; and
 - (g) **Phase-Out** sets out commitments, if any, for liberalization after the date of entry into force of this Agreement.

3. Each reservation in Section II sets out the following elements:
 - (a) **Sector** refers to the general sector in which the reservation is taken;
 - (b) **Sub-Sector** refers to the specific sector in which the reservation is taken;
 - (c) **Type of Reservation** specifies the obligation referred to in subparagraph 1(c) for which the reservation is taken;
 - (d) **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken; and
 - (e) **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the reservation.

4. In the interpretation of a reservation in Section I, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapter against which the reservation is taken. To the extent that:
 - (a) the **Phase-Out** element provides for the phasing out of the non-conforming aspects of measures, the **Phase-Out** element shall prevail over all other elements;
 - (b) the **Measures** element is qualified by a specific reference in the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and

- (c) 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 that discrepancy.

5. In the interpretation of a reservation in Section II, all elements of the reservation shall be considered. The **Description** element shall prevail over all other elements.

6. Where a Party maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 1102, 1103, 1104 or 1105 shall operate as a Schedule entry with respect to Article 803 (Investment - National Treatment), 804 (Investment - Most-Favoured-Nation Treatment) or 807 (Investment - Performance Requirements) to the extent of that measure.

Annex III

Schedule of Canada

Headnotes

1.# Commitments under this Agreement, in the sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2.# To clarify the commitment of Canada with respect to Article 1104, juridical persons supplying financial services and constituted under the laws of Canada are subject to non-discriminatory limitations on juridical form.¹

¹ For example, partnerships and sole proprietorships with limited or unlimited liability are generally not acceptable juridical forms for financial institutions in Canada. This headnote does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.

Section I

Sector:	Financial Services
Sub-Sector:	Insurance
Type of Reservation:	Cross-Border Trade (Article 1105)
Level of Government:	Federal
Measures:	<i>Insurance Companies Act, S.C. 1991, c. 47</i> <i>Reinsurance (Canadian Companies) Regulations, SOR/92-298</i> <i>Reinsurance (Foreign Companies) Regulations, SOR/92-302</i>
Description:	The purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from a non-resident reinsurer is limited to no more than 25 percent of the risks undertaken by the insurer purchasing the reinsurance.
Phase-Out:	None

Section II

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Type of Reservation:	Right of Establishment (Article 1104) National Treatment (Article 1102)
Level of Government:	Federal
Description:	Canada reserves the right to adopt or maintain any measure requiring that a foreign bank establish as a subsidiary in order to accept or maintain retail deposits of less than CDN\$150,000.

Sector: Financial Services

Sub-Sector: Banking and Other Financial Services (Excluding Insurance)

Type of Reservation: Right of Establishment (Article 1104)
National Treatment (Article 1102)

Level of Government : Federal

Description: Canada reserves the right to adopt or maintain any measure requiring that foreign banks that have been authorized to establish a branch in Canada be members of the Canadian Payments Association. Canada also reserves the right to adopt or maintain any measure prohibiting foreign lending branches from being members of the Canadian Payments Association.

Schedule of Peru

Headnotes

1. Commitments under this Agreement, in the sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2. To clarify the commitment of Peru with respect to Article 1104, juridical persons supplying financial services constituted under the laws of Peru are subject to non-discriminatory limitations on juridical form.²

² For example, limited liability partnerships and sole proprietorships with limited liability are generally not acceptable juridical forms for financial institutions in Peru. This headnote does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.

Section I

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	Right of Establishment (Article 1104)
Measure:	<i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias</i>
Description:	A financial institution of the other Party providing banking services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose consistent with paragraph 1 of Article 1110 the operations of the branch are limited by its capital located in Peru.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	Cross-Border Trade (Article 1105)
Measure:	<p>Texto Único Ordenado de la <i>Ley del Mercado de Valores</i>, aprobado por el Decreto Supremo N° 093-2002-EF; Artículos 280, 333, 337 y Décimo Séptima Disposición Final</p> <p>Ley N° 26702 y sus modificatorias, <i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros</i>; Artículos 136 y 296</p>
Description:	Financial institutions constituted under the laws of Peru and debt securities offered in a primary or secondary public offering in the territory of Peru must be rated by credit rating companies constituted under the laws of Peru. They may also be rated by other credit rating agencies, but only in addition to the mandatory rating.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	National Treatment (Article 1102)
Measure:	<p><i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias</i></p> <p><i>Ley de creación del Banco Agropecuario, Ley N°27603</i></p> <p><i>Ley de creación de la Corporación Financiera de Desarrollo (COFIDE), Decreto Ley N° 18807</i></p> <p><i>Ley de creación del Banco de la Nación, Ley N°16000</i></p> <p><i>Ley N° 28579, Fondo MiVivienda</i></p> <p><i>Decreto Supremo N° 157-90-EF</i></p> <p><i>Decreto Supremo N° 07-94-EF y sus modificatorias</i></p>
Description:	Peru may grant advantages or exclusive rights, without limitation, to one or more of the following financial entities, so long as they are partially or fully owned by the State: Corporación Financiera de Desarrollo (COFIDE), Banco de la Nación, Banco Agropecuario, Fondo Mivivienda, Cajas Municipales de Ahorro y Crédito, and the Caja Municipal de Crédito Popular.

Examples of such advantages are the following:³

The *Banco de la Nación* and *Banco Agropecuario* are not required to diversify their risk; and

The *Cajas Municipales de Ahorro y Crédito* may directly sell collateral they repossess in cases of loan default, in accordance with pre-established procedures.

³ For greater certainty, and notwithstanding the location of this non-conforming measure within Section I of this Schedule, the Parties understand that the advantages or exclusive right that Peru may grant to the specified entities are not limited only to the cited examples.

Sector:	Financial Services
Sub-Sector:	Banking and other financial services (Excluding Insurance)
Obligations concerned:	Right of Establishment (Article 1104)
Measures:	<p>Texto Único Ordenado de la <i>Ley del Mercado de Valores</i>, aprobado por el Decreto Supremo N° 093-2002-EF; Artículos 130, 167, 185, 204, 223, 259, 269, 270, 302, 324 y Décimo Séptima Disposición Final</p> <p>Decreto Legislativo N° 862, <i>Ley de Fondos de Inversión y sus Sociedades Administradoras</i>, Artículo 12</p> <p>Ley N° 26361, <i>Ley sobre Bolsas de Productos</i>, modificada por la Ley N° 27635; Artículos 2°, 9° y 15.</p> <p>Decreto Ley N° 22014, Artículo 1.</p> <p>Texto Único Ordenado de la <i>Ley del Sistema Privado de Administración de Fondos de Pensiones</i>, aprobado por el Decreto Supremo N° 054-97-EF; Artículo 13; y el Reglamento del Texto Único Ordenado de la <i>Ley del Sistema Privado de Administración de Fondos de Pensiones</i>, aprobado por el Decreto Supremo N° 004-98-EF; Artículo 18.</p>

Description:

Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including pension fund managers, must be constituted under the laws of Peru. Therefore, financial institutions of the other Party established in Peru to supply these financial services may not be established as branches or agencies.

Sector:	Financial Services
Sub-Sector:	All
Obligation concerned:	Cross-Border Trade (Article 1105)
Measure:	<i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias</i>
Description:	Creditors domiciled in Peru have legal preference with regard to the assets located in Peru of a branch of a foreign financial institution, in case of liquidation of the financial institution or its branch in Peru.

Section II

Sector:	Financial Services
Sub-Sector:	Social services
Obligation concerned:	Right of Establishment (Article 1104)
Description:	<p>With respect to subparagraph 3(a) of Article 1101 Peru reserves the right to adopt or maintain measures that impose limitations on:</p> <ul style="list-style-type: none">(i) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, and(ii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

Sector:	Financial Services
Sub-Sector:	Insurance and insurance-related services
Obligation concerned:	Cross-Border Trade (Article 1105)
Measure:	Ley N° 27181 y su Reglamento aprobado mediante Decreto Supremo 024-2002-MTC Ley N° 26790, <i>Ley de la Modernización de la Seguridad Social en Salud</i> , y el Reglamento aprobado por Decreto Supremo N° 03-98-SA
Description:	Peru reserves the right to adopt or maintain measures that restrict the acquisition of obligatory insurance outside of Peru, or that require that obligatory insurance be purchased from suppliers established in Peru, such as Seguro Obligatorio de Accidentes de Transito (SOAT) and Seguro Complementario de Trabajo en Riesgo. These restrictions do not apply to any insurance covered by Annex 1105 (Peru).

Section III

Specific Commitments

A. Portfolio Management

Portfolio Management

1. Peru shall allow a financial institution organized either inside or outside its territory to provide the following services to a collective investment scheme located in its territory:⁴

- (a) investment advice; and
- (b) portfolio management services, excluding:
 - (i) custodial services, unless they are related to managing a collective investment scheme,
 - (ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and
 - (iii) execution services, unless they are related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 1101 and paragraph 3 of Article 1105.

⁴ Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

3. For purposes of paragraphs 1 and 2, “collective investment scheme” means:
- (a) mutual funds for investments and securities, in accordance with the *Texto Unico Ordenado* approved by *Decreto Supremo N° 093-2002-EF*;
 - (b) investment funds, in accordance with the *Decreto Legislativo N° 862*; and
 - (c) pension funds, in accordance with the *Texto Unico Ordenado* approved by *Decreto Supremo N° 054-97-EF*.

B. Specific Commitment Regarding Services Described in Subparagraph 3(a) of Article 1101

4. In the context of the maintenance, modification, or adoption of a privatized or partially privatized retirement plan or social security system,⁵ notwithstanding any non-conforming measures of Peru referring to social services and found in its Annex II or this Annex, and consistent with its obligations under Article 1104, Peru shall not adopt or maintain measures that impose limitations on the number of financial institutions in the form of either numerical quotas or the requirements of an economic needs test, with respect to investors of the other Party seeking to establish financial institutions to supply such activities and services.

⁵ For greater certainty, this specific commitment applies only with regard to measures within the scope of this Chapter, as specified in Article 1101, including Annex 1101.3(a).