

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 11.11 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.
 - (b) Section B (Investor-State Dispute Settlement) of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 10.7 (Expropriation and Compensation), 10.8 (Transfers), 10.12 (Denial of Benefits), or 10.14 (Special Formalities and Information Requirements), 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. Annex 12.1.3(a) sets out the Parties' understanding with respect to certain activities or services described in subparagraph 3(a).

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 autonomously;
- (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 or investors of another Party seeking to establish such institutions, 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,¹ 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.

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.

¹ This clause does not cover measures of a Party that limit inputs for the supply of financial services.

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 Services²

Each Party shall permit a financial institution of another Party established in its territory 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. A Party may not require financial institutions of another Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
- 2. A Party may not 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:

² The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. Such 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.

- (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 Section A of its Schedule to Annex III (Non-Conforming Measures),
 - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III (Non-Conforming Measures), or
 - (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 12.8.³

2. 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 Section B of its Schedule to Annex III.

3. 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), or 11.3 (Most-Favored-Nation Treatment) does not apply shall be treated as a non-conforming measure not subject to Article 12.2 or 12.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the non-conforming measure is covered by this Chapter.

Article 12.10: Exceptions

1. Notwithstanding any other provision of this Chapter or Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,⁴ 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

³ 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 the Agreement, with Article 12.5.

⁴ 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.

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 Chapter Ten (Investment), Fourteen (Telecommunications), or Fifteen (Electronic-Commerce), including specifically Articles 14.16 (Relationship to Other Chapters), and 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit 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 and Administration of Certain Measures

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 their ability to gain access to and operate in another Party's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 19.2.2, 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 the purpose of the regulations; and

- (b) provide interested persons and Parties a reasonable opportunity to comment on the proposed regulations.
4. 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.⁵
5. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.
6. 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.
7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.
8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.
9. 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.
10. 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.
11. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.
12. Annex 12.11 sets out the Parties' understanding with regard to certain provisions of this Article.

⁵ For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them in a separate document from that setting forth the final regulations.

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 its territory, 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: Expedited Availability of Insurance Services

1. The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.
2. Annex 12.14 sets out certain commitments of the Parties with regard to the expedited availability of insurance services.

Article 12.15: Specific Commitments

Annex 12.15 sets out certain specific commitments by each Party.

Article 12.16: Financial Services Committee

1. The Parties hereby establish a Financial Services Committee (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.
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 (Dispute Settlement) of Chapter Twenty-One (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. When a Party claims that a dispute arises under this Chapter, Article 21.9 (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 21.8 (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 agree otherwise.
3. 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, a disputing Party; and
- (d) comply with the code of conduct to be established by the Commission.

4. Notwithstanding Article 21.15 (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 a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
- (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.

Article 12.19: Investment Disputes in Financial Services

1. Where an investor of a Party submits a claim to arbitration under Section B of Chapter Ten, (Investor-State Dispute Settlement) and the respondent invokes Article 12.10 as a defense, the following provisions shall apply:

- (a) The respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter Ten (Investor-State Dispute Settlement), submit in writing to the authorities responsible for financial services for the respondent and for the Party of the claimant, as set out in Annex 12.16.1, a request for a joint determination on the issue of whether and to what extent Article 12.10 is a valid defense to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d).
- (b) If a non-disputing Party other than the Party of the claimant considers that it has a substantial interest in the joint determination, such non-disputing Party may request that its authorities responsible for financial services, as set out in Annex 12.16.1, be included in any consultations held with a view to making that determination. They shall be included in such consultations if the respondent and the Party of the claimant agree that the claim of substantial interest is well founded. Where the substantial interest of the non-disputing Party is based on ownership or control of the claimant by a person of the non-disputing Party, the substantial interest shall be deemed to be well founded.
- (c) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph. Any such joint determination shall be transmitted promptly to the disputing parties, the Financial Services Committee, and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal.

- (d) If the authorities referred to in subparagraph (a), within 60 days of the date by which they have received the respondent's written request for a joint determination under that subparagraph, have not made a joint determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the authorities. The provisions of Section B of Chapter Ten (Investor-State Dispute Settlement) shall apply, except as modified by this subparagraph.
 - (i) In the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 12.18.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator.
 - (ii) If, prior to the submission of the request for a joint determination in conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 10.19.2, such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with subparagraph (d)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (e), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on the request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (d)(i).
 - (iii) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 12.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 12.10 not inconsistent with that of the respondent.
- (e) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:
 - (i) 10 days after the date the joint determination has been received, in accordance with subparagraph (c), by the disputing parties, the Committee, and, if constituted, the tribunal, or
 - (ii) 10 days after the expiration of the 60-day period extended to the authorities in subparagraph (d).

2. For purposes of this Article, the definitions of the following terms set out in Article 10.28 (Definitions) are incorporated, *mutatis mutandis*: disputing parties, disputing party, respondent, and Secretary-General.

Article 12.20: Definitions

For purposes of this Chapter:

claimant means an investor of a Party that is a party to an investment dispute with another Party;

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, 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 for purposes of Chapter Ten (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 another Party; provided, however, that a natural person who is a dual citizen shall be deemed to be exclusively a citizen 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 1.3 (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; for greater certainty, a public entity⁶ shall not be considered a

⁶ The Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

designated monopoly or a state enterprise for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises); 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; for greater certainty, a self-regulatory organization shall not be considered a designated monopoly for purposes of Chapter Thirteen (Competition Policy, Designated Monopolies, and State Enterprises).

Annex 12.1.3(a)

Understanding Concerning Article 12.1.3(a)

1. The Parties understand that this Chapter applies to measures adopted or maintained by a Party relating to activities and services described in Article 12.1.3(a) only to the extent that a Party allows its financial institutions to supply such activities and services in competition with a public entity or a financial institution. The Parties further understand that this Chapter does not apply to such measures: (a) to the extent that a Party reserves such activities and services to the government, a public entity, or a financial institution and they are not supplied in competition with another financial institution, or (b) relating to those contributions with respect to which the supply of such activities or services is so reserved.

2. For greater certainty, with respect to the activities or services referred to in Article 12.1.3(a), the Parties recognize that the taking of any of the following actions is not inconsistent with this Chapter.

A Party may:

- (a) designate, formally or in effect, a monopoly, including a financial institution, to supply some or all activities or services;
- (b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity, or a designated monopoly;
- (c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services supplied by an entity other than the government, a public entity, or a designated monopoly; and
- (d) require that some or all activities or services be supplied by financial institutions located within the Party's territory. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For purposes of this Annex, "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in Article 12.1.3(a).

Annex 12.5.1

Cross-Border Trade

United States

Insurance and Insurance-Related Services

1. 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 in Article 12.20 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 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 in Article 12.20.

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to insurance services.

Banking and Other Financial Services (Excluding Insurance)

3. Article 12.5.1 applies only 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,⁷ and advisory and other auxiliary financial services,⁸ excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.⁹

⁷ It is understood that, where the financial information or financial data processing referred to in paragraph 3 of this annex involves personal data, the treatment of such personal data shall be in accordance with the United States' law regulating the protection of such data.

⁸ It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

⁹ It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

Colombia

Insurance and insurance-related services

1. 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 in Article 12.20 with respect to:

- (a) insurance of risks relating to:
 - (i) international maritime shipping, international 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) consultancy, risk assessment, actuarial and claims settlement services; and
- (d) brokerage of insurance risks relating to subparagraphs (a) and (b).

2. Article 12.5.1 applies to the cross-border supply of or trade in financial services as defined in paragraph (c) of the definition of cross-border supply of financial services in Article 12.20 with respect to services listed in paragraph 1 above.

3. Colombia's commitments in paragraphs 1 and 2 with regard to insurance risks described in subparagraphs 1(a)(i) and (ii) and brokerage of such insurance risks shall become effective four years after the entry into force of this Agreement or when Colombia has adopted and implemented the necessary modifications to its relevant legislation, whichever occurs first.

Banking and other financial services (excluding insurance)

4. Article 12.5.1 applies only with respect to:

- (a) provision and transfer of financial information as referred to in subparagraph (o) of the definition of financial service in Article 12.20;
- (b) financial data processing¹⁰ and related software as referred to in subparagraph (o) of the definition of financial service in Article 12.20;¹¹ and

¹⁰ It is understood that, where the financial information or financial data processing referred to in subparagraphs (a) and (b) of this annex involve personal data, the treatment of such personal data shall be in accordance with Colombian law regulating the protection of such data.

- (c) advisory and other auxiliary financial services,¹² 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 in Article 12.20.

5. Notwithstanding subparagraph 4(c), in the event that, after the date of entry into force of this Agreement, Colombia allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2.3) to cross-border financial service suppliers of the other Parties. Nothing in this commitment shall be construed to prevent Colombia from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

¹¹ It is understood that a trading platform, whether electronic or physical, does not fall within the range of services specified in paragraph 3.

¹² It is understood that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 12.20.

Annex 12.14

Expedited Availability of Insurance Services

United States

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.

Colombia

Colombia shall endeavor to maintain existing procedures or may consider adopting measures such as not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable time; and not imposing limitations on the number or frequency of product introductions.

Annex 12.15

Specific Commitments

United States

Portfolio Management

1. The United States shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:¹³
 - (a) investment advice; and
 - (b) portfolio management services, excluding:
 - (i) custodial services, unless they are related to managing a collective investment scheme,
 - (ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust, and
 - (iii) execution services, unless they are related to managing a collective investment scheme.¹⁴
2. Paragraph 1 is subject to Articles 12.1 and 12.5.3.
3. For purposes of paragraphs 1 and 2, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

Insurance Company Branches

4. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-U.S. insurance company as a branch to supply life, accident, health (excluding workers compensation) insurance, non-life insurance, or

¹³ Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

¹⁴ Custodial and trustee services are included in the scope of this specific commitment only with respect to investments for which the primary market is outside the United States.

reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

Colombia¹⁵

A. Specific Commitment Regarding Portfolio Management

1. Not later than four years after the entry into force of the Agreement, Colombia shall allow a financial institution organized either inside or outside its territory to provide the following services to a collective investment scheme located in its territory:¹⁶

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

2. This commitment is subject to Article 12.1 and to Article 12.5.3.

3. For purposes of this commitment, **collective investment scheme** means:

- (i) a *fondo común ordinario* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria* (subparagraphs 3 and 4 of paragraph 2, Article 29 of the *Estatuto Orgánico del Sistema Financiero*);

¹⁵ The Parties understand that Colombia is committed to opening its financial services sector gradually, pursuant to the provisions of this Chapter, in a manner that benefits consumers and is based on prudential regulation, and in accordance with the provisions of Colombia's Political Constitution, including the provisions set forth in Article 13 thereof.

¹⁶ Notwithstanding paragraph 1, a Party may require a collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme, including the assets of the collective investment scheme.

- (ii) a *fondo común especial* organized in accordance with the provisions of the *Estatuto Orgánico del Sistema Financiero* and managed by a trust company (paragraph 6, Article 146 of the *Estatuto Orgánico del Sistema Financiero*);
- (iii) a *fondo de valores* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad comisionista de bolsa* (Article 7, subparagraph (g) of Law 45 of 1990 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*);
- (iv) a *fondo de inversión* organized in accordance with regulations pertaining to the market for public securities and managed by a *sociedad administradora de inversión* (Decree 384 of 1980 and Title 4 of Resolution 400 of 1995 issued by the *Superintendencia de Valores*); and
- (v) a *fondo voluntario de pensiones de jubilación e invalidez*, organized in accordance with the provisions of Article 169 of the *Estatuto Orgánico del Sistema Financiero* and managed by a *sociedad fiduciaria*, an insurance company, a *Sociedad Administradora de Fondos de Pensiones y de Cesantía*, or a *Sociedad Administradora de Fondos de Cesantía* (in accordance with Articles 29(h), 183(3), and 30(1) of the *Estatuto Orgánico del Sistema Financiero*, respectively).

B. Establishment of Bank Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for banking services, no later than four years after the entry into force of this Agreement, Colombia will allow banks of another Party to establish in its territory by way of branches.
2. For that purpose, Colombia may require that the capital assigned to the branches of banks of another Party in Colombia be effectively brought into Colombia and converted into local currency, in accordance with Colombian law. The operations of branches of banks of another Party shall be limited by the capital assigned and brought into Colombia.
3. For greater certainty, Colombia may choose how to regulate branches of banks of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.¹⁷

¹⁷ The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

- (a) require branches to comply with the same obligations currently required or that may be required in the future of banks established under Colombian law;

C. Establishment of Insurance Company Branches

1. Notwithstanding the inclusion of the non-conforming measures of Colombia in Section B of Annex III, in relation to Article 12.4 for insurance services, no later than four years after the entry into force of this Agreement, Colombia will allow insurance companies of another Party to establish in its territory by way of branches.

2. For greater certainty, Colombia may choose how to regulate branches of insurance companies of another Party, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves,¹⁸ and obligations regarding risk patrimony

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- (b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular bank of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that bank;
 - (c) require a bank that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;
 - (d) require that the acts undertaken and contracts entered into in Colombia by branches of banks of another Party established in Colombia be subject to Colombian law and authorities;
 - (e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; and responsibility vis-à-vis local creditors;
 - (f) require that any subsequent capitalization have the same treatment as the branch's initial capital;
 - (g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;
 - (h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and
 - (i) allow branches established in Colombia to make transfers of their net profits, provided that no deficiencies arise in the solvency margin and other capital requirements contemplated in local regulations.

¹⁸ In accordance with Decreto 2779 of 2001, an insurance company established in Colombia may currently invest up to thirty percent of the value of its portfolio that corresponds to its technical reserves in instruments issued or guaranteed by foreign entities identified in that decree, such as fixed income securities (i) issued or guaranteed by a foreign government or foreign central bank, if the sovereign debt of the country is rated as investment grade; (ii) issued or guaranteed by a multilateral credit organization; (iii) issued by foreign non-banking entities; or (iv) guaranteed or accepted by commercial banks or investment banks, but in the case of clauses (iii) and (iv), only if the issuer is located in a country the sovereign debt of which is rated as investment grade.

and their investments.¹⁹

¹⁹ The Parties understand that, for this purpose, Colombia may establish the following requirements, among others:

- (a) require branches to comply with the same obligations currently required or that may be required in the future of insurance companies established under Colombian law;
- (b) ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular insurance company of another Party from that Party's financial supervisory or regulatory authorities before permitting the establishment of a branch by that insurance company;
- (c) require an insurance company that seeks to establish through a branch to demonstrate that it fulfills the regulatory and prudential supervision requirements in its country of origin, in accordance with international practices;
- (d) require that the acts undertaken in Colombia and contracts entered into in Colombia by branches of insurance companies of another Party established in Colombia be subject to Colombian law and authorities;
- (e) issue regulations for the branches referred to in this section, which may relate to the following aspects of their operation, among others: the licensing regime; accounting; the responsibility of administrators; the authorized operations, including operations with the central bank; responsibility vis-à-vis local creditors;
- (f) require that any subsequent capitalization or reserve increase have the same treatment as the branch's initial capital and reserves;
- (g) require that, for the purposes of transactions between a branch established in Colombia and its parent company or other related companies, each one of these entities be considered as an independent institution and that, without prejudice to the foregoing, a financial institution of another Party be liable for the obligations contracted by its branch in Colombia;
- (h) require the owners and representatives of branches established in Colombia to comply with the solvency and moral integrity requirements established by law in Colombia that must be complied with by the shareholders of financial entities organized in Colombia; and
- (i) allow branches established in Colombia to make transfers of their net profits, provided that there is no deficit in the investment of their technical reserves that could constitute a breach of their contractual obligations, nor a deficit in their solvency margin or technical reserves that constitutes insufficient coverage from the claims rate deviation reserve and other risks that may arise in their operation, nor a deficit in other capital requirements contemplated in local regulations.

D. Cross-Border Consumption of Insurance and Insurance-Related Services

No later than four years after the entry into force of this Agreement, Colombia will allow, in accordance with Article 12.5.2, persons located in its territory, and its nationals wherever located, to purchase any insurance service²⁰ from cross-border financial service suppliers of another Party located in the territory of that other Party or of any other Party²¹, except for the following services:²²

- (a) those insurance services the purchase of which is mandatory under Colombian law;
- (b) those insurance services the purchase of which is prohibited under Colombian law prior to purchase of insurance services described in subparagraph (a) or participation in Colombia's social security system; and
- (c) all insurance services, when the policy holder, insured, or beneficiary is a Colombian government ministry, department, or agency (*entidad del Estado*).

E. Pension Fund Managers

Notwithstanding the non-conforming measure of Colombia in Annex II referring to social services, and subject to Article 12.1, including Annex 12.1.3(a), Colombia shall, with regard to *Sociedades Administradoras de Fondos de Pensiones y Cesantías*, *Sociedades Administradoras de Fondos de Pensiones*, and *Sociedades Administradoras de Fondos de Cesantías* (collectively, "SAFPs"):²³

²⁰ For greater certainty, policies covered by paragraphs (a) and (b) of the definition of financial service in Article 12.20 (Definitions) are financial instruments, consistent with the meaning of financial instruments in Article 12.5.3 (Cross-Border Trade).

²¹ For greater certainty, Colombia may, as permitted under Article 12.5.3, require cross-border financial service suppliers to provide information such as the aggregate value of premiums paid to them by persons resident in Colombia.

²² For greater certainty, the Parties understand that Colombia may, in accordance with subparagraph 4 of Annex 12.1.3(a), prohibit the purchase from insurance companies not established in Colombia of insurance services, including all types of lifetime annuities (*renta vitalicia*), death and disability insurance (*previsionales de invalidez y sobrevivencia*), and workers compensation insurance (*riesgos profesionales*), to the extent these services are described in Article 12.1.3(a).

²³ This commitment shall also apply with regard to any successor to SAFPs, in the context of the modification or adoption by Colombia of a privatized or partially privatized retirement plan or social security system. For greater certainty, this specific commitment applies only with regard to measures within the scope of this Chapter, as specified in Articles 12.1, including Annex 12.1.3 (a).

(1) extend the obligations of Articles 12.2.1 and 12.2.2 to the supply by SAFPs that are financial institutions of another Party established in Colombia of those activities and services described in Article 12.1.3(a) that are not reserved for supply by the government of Colombia, a public entity, or a financial institution;

(2) adopt or maintain no measure that imposes limitations on the number of SAFPs in the form of either numerical quotas or the requirements of an economic needs test, with respect to investors of another Party seeking to establish SAFPs to supply those activities and services referred to in paragraph 1;

(3) no later than four years after entry into force of the Agreement, permit SAFPs to subcontract to financial institutions of another Party established in Colombia the services described in Annex 12.15(A)(1)(a)-(b) (Specific Commitment Regarding Portfolio Management);

(4) no later than four years after entry into force of the Agreement, and subject to Articles 12.1 and 12.5.3, permit a financial institution organized under the laws of the United States to provide to an SAFP, with respect to those assets, if any, that are permitted under relevant Colombian law to be invested outside the territory of Colombia, (i) investment advice; (ii) execution services in fulfillment of instructions from the SAFP, to the extent required by and consistent with Colombian law; and (iii) custodial services, if applicable law does not permit those assets to be held within the territory of Colombia.²⁴

²⁴ Nothing in paragraph 4 of this specific commitment requires Colombia to permit a financial institution organized under the laws of the United States to make investment or other management decisions regarding the investment portfolio of an SAFP or to hold custody of the assets of an SAFP absent execution instructions from the SAFP.

Annex 12.16.1

Financial Services Committee

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services is:

- (a) for Colombia, the Ministry of Finance and Public Credit (*Ministerio de Hacienda y Crédito Público*), in coordination with the Ministry of Commerce, Industry and Tourism (*Ministerio de Comercio, Industria y Turismo*) and the Bank of the Republic (*Banco de la República*); and
- (b) for the United States, the Department of the 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.

UNDERSTANDINGS REGARDING FINANCIAL SERVICES AND SERVICES MEASURES

November 22, 2006

The Governments of the United States of America and the Republic of Colombia confirm the following understandings regarding the United States - Colombia Trade Promotion Agreement signed this day (the “Agreement”) and confirm that these understandings constitute an integral part of the Agreement. For greater certainty,

- (a) nothing in Article 12.6 (New Financial Services) of the Agreement prohibits a Party from requiring the issuance of a decree, resolution, or regulation by the executive branch, regulatory agencies, or central bank, in order to authorize new financial services not specifically authorized in its law;
- (b) a Party may adopt excise or other taxes levied on cross-border services to the extent such taxes are consistent with Articles 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), 12.2, and 12.3, subject to Article 22.3 (Taxation) of the Agreement;
- (c) with respect to cross-border trade in financial services, and without prejudice to other means of prudential regulation, a Party may require the authorization of cross-border financial service suppliers of another Party and of financial instruments;
- (d) a Party may apply solvency and integrity requirements to branches of insurance companies of another Party established in its territory, including measures requiring that capital assigned to a branch and technical reserves be effectively brought into the Party’s territory and converted into local currency, in accordance with the Party’s law; and
- (e) without limiting the other applications or meaning of Article 12.10.2, including its final sentence, Article 12.10.2 permits a Party to apply non-discriminatory exchange rate regulations of general application to the acquisition by its residents of financial services from cross-border financial service suppliers.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF COLOMBIA:
