

Chapter 12

Financial Services

Article 12.01 Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) financial institutions of the other Party;
 - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (c) cross-border trade in financial services.

2. Chapters 10 (Investment) and 11 (Cross Border Trade in Services) apply to measures described in paragraph 1 only to the extent that such Chapters or Articles of such Chapters are incorporated into this Chapter.
 - (a) Articles 10.07 (Expropriation and Compensation), 10.08 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.13 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter;
 - (b) Section B of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.07 (Expropriation and Compensation), 10.08 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirement), as incorporated into this Chapter;
 - (c) Article 11.11 (Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.05.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:
 - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
 - (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. The provisions of this Chapter shall prevail upon the provisions of the other Chapters, except in cases that an express remission is made to those Chapters.

Article 12.02 National Treatment

1. A Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. A Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 12.05.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 12.03 Most-Favored-Nation Treatment

1. A Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party.

2. A Party may recognize prudential measures of the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the other Party or a non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 12.04 Market Access for Financial Institutions

No Party may adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;
 - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) 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; or
 - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

For purposes of this Article, “financial institutions of the other Party” includes financial institutions that investors of the other Party seek to establish in the territory of the Party.

Article 12.05 Cross-Border Trade

1. A Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 12.05.1.

2. A Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of that other Party. This obligation does not

require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

Article 12.06 New Financial Services¹

A Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 12.04(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires authorization to supply a new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

Article 12.07 Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 12.08 Senior Management and Boards of Directors

1. No Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

¹ The Parties understand that nothing in Article 12.06 prevents a financial institution of a Party from applying to the other Party to request it to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. The application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.06.

Article 12.09 Non-Conforming Measures

1. Articles 12.02 through 12.05 and 12.08 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at
 - (i) the central level of government, as set out by that Party in its Schedule to Annex III, or
 - (ii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 12.02, 12.03, or 12.07.²
2. Annex 12.09.2 sets out certain specific commitments by each Party.
3. Annex 12.09.3 sets out, for purposes of transparency, supplementary information regarding certain aspects of financial services measures of a Party that the Party considers are not inconsistent with its obligations under this Chapter.
4. Articles 12.02 through 12.05 and 12.08 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex III.
5. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Article 10.03 (National Treatment), 10.04 (Most-Favored-Nation Treatment), 11.02 (National Treatment), 11.03 (Most-Favored-Nation Treatment, Services), or 11.05 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.02 or, 12.03, or 12.04, as the case may be, does not apply, to the extent that the measure, sector, subsector, or activity set out in the Schedule is covered by this Chapter.

Article 12.10 Exceptions

1. Notwithstanding any other provision of this Chapter or Chapters 10 (Investment), 13 (Telecommunications), or 14 (Electronic Commerce), including specifically Article 13.17 (Relationship to Other Chapters) and Article 11.01.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor

² For greater certainty, Article 12.05 does not apply to an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed on the date of entry into force of this Agreement, with Article 12.05.

of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,³ including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 10 (Investment), 13 (Telecommunications), or 14 (Electronic Commerce), including specifically Article 13.17 (Relationship to Other Chapters), and Article 11.01.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.09 (Performance Requirements) with respect to measures covered by Chapter 10 (Investment) or under Article 10.08 (Transfers) or 11.11 (Transfers and Payments).

3. Notwithstanding in the Article 10.08 (Transfers) and 11.11 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

Article 12.11 Transparency

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are

³ It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

important in facilitating both access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 20.02.2 (Publication), each Party shall, to the extent practicable:
 - (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
 - (b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.
3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.
4. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.
5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.
7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.
8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

Article 12.12 Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.02 and 12.03 by such self-regulatory organization.

Article 12.13 Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Article 12.14 Domestic Regulation

Except with respect to non-conforming measures listed in its Schedule to Annex III, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

Article 12.15 Expedited Availability of Insurance Services

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

Article 12.16 Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.16.1.

2. The Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 12.19.

All decisions of the Committee shall be taken by mutual agreement, unless the Committee otherwise decides.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

Article 12.17 Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.16.1.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 12.18 Dispute Settlement

1. Section A of Chapter 22 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to eight individuals who are willing and able to serve as financial services panellists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to two individuals who are not nationals of any Party. The roster members shall be appointed by mutual agreement and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster. The Parties may appoint a replacement where a roster member is no longer available to serve.

3. Financial services roster members, as well as financial services panelists, shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

- (c) be independent of, and not be affiliated with or take instructions from any Party; and
- (d) comply with a code of conduct to be established by the Commission.

4. When a Party claims that a dispute arises under this Chapter, Article 22.10 (Arbitral Group Selection) shall apply, except that:

- (a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
- (b) in any other case,
 - (i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 22.09 (Qualifications of Panelists); and
 - (ii) if the Party complained against invokes Article 12.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

5. Notwithstanding Article 22.16 (Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

Article 12.19 Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim under Section B of Chapter 10 (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer the matter in writing to the Financial Services Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Financial Services Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Financial Services Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.07 (Request for Establishment of an Arbitration Group). The panel shall be constituted in accordance with Article 12.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within ten days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. For purposes of this Article, **tribunal** means a tribunal established under Article 10.19 (Selection of Arbitrators).

Article 12.20 Consolidated Supervision

1. The Parties shall promote cooperation between their supervising and regulatory authorities.

2. The Parties recognize the necessity to strengthen the consolidated supervision of financial institutions and financial groups through agreements regarding cooperation and exchange of information between their supervising and regulatory authorities.

Article 12.21 Definitions

For purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of one Party in the territory of the other Party;

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
 - (i) life;
 - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency; and
- (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge, and debit cards, travellers checks, and bankers drafts;
- (i) Guarantees and commitments;
- (j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
 - (i) money market instruments (including checks, bills, and certificates of deposits);

- (ii) foreign exchange;
 - (iii) derivative products including, but not limited to, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities;
 - (vi) other negotiable instruments and financial assets, including bullion;
- (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (l) Money broking;
 - (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
 - (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means “investment” as defined in Article 10.28 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.28 (Definitions);

investor of a Party means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 2.01 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

regulatory authorities means any governmental body that exercises a supervising authority over providers of financial services or financial institutions; and

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions.

Annex 12.05.1

Cross-Border Trade

Section A: The Republic of Nicaragua

Insurance and Insurance-Related Services

1. For The Republic of Nicaragua, Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
 - (i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to subparagraphs (a)(i) and (a)(ii); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services, related with this numeral and provided solely to an insurance supplier.

2. For the Republic of Nicaragua, Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services and insurance related services listed in paragraph 1.

Banking and Other Financial Services (Excluding Insurance)

3. For the Republic of Nicaragua, Article 12.05.1 applies with respect to:

- (a) the provision and transfer of financial information as described in subparagraph (o) of the definition of financial service; and
- (b) financial data processing as described in subparagraph (o) of the definition of financial service.⁴

⁴ The Republic of Nicaragua's law regulating protection of information applies where the financial information or financial data processing referred to in subparagraphs (a) and (b) involves such protected information. Protected information includes, but is not limited to, information regulated under

The financial services described in subparagraphs (a) and (b) are subject to prior authorization from the relevant regulator, as required.

Section B: The Republic of China (Taiwan)

Insurance and Insurance-Related Services

1. For the Republic of China (Taiwan), Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
 - (i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to subparagraphs (a)(i) and (a)(ii); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services, related with this numeral and provided solely to an insurance supplier.

2. For the Republic of China (Taiwan), Article 12.05.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services and insurance related services listed in paragraph 1.

Insurance, Banking and Other Financial Services

3 For the Republic of China (Taiwan), Article 12.05.1 applies with respect to the provision and transfer of financial information and financial data processing and related software.

the concept of banking secrecy and personal information.

Annex 12.09.2

Specific Commitments

Section A: The Republic of Nicaragua

Expedited Availability of Insurance

1. The Republic of Nicaragua 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.

Insurance Branching

2. Notwithstanding the nonconforming measures of the Republic of Nicaragua in Annex III, Section B, referring to insurance market access, excluding any portion of those non-conforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, the Republic of Nicaragua shall allow the Republic of China (Taiwan) insurance suppliers to establish in its territory through branches. The Republic of Nicaragua may choose how to regulate branches, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk capital and their investments.

Section B: The Republic of China (Taiwan)

Expedited Availability of Insurance

1. It is understood that the Republic of China (Taiwan) requires prior product approvals for the introduction of a new insurance product.

2. The Republic of China (Taiwan) 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.

Banking Services

3. Notwithstanding Annex III, at the entry into force of this Agreement, the Republic of China (Taiwan) establishes in the following paragraph further liberalization commitments.

4. The Republic of China (Taiwan) shall not require the Republic of Nicaragua's banks, in applying for approvals to establish branches, offshore banking branches and representative offices, to meet the requirements of bank rankings and prior business volume specified in the Regulations Governing Foreign Bank Branches and Representative Offices and the Implementation of Offshore Banking Act.

Cross-border Trade in Financial Services

5. In the event that the Republic of China (Taiwan) applies a better market access than the one applied in this Agreement in any cross-border trade in financial services to another country, this new access shall be granted to the Republic of Nicaragua in a period no greater than 60 days from the entry into force of this new market access level.

Annex 12.09.3

Additional Information Regarding Financial Services Measures

The Parties indicated below has provided the following descriptive and explanatory information regarding certain aspects of its financial services measures for purposes of transparency.

Section A: The Republic of Nicaragua

1. The Republic of Nicaragua reserves the right to deny an operating license to a financial institution or group (other than an insurance financial institution or group) in the event that the other Party has denied or cancelled an operating license to such financial institution or group.

2. To maintain a branch in the Republic of Nicaragua, a bank constituted and organized in a foreign country must:

- (a) be legally authorized and allowed by its bylaws to operate in that foreign country and to establish branches in other foreign countries;
- (b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which the bank is constituted and organized, indicating that authority's concurrence that the bank may establish a branch in the Republic of Nicaragua; and
- (c) assign the branch capital that meets minimum requirements;

Such a branch must have its domicile in the Republic of Nicaragua.

3. To maintain a branch in the Republic of Nicaragua, a non-banking financial institution organized and constituted under the laws of a foreign country must:

- (a) be legally authorized and allowed by its bylaws to operate in the country in which it is organized and constituted and to establish branches abroad;
- (b) prior to establishing such branch, present a certification issued by the supervising authority of the country in which such institution is constituted and organized, indicating that authority's concurrence with the establishment of a branch in the Republic of Nicaragua by such institution;
- (c) assign such branch capital meeting the minimum requirements; and
- (d) in the case of FONCITUR, the capital and all of the funds of the FONCITUR must be invested in the Republic of Nicaragua, in projects registered with the Instituto Nicaragüense de Turismo;

Such a branch must have its domicile in the Republic of Nicaragua.

4. For purposes of this paragraph and paragraph 3:

(a) **non-banking financial institution** means an institution that operates as a recipient of deposits from the public, as a stock exchange or institution related to a stock exchange; as Almacenes Generales de Depósitos con carácter financiero; as leasing entities; and as FONCITURs; and

(b) **FONCITUR** means Fondo de Capital de Inversión Turística.

5. A representative office of a foreign bank may place funds in the Republic of Nicaragua in the form of loans and investments, and act as information centers for their clients, but is prohibited from accepting deposits from the public in the Republic of Nicaragua.

Section B: The Republic of China (Taiwan)

Financial regulations are updated on the website of Financial Supervisory Commission (<http://www.fscey.gov.tw>).

Annex 12.16.1

Committee on Financial Services

The authorities of each Party responsible for financial services are:

- (a) in the case of the Republic of Nicaragua, the Ministerio de Fomento, Industria y Comercio, the Superintendencia de Bancos y otras Instituciones Financieras, and the Ministerio de Hacienda y Crédito Público, for banking and other financial services and for insurance; and
- (b) in the case of the Republic of China (Taiwan), the Ministry of Economic Affairs and the Financial Supervisory Commission, for banking and other financial services and for insurance;

or their successors.