

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 the other Party;
 - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
 - (c) cross-border trade in financial services.
2. Chapters 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 10.6 (Expropriation and Compensation), 10.7 (Transfers), 10.10 (Investment and Environment), 10.11 (Denial of Benefits), 10.13 (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 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 Articles 10.6 (Expropriation and Compensation), 10.7 (Transfers), 10.11 (Denial of Benefits), or 10.13 (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 subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

ARTICLE 12.2: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.
2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. For purposes of the national treatment obligations in Article 12.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

ARTICLE 12.3: MOST-FAVORED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.
2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
 - (a) accorded unilaterally;
 - (b) achieved through harmonization or other means; or
 - (c) based upon an agreement or arrangement with the non-Party.
3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the 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 the other 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

Neither Party may adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party in 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 requirement 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 the other Party to supply the services specified in Annex 12-A.
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 the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

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

ARTICLE 12.6: NEW FINANCIAL SERVICES²

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the new financial service does not require the Party to adopt a new law or modify an existing law.
2. 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 would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

ARTICLE 12.7: TREATMENT OF CERTAIN INFORMATION

Article 21.5 (Disclosure of Information) does not apply to this Chapter. Nothing in this Chapter shall be construed to require 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. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

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

² The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied in neither Party's territory. 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.

- (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III;
 - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; 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 Articles 12.2, 12.3, 12.4, or 12.8.
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 set out in Section B of its Schedule to Annex III.
3. Annex 12-B sets out certain specific commitments by each Party.
4. 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, Article 12.3, or Article 12.4, as the case may be, does not apply, to the extent that the measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

ARTICLE 12.10: EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), or Fourteen (Electronic Commerce), including specifically Article 13.16 (Telecommunications, Relationship to Other Chapters), and Article 11.1 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, neither Party shall be prevented from adopting or maintaining measures for prudential reasons,³ including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall

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

not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters Ten (Investment), Thirteen (Telecommunications), or Fourteen (Electronic Commerce), including specifically Article 13.16 (Telecommunications, Relationship to Other Chapters), and Article 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 policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.8 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment), or under Article 10.7 (Transfers) or Article 11.10 (Transfers and Payments).

3. Notwithstanding Articles 10.7 (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 a 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 that 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, as covered by this Chapter.

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

2. In lieu of Article 18.1.2 (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 the other Party a reasonable opportunity to comment on such proposed regulations.
3. At the time it adopts final regulations of general application relating to the subject matter of this Chapter, each 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 such 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 for responding to inquiries from interested persons regarding measures of general application relating to the subject matter of this Chapter.
7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.
8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

ARTICLE 12.12: SELF-REGULATORY ORGANIZATIONS

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into 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 the other Party 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

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: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Subcommittee on Financial Services.
2. Consultations under this Article shall include officials of the authorities specified in Annex 12-D.
3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.
4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

ARTICLE 12.17: DISPUTE SETTLEMENT

1. Chapter Twenty (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 20.7 (Establishment of Panel) shall apply, except that, unless the Parties agree otherwise, the panel shall be composed entirely of individuals meeting the qualifications in paragraph 3.
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; and
 - (c) meet the qualifications set out in Article 20.7.5(b) and (c) (Establishment of Panel).
4. Notwithstanding Article 20.11 (Non-Implementation), 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 12.18: INVESTOR-STATE DISPUTE SETTLEMENT IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Section B of Chapter Ten (Investor-State Dispute Settlement) against the other Party and the respondent invokes Article 12.10 (Exceptions), on request of the respondent, the tribunal shall refer the matter in writing to the Subcommittee on Financial Services 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 Subcommittee on Financial Services shall decide the issue of whether and to what extent Article 12.10 (Exceptions) is a valid defense to the claim of the investor. The Subcommittee shall transmit a copy of its decision to the tribunal and to the Joint Committee. The decision shall be binding on the tribunal.
3. Where the Subcommittee on Financial Services 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 refer the issue to a panel under Chapter Twenty (Dispute Settlement). The panel shall be constituted in accordance with Article 12.17. The panel shall transmit its final report to the Subcommittee and to the tribunal. The report shall be binding on the tribunal.
4. Where the issue has not been referred to a panel pursuant to paragraph 3 within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. For purposes of this Article, **tribunal** means a tribunal established pursuant to Section B of Chapter Ten (Investor-State Dispute Settlement).

ARTICLE 12.19: DEFINITIONS

For purposes of this Chapter:

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

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

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

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

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

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

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

Insurance and insurance-related services

- (a) Direct insurance (including co-insurance):
 - (i) life,
 - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency; and

- (d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

Banking and other financial services (excluding insurance)

- (e) Acceptance of deposits and other repayable funds from the public;
- (f) Lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, 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;
- (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 10.27 (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 10.27 (Definitions);

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

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

person of a Party means “person of a Party” as defined in Article 1.3 (Definitions) 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-A
CROSS-BORDER TRADE

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 in Article 12.19 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;
- (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 paragraph (c) of the definition of cross-border supply of financial services in Article 12.19 with respect to insurance services.

3. For Morocco, 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 12.19:

- (a) with respect to 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;
 - (ii) goods in international transit; and
 - (iii) brokerage of insurance described in clauses (i) and (ii);

no later than two years after the date of entry into force of this Agreement;
and
- (b) with respect to reinsurance and retrocession and brokerage of reinsurance, upon entry into force of this Agreement.

4. For Morocco, 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 12.19 with respect to insurance services described in paragraph 3 on the dates indicated in paragraph 3.

Banking and other financial services (excluding insurance)

5. 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.

6. For Morocco, 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 and advice on acquisitions and on corporate restructuring and strategy, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.

ANNEX 12-B SPECIFIC COMMITMENTS

United States – Expedited Availability of Insurance

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 welcomes the efforts of the National Association of Insurance Commissioners (“NAIC”) relating to the availability of insurance services as expressed in the NAIC’s “Statement of Intent: The Future of Insurance Regulation,” including the initiatives on speed-to-market intentions and regulatory re-engineering (under Part II of the Statement of Intent).

Morocco – Expedited Availability of Insurance

Morocco reaffirms the transparency, rapidity, and efficiency of its procedures regarding introduction and distribution of products issued by insurance companies in its territory. In particular, Morocco deems any product to be approved unless it is disapproved within 30 days. Morocco imposes no limitations on the number or frequency of product introductions. As part of the work program of the Subcommittee on Financial Services, Morocco will be open to further discussions of the need for continuing review of products other than those sold to individuals (including life insurance), small- or medium-sized businesses, or compulsory insurance.

Morocco – Future Consultation and Implementing Actions Regarding Non-Insurance Financial Services

To follow up on discussions that took place during the negotiation of this Agreement with respect to non-insurance financial services, Morocco and the United States agree as follows:

1. Morocco shall begin consultations, in the context of the Subcommittee on Financial Services, and shall consider liberalizing changes with respect to the following two areas:
 - (a) Morocco’s current requirement that operations of banks incorporated abroad and functioning as branches in Morocco be limited by the amount of capital effectively allocated by those institutions to their operations in Morocco (*dotation en capital*). Morocco and the United States agree that any liberalizing change to this requirement would apply to new bank branches established after the change becomes effective and would not apply in the case of the conversion to a branch by a foreign bank operating through a subsidiary in Morocco, where that subsidiary is systemically

important.⁴ Among possible approaches to liberalizing this requirement, the following two are noted:

- (i) allowing a foreign branch bank to operate based on the capital of its parent company through a multiplying coefficient of the branch's paid-in capital in Morocco, and
 - (ii) allowing a foreign branch bank to operate based on the capital of its parent company, up to an amount that would be limited to the average of total capital of the banks operating in Morocco, as calculated at the end of the prior year.
- (b) Morocco's current prohibition on the holding of non-Moroccan securities by Moroccan mutual funds. Morocco and the United States agree that any such change to this prohibition would be implemented at a pace to be determined. Among possible approaches to liberalizing this prohibition, the following two examples are noted:
- (i) Morocco considers that a possible first step would be to permit five percent of the total amount of securities to be invested in non-Moroccan securities; and
 - (ii) the United States considers that a possible first step would be to permit 25 percent of the total amount of securities to be invested in non-Moroccan securities.

2. Morocco agrees that it will decide, by no later than three years from the date of entry into force of this Agreement, to take action to implement liberalizing changes with respect to one of the above two areas.

⁴ For example, a bank with assets comprising one percent or less of the total assets of the Moroccan banking sector would not be considered systemically important.

ANNEX 12-C
IMPLEMENTATION OF ARTICLE 12.11

The Parties recognize that Morocco's implementation of the obligations of paragraphs 2, 3, and 4 of Article 12.11 may require changes to its process for issuing regulations. Morocco shall implement the obligations of paragraphs 2, 3, and 4 of Article 12.11 no later than two years after the date of entry into force of this Agreement. Morocco shall implement Article 12.11.2 within its constitutional framework.

ANNEX 12-D
AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authority of each Party responsible for financial services is:

- (a) for Morocco, the Ministry of Finance; 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 services.

Washington, D.C.
June 15, 2004

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day.

According to the terms of Article 27 of the Agreement concerning the establishment of the *Societe Africaine de Reassurance* ("Africa Re"), insurance companies established in Morocco must cede five percent of each reinsurance contract to the *Societe Africaine de Reassurance*. The five percent cession applies to the amount of the reinsurance contract after subtracting any mandatory cession to the *Societe Central de Reassurances* ("SCR"). The five percent cession does not apply to "*reassurance facultative*" (optional reinsurance).

As provided in Morocco's schedule to Annex III of the Agreement, Morocco's non-conforming measure pertaining to the SCR shall be phased out under the time frames set forth in that non-conforming measure.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation

Washington, D.C.
June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

I am pleased to receive your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day.

According to the terms of Article 27 of the Agreement concerning the establishment of the *Societe Africaine de Reassurance* ('Africa Re'), insurance companies established in Morocco must cede five percent of each reinsurance contract to the *Societe Africaine de Reassurance*. The five percent cession applies to the amount of the reinsurance contract after subtracting any mandatory cession to the *Societe Central de Reassurances* ('SCR'). The five percent cession does not apply to 'reassurance *facultative*' (optional reinsurance).

As provided in Morocco's schedule to Annex III of the Agreement, Morocco's non-conforming measure pertaining to the SCR shall be phased out under the time frames set forth in that non-conforming measure.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

Washington, D.C.
June 15, 2004

The Honorable Robert B. Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day:

Morocco reserves the right to regulate the treatment of transactions between a branch and its parent company and to hold the branch solely responsible for complying with its commitments towards the insured and complying with laws and regulations in force.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation

Washington, D.C.
June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

I am pleased to receive your letter of today's date, which reads as follows:

“I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day:

Morocco reserves the right to regulate the treatment of transactions between a branch and its parent company and to hold the branch solely responsible for complying with its commitments towards the insured and complying with laws and regulations in force.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.”

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Robert B. Zoellick

Washington, D.C.
June 15, 2004

The Honorable Robert B. Zoellick
United States Trade Representative

The Honorable John B. Taylor
Under Secretary for International Affairs
U.S. Department of the Treasury

Dear Ambassador Zoellick and Mr. Taylor:

I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day:

The Parties acknowledge that branches or agencies of banks of a Party operating in the other Party's territory are subject to the laws of the other Party, notwithstanding the fact that the corporate entities of which they are a part are organized under the law of the Party.

The Parties also confirm their recognition that foreign investment in financial services typically produces numerous benefits, including the expansion and deepening of financial markets and the introduction of innovative practices. In addition, the Parties confirm that they both encourage the creation of opportunities for training, sharing expertise, and development of highly skilled employees.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement.

Sincerely,

Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation

Washington, D.C.
June 15, 2004

The Honorable Taïb Fassi Fihri
Minister Delegate for Foreign Affairs and Cooperation
Kingdom of Morocco

Dear Minister Fassi Fihri:

We are pleased to receive your letter of today's date, which reads as follows:

"I have the honor to confirm the following understanding reached between the delegations of the Kingdom of Morocco and the United States of America in the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day:

The Parties acknowledge that branches or agencies of banks of a Party operating in the other Party's territory are subject to the laws of the other Party, notwithstanding the fact that the corporate entities of which they are a part are organized under the law of the Party.

The Parties also confirm their recognition that foreign investment in financial services typically produces numerous benefits, including the expansion and deepening of financial markets and the introduction of innovative practices. In addition, the Parties confirm that they both encourage the creation of opportunities for training, sharing expertise, and development of highly skilled employees.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an integral part of the Agreement."

We have the further honor to confirm that the understanding referred to in your letter is shared by our Government and constitutes an integral part of the Agreement.

Sincerely,

Robert B. Zoellick
United States Trade Representative

John B. Taylor
Under Secretary for
International Affairs
U.S. Department of the Treasury