

## Chapter Twelve

### Financial Services

#### Article 12.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of another Party;
  - (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Chapters Ten (Investment) and Eleven (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 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.11 (Investment and Environment), 10.12 (Denial of Benefits), 10.14 (Special Formalities and Information Requirements), and 11.12 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.
  - (b) Section B of Chapter Ten (Investor-State Dispute Settlement) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.7, 10.8, 10.12, or 10.14, as incorporated into this Chapter.
  - (c) Article 11.10 (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 12.5.
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. (a) Subject to subparagraph (c), for two years beginning on the date of entry into force of this Agreement, this Chapter shall not apply to:
- (i) measures adopted or maintained by the Dominican Republic relating to financial institutions of Costa Rica, El Salvador, Honduras, or Nicaragua to the extent they supply banking services; investors of Costa Rica, El Salvador, Honduras, or Nicaragua, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in financial services between the Dominican Republic and Costa Rica, El Salvador, Honduras, or Nicaragua; or
  - (ii) measures adopted or maintained by Costa Rica, El Salvador, Honduras, or Nicaragua relating to financial institutions of the Dominican Republic to the extent they supply banking services; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Costa Rica, El Salvador, Honduras, or Nicaragua; or cross-border trade in financial services between Costa Rica, El Salvador, Honduras, or Nicaragua and the Dominican Republic;
  - (iii) measures adopted or maintained by the Dominican Republic relating to financial institutions of Guatemala; investors of Guatemala, and investments of such investors, in such financial institutions in the territory of the Dominican Republic; or cross-border trade in financial services between the Dominican Republic and Guatemala; or
  - (iv) measures adopted or maintained by Guatemala relating to financial institutions of the Dominican Republic; investors of the Dominican Republic, and investments of such investors, in such financial institutions in the territory of Guatemala; or cross-border trade in financial services between Guatemala and the Dominican Republic.
- (b) During the two-year period referred to in subparagraph (a), the Dominican Republic and each Central American Party shall seek to agree on those measures described in subparagraph (a) that shall be considered non-conforming measures pursuant to Article 12.9 and that shall be reflected in their respective Schedules to Annex III for purposes of modifying their rights and obligations with respect to each other under this Chapter.
- (c) If the Commission approves any such agreement during this period, each relevant Party's schedule shall be modified accordingly. Subparagraph (a) shall cease to apply as between the Dominican Republic and the relevant Central American Party on the date the modification takes effect.

## **Article 12.2: National Treatment**

1. Each Party shall accord to investors of another 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. Each Party shall accord to financial institutions of another Party and to investments of investors of another 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 12.5.1, a Party shall accord to cross-border financial service suppliers of another 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 12.3: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party, financial institutions of another Party, investments of investors in financial institutions, and cross-border financial service suppliers of another 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 any other Party or of a non-Party, in like circumstances.
2. A Party may recognize prudential measures of another 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 another Party or a non-Party.
3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another 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 between the relevant Parties.
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 another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

#### **Article 12.4: Market Access for Financial Institutions**

No Party may adopt or maintain, with respect to financial institutions of another 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 another Party” includes financial institutions that investors of another Party seek to establish in the territory of the Party.

#### **Article 12.5: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the services specified in Annex 12.5.1.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of that other Party or of any 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 another Party and of financial instruments.

## **Article 12.6: New Financial Services<sup>1</sup>**

Each Party shall permit a financial institution of another 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 12.4(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 12.7: 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 12.8: Senior Management and Boards of Directors**

1. No Party may require financial institutions of another 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 another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## **Article 12.9: Non-Conforming Measures**

1. Articles 12.2 through 12.5 and 12.8 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,
    - (ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or

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<sup>1</sup> The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another 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 12.6.

- (iii) 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 12.2, 12.3, 12.4, or 12.8.<sup>2</sup>
2. Annex 12.9.2 sets out certain specific commitments by each Party.
3. Annex 12.9.3 sets out, solely 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 12.2 through 12.5 and 12.8 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 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), or 11.4 (Market Access) does not apply shall be treated as a non-conforming measure to which Article 12.2, 12.3, or 12.4, 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 Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>3</sup> 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.

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<sup>2</sup> For greater certainty, Article 12.5 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 12.5.

<sup>3</sup> 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.

2. Nothing in this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), including specifically Article 13.16 (Relationship to Other Chapters), or Fourteen (Electronic Commerce), and Article 11.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by an investor of another 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 10.9 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or under Article 10.8 (Transfers) or 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.8 (Transfers) and 11.10 (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 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 18.2.2 (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 another 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 another 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 12.2 and 12.3 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 another 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: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee. 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 consensus, 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 another 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 two or more Parties.

### **Article 12.18: Dispute Settlement**

1. Section A of Chapter Twenty (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 28 individuals who are willing and able to serve as financial services panelists. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to seven individuals who are not nationals of any Party. The roster members shall be appointed by consensus 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 20.9 (Panel 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 20.8 (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 20.16 (Non-Implementation – 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 Ten (Investment) against another 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 20.6 (Request for an Arbitral Panel). 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. The Financial Services Committee may decide that, for purposes of a referral pursuant to paragraph 1, the financial services authorities of the relevant Parties shall make the decision described in paragraph 2 and transmit that decision to the tribunal and the Commission. In that case, a request may be made under paragraph 3 if the relevant Parties have not made the decision described in paragraph 2 within 60 days of their receipt of the referral under paragraph 1.

5. 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.

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

## Article 12.20: 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 another Party,
- (b) in the territory of one Party by a person of that Party to a person of another Party, or
- (c) by a national of one Party in the territory of another 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 another 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, travelers 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;

**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 another 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 another 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 2.1 (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; 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 12.5.1**

### **Cross-Border Trade**

#### **Section A: Costa Rica**

##### *Banking and Other Financial Services (Excluding Insurance)*

1. For Costa Rica, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>4</sup>

#### **Section B: The Dominican Republic**

##### *Insurance and Insurance-Related Services*

1. For the Dominican Republic, Article 12.5.1 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 and 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 paragraphs (a) and (b); and
- (d) consultancy, risk assessment, actuarial, and claims settlement services.

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<sup>4</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

2. For the Dominican Republic, Article 12.5.1 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.<sup>5</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For the Dominican Republic, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>6</sup>

**Section C: El Salvador**

*Insurance and Insurance-Related Services*

1. For El Salvador, Article 12.5.1 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 and 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 paragraphs (a) and (b); and
- (d) consultancy, risk assessment, actuarial, and claims settlement services.

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<sup>5</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>6</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.



2. For El Salvador, Article 12.5.1 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.<sup>7</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For El Salvador, Article 12.5.1 applies with respect to:
- (a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
  - (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, when it is required;<sup>8</sup> and
  - (c) advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.<sup>9</sup>

**Section D: Guatemala**

*Insurance and Insurance-Related Services*

1. For Guatemala, Article 12.5.1 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 and 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;

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<sup>7</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>8</sup> It is understood that where the financial information or financial data referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with El Salvador's law regulating the protection of such data.

<sup>9</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

- (b) reinsurance and retrocession;
- (c) insurance intermediation such as brokerage and agency only for the services indicated in paragraphs (a) and (b); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service.

2. For Guatemala, Article 12.5.1 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.<sup>10</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For Guatemala, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>11</sup>

**Section E: Honduras**

*Insurance and Insurance-Related Services*

1. For Honduras, Article 12.5.1 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 and 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;

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<sup>10</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>11</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

- (c) insurance intermediation such as brokerage and agency only for the services indicated in paragraphs (a) and (b); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service.

2. For Honduras, Article 12.5.1 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.<sup>12</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For Honduras, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>13</sup>

## **Section F: Nicaragua**

*Insurance and Insurance-Related Services*

1. For Nicaragua, Article 12.5.1 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 and 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 paragraphs (a)(i) and (a)(ii); and

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<sup>12</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>13</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services.<sup>14</sup>

2. For Nicaragua, Article 12.5.1 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.<sup>15</sup>

*Banking and Other Financial Services (Excluding Insurance)*

3. For Nicaragua, Article 12.5.1 applies with respect to:
- (a) the provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
  - (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required;<sup>16</sup> and
  - (c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.<sup>17</sup>

**Section G: United States**

*Insurance and Insurance-Related Services*

1. For the United States, Article 12.5.1 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 risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the

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<sup>14</sup> For greater certainty, it is understood that these auxiliary services will only be provided to an insurance supplier.

<sup>15</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>16</sup> It is understood that 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 concept of banking secrecy and personal information.

<sup>17</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and

- (ii) goods in international transit; and
- (b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service.

2. For the United States, Article 12.5.1 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.

*Banking and Other Financial Services (Excluding Insurance)*

3. For the United States, Article 12.5.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>18</sup>

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<sup>18</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

## Annex 12.9.2

### Specific Commitments

#### Section A: Costa Rica

##### *Portfolio Management*

1. Costa Rica shall allow a financial institution (other than a trust company) organized outside its territory to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.
2. Notwithstanding paragraph 1, Costa Rica may require that the ultimate responsibility for the management of a collective investment scheme be borne by a “*sociedad administradora de fondos de inversión*” constituted according to the *Ley Reguladora del Mercado de Valores*, No. 7732 of December 17, 1997 in the case of investment funds or an “*operadora de pensiones*” constituted according to the *Ley de Protección al Trabajador*, No. 7983 of February 18, 2000 in the case of pension funds and complementary pension funds.
3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment fund constituted according to the *Ley Reguladora del Mercado de Valores*, No. 7732 of December 17, 1997, or a pension fund or a complementary pension fund constituted according to the *Ley de Protección al Trabajador*, No. 7983 of February 18, 2000.

##### *Expedited Availability of Insurance*

4. Costa Rica should endeavor to consider policies or procedures such as: not requiring product approval for insurance other than insurance 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.

#### Section B: The Dominican Republic

##### *Portfolio Management*

1. The Dominican Republic shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Articles 12.1 and 12.5.3.

2. The Parties recognize that the Dominican Republic does not currently have legislation regulating collective investment schemes. Notwithstanding paragraph 1, and no later than four years after the date of entry into force of this Agreement, the Dominican Republic shall implement paragraph 1 by adopting a Special Law regulating collective investment schemes, which shall contain a definition of collective investment scheme as specified in paragraph 3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning provided under the Special Law that the Dominican Republic adopts pursuant to paragraph 2.

#### *Expedited Availability of Insurance*

4. It is understood that the Dominican Republic requires prior product approval before the introduction of a new insurance product. The Dominican Republic shall provide that once an enterprise seeking approval for such a product files information with the Dominican Republic's regulatory authority, the regulator shall grant approval or issue disapproval in accordance with the Dominican Republic's law for the sale of the new product within 30 days. It is understood that the Dominican Republic does not maintain any limitations on the number or frequency of new product introductions.

### **Section C: El Salvador**

#### *Portfolio Management*

1. El Salvador shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the territory of El Salvador. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. The Parties recognize that El Salvador does not currently have legislation regulating collective investment schemes. Notwithstanding paragraph 1, and no later than four years after the date of entry into force of this Agreement, El Salvador will implement paragraph 1 by adopting a Special Law regulating collective investment schemes, which shall contain a definition of collective investment scheme as specified in paragraph 3.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning provided under the Special Law that El Salvador adopts pursuant to paragraph 2.

#### *Foreign Banking*

4. El Salvador shall allow banks organized under the laws of El Salvador to establish branches in the United States, subject to their compliance with relevant U.S. law. The Salvadoran regulatory agency will develop and issue prudential and other requirements that such banks must meet in order for them to obtain authorization to apply for the establishment of branches in the United States.

### *Expedited Availability of Insurance*

5. It is understood that El Salvador requires prior product approval before the introduction of a new insurance product. El Salvador shall provide that once an enterprise seeking approval for such a product files information with El Salvador's supervisory authority, the regulator shall grant approval or issue disapproval in accordance with El Salvador's law for the sale of the new product within 60 days. It is understood that El Salvador does not maintain any limitations on the number or frequency of new product introductions.

## **Section D: Guatemala**

### *Portfolio Management*

1. Guatemala shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. The Parties recognize that Guatemala does not currently allow insurance companies to manage collective investment schemes. At such time as Guatemala allows insurance companies to manage collective investment schemes, Guatemala shall comply with paragraph 1 with regard to management of such schemes by insurance companies.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment made in accordance with Articles 74, 75, 76, 77, and 79 of the *Ley del Mercado de Valores y Mercancías*, Decree No. 34-96 of the *Congreso de la República*.

### *Expedited Availability of Insurance*

4. It is understood that Guatemala requires prior product approval before the introduction of a new insurance product. Guatemala shall provide that once an enterprise seeking approval for such a product files the information with Guatemala's supervisory authority, the authority shall grant approval or issue disapproval in accordance with Guatemala's law for the sale of the new product within 60 days. It is understood that Guatemala does not maintain any limitations on the number or frequency of product introductions.

## **Section E: Honduras**

### *Portfolio Management*

1. Honduras shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to



managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. Notwithstanding paragraph 1, Honduras may require a collective investment scheme located in its territory to retain ultimate responsibility for the management of such collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** will have the meaning set out in any future laws, regulations, or guidance defining “collective investment scheme.”

#### *Expedited Availability of Insurance*

4. It is understood that Honduras requires prior product approval before the introduction of a new insurance product. Honduras shall provide that once an enterprise seeking approval for such a product files the information with the *Comisión Nacional de Bancos y Seguros*, the Commission shall grant approval according to its law or issue disapproval for the sale of the new product within 30 days. It is understood that Honduras does not maintain any limitations on the number or frequency of product introductions.

### **Section F: Nicaragua**

#### *Portfolio Management*

1. Nicaragua shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme or pension fund, to managers of a collective investment scheme or pension fund located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. Notwithstanding paragraph 1, Nicaragua may require that the ultimate responsibility for the management of collective investment schemes and pension funds be borne, respectively, by the managers of such schemes and funds established in its territory.

3. The Parties recognize that Nicaragua does not currently have legislation establishing collective investment schemes and that its legislation relating to pension funds is not fully implemented. Notwithstanding paragraph 1, at such time as Nicaragua adopts legislation, regulations, or administrative guidance establishing collective investment schemes, Nicaragua shall comply with paragraph 1 with respect to collective investment schemes and provide a definition of collective investment scheme to be added to paragraph 5. Notwithstanding paragraph 1, at such time as Nicaragua undertakes further implementation relating to pension funds, Nicaragua shall comply with the obligations of paragraph 1 of this provision with respect to pension funds.

4. The Parties recognize that Nicaragua does not currently allow insurance companies to manage collective investment schemes. Notwithstanding paragraph 1, at such time as Nicaragua

allows insurance companies to manage a collective investment scheme, Nicaragua shall comply with paragraph 1 with regard to management of collective investment schemes by insurance companies.

5. For purposes of paragraphs 1 through 3, **pension fund** has the meaning established in the *Ley del Sistema de Ahorro para Pensiones*, Law No. 340 (published in *La Gaceta, Diario Oficial*, No. 72 of 11 April 2000) and its implementing regulations.

#### *Expedited Availability of Insurance*

6. 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*

7. Notwithstanding the nonconforming measures 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, Nicaragua shall allow U.S. insurance suppliers to establish in its territory through branches. 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 G: United States**

#### *Portfolio Management*

1. The United States shall allow a financial institution (other than a trust company), organized outside its territory, to provide investment advice and portfolio management services, excluding (a) custodial services, (b) trustee services, and (c) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.1 and to Article 12.5.3.

2. For purposes of paragraph 1, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.

#### *Expedited Availability of Insurance*

3. The United States should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than insurance 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.

## **Section H: Specific Commitments of Costa Rica on Insurance Services**

### **I. Preamble**

The Government of the Republic of Costa Rica:

reaffirming its decision to ensure that the process of opening its insurance services sector must be based on its Constitution;

emphasizing that such process shall be to the benefit of the consumer and shall be accomplished gradually and based on prudential regulation;

recognizing its commitment to modernize the *Instituto Nacional de Seguros* (INS) and the Costa Rican legal framework in the insurance sector;

undertakes through this Annex the following specific commitments on insurance services.

### **II. Modernization of INS and the Costa Rican Legal Framework in the Insurance Sector**

By no later than January 1, 2007, Costa Rica shall establish an independent insurance regulatory authority which shall be separate from and not accountable to any supplier of insurance services. The decisions and the procedures used by the regulatory authority shall be impartial with respect to all market participants. The insurance regulatory authority shall have adequate powers, legal protection, and financial resources to exercise its functions and powers,<sup>19</sup> and treat confidential information appropriately.

### **III. Gradual Market Access Opening Commitments**

#### **1. Cross-Border Commitments**

Costa Rica shall allow insurance service providers of any Party, on a non-discriminatory basis, to effectively compete to supply directly to the consumer insurance services on a cross-border basis as provided below:

A. By no later than the date of entry into force of this Agreement, Costa Rica shall permit the following:

(i) pursuant to Article 12.5.2, persons located in its territory, and its nationals wherever located, to purchase any and all lines of insurance (except

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<sup>19</sup> The regulatory authority shall act consistently with the core principles of the International Association of Insurance Supervisors.

compulsory automobile insurance<sup>20</sup> and occupational risk insurance<sup>21</sup>)<sup>22</sup> from cross-border insurance service suppliers of another Party located in the territory of that other Party or of another Party. This obligation will not require Costa Rica to permit such suppliers to do business or solicit in its territory. Costa Rica may define “doing business” and “solicitation” for purposes of this obligation, as long as such definitions are not inconsistent with Article 12.5.1; and

- (ii) pursuant to Article 12.5.1, 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 in Article 12.20 with respect to:
  - (a) insurance risk relating to:
    - (i) space launching of freight (including satellite), maritime shipping and commercial aviation, 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) retrocession and reinsurance;
  - (c) services necessary to support global accounts;<sup>23</sup>
  - (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service;<sup>24</sup> and

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<sup>20</sup> For purposes of this commitment, “compulsory automobile insurance” has the meaning given to that term in Article 48 of the *Ley de Tránsito por Vías Públicas Terrestres*, Law No. 7331 of 13 April 1993.

<sup>21</sup> As referred to in the last paragraph of Article 73 of the *Constitución Política de la República de Costa Rica*. Occupational risk insurance is a compulsory insurance that covers workers under a subordinate labor relationship for accidents or illnesses occurring as a consequence of their occupation, as well as the direct, immediate, and evident effects of such accidents and illnesses.

<sup>22</sup> For greater certainty, Costa Rica is not required to modify its regulation of compulsory automobile insurance and occupational risk insurance, provided that such regulation is consistent with the obligations undertaken in this Agreement, including this Annex.

<sup>23</sup> For purposes of this subclause,

- (a) **services necessary to support global accounts** means that the coverage of a master (global) insurance policy written in a territory other than Costa Rica for a multinational client by an insurer of a Party extends to the operations of the multinational client in Costa Rica; and
- (b) a multinational client is any foreign enterprise majority owned by a foreign manufacturer or service provider doing business in Costa Rica.

- (e) insurance intermediation, provided by brokers and agents outside Costa Rica, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial services.<sup>25</sup>

B. By July 1, 2007:

- (a) Costa Rica shall permit the establishment of representative offices; and
- (b) Article 12.5.1 shall apply 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 in Article 12.20 with respect to:
  - (i) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service;<sup>26</sup>
  - (ii) insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial services;<sup>27</sup> and
  - (iii) surplus lines.<sup>28</sup>

C. For Costa Rica, Article 12.5.1 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 in Article 12.20 with respect to insurance services.

## 2. Right of Establishment for Insurance Providers

Costa Rica shall, on a non-discriminatory basis, allow insurance service suppliers of any Party, to establish and effectively compete to supply directly to the consumer insurance services in its territory as provided below:

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<sup>24</sup> This clause applies only to the lines of insurance set out in III.1.A.(ii)(a), (b), and (c).

<sup>25</sup> This clause applies only to the lines of insurance set out in III.1.A.(ii)(a), (b), and (c).

<sup>26</sup> This clause applies to all lines of insurance.

<sup>27</sup> This clause applies to all lines of insurance.

<sup>28</sup> Surplus lines of insurance means lines of insurance (products covering specific sets of risks with specific characteristics, features, and services) that meet the following criteria:

- (a) lines of insurance other than those that INS supplies as of the date of signature of this Agreement, or lines of insurance that are substantially the same as such lines; and
- (b) that are sold either (i) to customers with premiums in excess of 10,000 U.S. dollars per year, or (ii) to enterprises, or (iii) to customers with a particular net worth or revenues of a particular size or number of employees.

As of January 1, 2008, surplus lines shall be defined as insurance coverage not available from an admitted company in the regular market.

- (a) any and all lines of insurance<sup>29</sup> (except compulsory automobile and occupational risk insurance), no later than January 1, 2008; and
- (b) any and all lines of insurance, no later than January 1, 2011.

For purposes of this commitment Costa Rica shall allow insurance service suppliers to be established through any juridical form, as provided in Article 12.4(b). It is understood that Costa Rica may establish prudential solvency and integrity requirements, which shall be in line with comparable international regulatory practice.

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<sup>29</sup> For greater certainty, social security services referred to in the first, second, and third paragraphs of article 73 of the *Constitución Política de la República de Costa Rica* and provided by the *Caja Costarricense de Seguro Social* as of the date of signature of this Agreement are not subject to any commitment included in this Annex.

### Annex 12.9.3

#### Additional Information Regarding Financial Services Measures

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

#### Section A: Costa Rica

Administrators of pension funds can invest up to 25 per cent of the equity of the fund in securities issued by foreign financial institutions. This limit can be increased up to 50 per cent, provided that real yields of investments of the complementary pension regime are equivalent or lower than international yields.

#### Section B: The Dominican Republic

##### *Banking Services and Other Financial Services (Insurance Excluded)*

##### 1. Multipurpose Banks and Credit Entities

- (a) In conformity with the *Ley Monetaria y Financiera*, No. 183-02, November 21, 2002, authorization for the operation of multipurpose banks (commercial banks) and credit entities (savings and credit banks and credit corporations) requires the presentation before the *Junta Monetaria* of an opinion of the *Superintendencia de Bancos* based on documents presented by the applicant entity. The *Junta Monetaria* may authorize the establishment of subsidiaries as well as branch offices, provided there is adequate coordination and exchange of information with the supervising authorities of the country of origin.
- (b) Under no circumstances shall preferred shares grant their holders a greater voting right than common shares, nor shall holders of preferred shares collect dividends in advance of or independently from the results of the business year.
- (c) For the purposes of opening a new entity, documentation establishing the existence and origin of the amount contributed shall be presented before the *Superintendencia de Bancos*. Such amount shall be temporarily deposited in the *Banco Central* for the execution of the initial investment plan and may be used to pay for the acquisition of fixed assets and the necessary expenses of facilities and initiation of operations.
- (d) Multipurpose banks (commercial banks) and credit entities are not allowed to decrease their paid-up capital without previous authorization of the *Superintendencia de Bancos*. The payment of dividends is subject to compliance with the requirements established by the *Junta Monetaria*.

- (e) Savings and Credit Banks may only contract obligations abroad and grant loans in foreign currency with the prior authorization of the *Junta Monetaria*.
- (f) Representative offices of foreign banks not located in the territory of the Dominican Republic may not perform financial intermediation activities.

2. Exchange Agents

A prior authorization from the *Junta Monetaria* is needed to act as an Exchange Agent.

3. Securities and Goods Exchanges

- (a) All commodities exchanges must receive prior approval from the *Consejo Nacional de Valores*.
- (b) Securities intermediaries must be authorized to operate by the *Superintendencia de Valores*.
- (c) Securities Exchanges shall be represented in securities negotiations by natural persons known as securities brokers who are holders of a credential granted by the corresponding exchange and registered in the securities market. To register in the *Registro del Mercado de Valores*, securities and individuals must comply with Law No. 19-00. Exchanges shall be allowed to sell or rent the right to operate in an exchange, with the previous approval of the corresponding exchange and the *Superintendencia de Valores*.
- (d) Securities intermediaries existing before Law No. 19-00 went into effect, that are members of commodities exchanges and engage solely in the trading of commodities (securities representatives for commodities), must comply with the requirements of the law no later than five years from the date it went into effect.

*Services of Insurance and Reinsurance*

4. According to *Ley sobre Seguros y Fianzas en la República Dominicana*, No.146-02, July 22, 2001, a foreign enterprise that wishes to or has the intention of operating in the insurance business, the reinsurance business, or both, within the Dominican Republic must formulate its request to the *Superintendencia de Seguros*, expressing the fields in which it intends to operate in the Dominican Republic, attaching the following documents:

- (a) certification regarding the enterprise's domiciles, that of its head office, and the domicile in the Dominican Republic, which must be previously established;
- (b) the profit and loss general statement of its operations during the past five years, duly approved according to the insurance legislation of the country of origin;
- (c) certification of the names and nationalities of the senior managers or directors;



- (d) copy of the proxy given to the legal representative in the Dominican Republic;
- (e) certification of the State or Government entity in charge of the operations performed by the insurance enterprise or enterprises in which their head office or head offices are located; and
- (f) certification of the agreement or agreements taken by the competent authority of the enterprise stating the decision to extend its business to the Dominican Republic, and that it shall be responsible for its obligations, whether derived from its operations in the Dominican Republic or from the law, with both the goods it owns in the territory of the Dominican Republic, and also with the goods it has in other countries as far as the laws of such countries allow; and that it will submit to the laws and courts of the Dominican Republic, expressly renouncing all rights that might oppose them. This certification must be translated into Spanish and be duly processed so that it is fully valid in the Dominican Republic.

5. Applications for insurance, policies, certificates, provisional warrants, modifications or endorsements, renewal certificates, and other documents related to insurance contracts, as well as performance bonds, should be written in plain and simple Spanish for ease of understanding.

*Reinsurance Located in the Territory of Another Party*

6. The *Superintendencia de Seguros* will communicate to the applicant within a period not to exceed 30 days, its decision with regard to the required authorization. If, after this period, the *Superintendencia de Seguros* has not reached a decision to this effect, it will be understood that no objection exists to consider the applicant entity as an accepted reinsurer.

*Pensions*

7. In conformity with *Ley que Crea el Sistema Dominicano de Seguridad Social*, No. 87-01 May 9, 2001, the resources of the pension funds must be invested exclusively in the territory of the Dominican Republic. Foreign investments in this sector are subject to special rules issued by the *Consejo Nacional de Seguridad Social*.

### **Section C: El Salvador**

With regard to banking:

- (a) Holding companies and other foreign financial institutions are subject to consolidated supervision in accordance with relevant international practice. The *Superintendencia del Sistema Financiero*, subject to the opinion of the *Banco Central*, shall issue instructions for determining eligible institutions.

- (b) Banks and other foreign financial institutions must satisfy requirements of prudential regulation and supervision in their countries of origin in accordance with relevant international practice.
- (c) To be authorized to establish a branch in El Salvador, a foreign bank must meet the following criteria:
  - (i) *Establishment:* To obtain the authorization to establish a branch, a foreign bank must:
    - (A) prove that its head office is legally established in accordance with the laws of the country where it is constituted, that such country subjects the bank to prudential regulation and surveillance in accordance with international usage on the issue, and that it is classified as a first-rate bank by an internationally recognized risk rating company;
    - (B) prove that under the laws of the country where it is constituted and its own regulations, it can approve the establishment of branches, agencies, and offices that satisfy the requirements established by the *Ley de Bancos* and that both the head office and the government authority in charge of oversight of this entity in such country have appropriately authorized the entity's operation in El Salvador;
    - (C) agree to maintain permanently in El Salvador at least one representative with full powers to perform all activities and contracts to be entered into and executed in El Salvador. The power must be granted clearly and precisely so as to bind the represented entity, so that it is wholly responsible in the country and internationally for all actions taken and contracts signed in El Salvador and so that it satisfies all the requirements established under the laws of El Salvador and the laws of the country where the foreign entity is constituted;
    - (D) agree to locate and maintain in El Salvador the amount of capital and capital reserves that the *Ley de Bancos* requires of El Salvador banks;
    - (E) certify that it has been in operation for at least five years and that the results of its operations have been satisfactory, based on reports of the oversight entity in the country where the foreign bank is constituted and of internationally recognized risk rating companies; and

- (F) expressly submit to the laws, courts, and authorities of El Salvador, with regard to the acts it performs and the contracts it signs, or those that have effect in El Salvador.
- (ii) In such cases, the *Superintendencia del Sistema Financiero* shall sign cooperation memoranda with the regulatory agency of the country where the investing entity is established.
- (iii) Foreign banks authorized to operate in El Salvador shall be subject to inspection and oversight by the *Superintendencia del Sistema Financiero*, shall enjoy the same rights and privileges, and will be subject to the same laws and standards that apply to domestic banks.

#### **Section D: Honduras**

1. Banking and savings and loan associations may not provide credits to natural persons or juridical persons domiciled abroad unless the *Banco Central de Honduras* authorizes the credits.
2. A branch of a foreign bank is not required to have its own Board of Directors or Administrative Council, but must have at least two representatives domiciled in Honduras. Such representatives are responsible for the general direction and administration of the business and have the legal authority to act in Honduras and to execute and to be responsible for the branch's own operations.
3. The founding members of financial institutions organized under the laws of Honduras must be natural persons.
4. The operation, function, servicing, and issuance of any new financial product with a direct and immediate relation to banking or lending must have the approval of the *Comisión Nacional de Bancos y Seguros*.
5. Shares in a foreign investment fund may be marketed in the territory of Honduras only if there is a reciprocity agreement at the government level or at the level of the relevant supervisory authorities of the country of origin of the investment fund and the country in which its shares are marketed.
6. Corporations that classify risk and choose to organize under Honduran law must be constituted as *sociedades anónimas* and must have in Honduras a permanent legal representative with a power of attorney sufficiently broad to undertake any legal act needed for the supply of risk classification services in Honduras.

## Section E: Nicaragua

1. 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 another Party has denied or cancelled an operating license to such financial institution or group.
2. To maintain a branch in 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 Nicaragua; and
  - (c) assign the branch capital that meets minimum requirements.

Such a branch must have its domicile in Nicaragua.

3. To maintain a branch in 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 Nicaragua by such institution;
  - (c) assign such branch capital meeting the minimum requirements; and
  - (d) in the case of a FONCITUR, the capital and all of the funds of the FONCITUR must be invested in Nicaragua, in projects registered with the *Instituto Nicaragüense de Turismo*.

Such a branch must have its domicile in 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 a *Fondo de Capital de Inversión Turística*.

5. A representative office of a foreign bank may place funds in 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 Nicaragua.

6. The administrator of a pension fund may invest abroad a maximum of 30 percent of the assets of the fund. However, the *Superintendencia de Pensiones* reserves the right to vary the investment limits applicable to pension funds administrators at the foreign and national level.

## Annex 12.16.1

### Financial Services Committee

The authority of each Party responsible for financial services is:

- (a) in the case of Costa Rica, the *Consejo Nacional de Supervisión del Sistema Financiero* (CONASSIF) and the *Ministerio de Comercio Exterior* for banking and other financial services and for insurance;
- (b) in the case of the Dominican Republic, the *Banco Central de la República Dominicana* in consultation with the *Superintendencia de Bancos*, the *Superintendencia de Seguros*, the *Superintendencia de Valores*, and the *Superintendencia de Pensiones*, as appropriate,
- (c) in the case of El Salvador, the *Ministerio de Economía*, in consultation with the corresponding competent authority (*Superintendencia del Sistema Financiero*, *Superintendencia de Valores*, *Superintendencia de Pensiones* and the *Banco Central de Reserva*);
- (d) in the case of Guatemala, the *Superintendencia de Bancos* for banking and other financial services, the *Ministerio de Economía* for insurance and securities, and any other institutions approved by those authorities to participate within the Financial Services Committee;
- (e) in the case of Honduras, the *Banco Central de Honduras*, the *Comisión Nacional de Bancos y Seguros*, and the *Secretaría de Estado en los Despachos de Industria y Comercio*;
- (f) in the case of Nicaragua, the *Ministerio de Fomento, Industria y Comercio*, the *Superintendencia de Bancos y otras Instituciones Financieras*, the *Superintendencia de Pensiones*, and the *Ministerio de Hacienda y Crédito Público*, for banking and other financial services and for insurance; and
- (g) in the case of the United States, the Department of Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance,

or their successors.