

**ANNEX 10-A
NON-CONFORMING MEASURES FOR FINANCIAL SERVICES
SCHEDULE OF TURKEY**

EXPLANATORY NOTES

1. The Schedule of Turkey to this Annex sets out, pursuant to Article 10.6 (Non-Conforming Measures) of Chapter 10 (Financial Services), the reservations taken by Turkey with respect to existing measures that do not conform with some or all of the obligations imposed by:
 - (i) Article 10.3 (National Treatment) of Chapter 10 (Financial Services);
 - (ii) Article 10.4 (Market Access for Financial Institutions) of Chapter 10 (Financial Services); and
 - (iii) Article 10.5 (Cross-Border Trade in Financial Services) of Chapter 10 (Financial Services).
2. All measures affecting Article 10.3 (National Treatment), Article 10.4 (Market Access for Financial Services) and Article 10.5 (Cross-Border Trade in Financial Services) of Chapter 10 (Financial Services) shall be stated in the Description of Reservation element. In the interpretation of a reservation, all elements of the reservations shall be considered in their totality.
3. Each Schedule entry sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made,
 - (b) **Sub-sector** refers to the specific sector for which the entry is made,
 - (c) **Type of Reservation** specifies the obligation(s) referred to in paragraph 1 that, pursuant to paragraph 1(a) of Article 10.6 (Non-Conforming Measures) of Chapter 10 (Financial Services), do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Source of Measure** element of that entry;
 - (d) **Source of Measure**¹ identifies the laws, regulations, rules, procedures, administrative actions or any other form of measure for which the reservation is taken. A measure cited in the **Source of Measure** element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

¹ For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in paragraph 1 of Article 10.6 (Non-Conforming Measures) of Chapter 10 (Financial Services).

(e) **Description of Reservation** sets out the non-conforming measures to which the reservation applies.

4. Whenever, in this Schedule, the supply of services is conditioned upon obtaining authorisation from relevant regulatory authorities, it shall be understood that the authorisation process is non-automatic, requiring a case-by-case evaluation, and the regulatory authorities may exercise discretion over their decisions.
5. References in this Schedule to any enterprise or entity apply as well to any successor enterprise or entity, which shall be entitled to benefit from any listing of a non-conforming measure with respect to that enterprise or entity

1.

Sector	Financial Services
Sub-sector	Insurance and Insurance Related Services/ <i>Insurance and Reinsurance</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4) Cross-Border Trade in Financial Services (Article 10.5)
Source of Measure	Insurance Law No. 5684
Description of Reservation	- Apart from the exceptions specified in the Insurance Law with respect to the provision of insurance and reinsurance services that can be provided on a cross-border basis as set out in NCM #1 in the Schedule of Turkey in Annex 10-B, establishment in the Turkish territory is required for the provision of insurance and insurance-related services. Principles and procedures governing the operation of foreign insurance companies and reinsurance companies in Turkey are determined by the Council of Ministers. - Insurance companies and reinsurance companies have to be established in the form of a joint-stock company or a cooperative to operate in Turkey. Insurance companies and reinsurance companies cannot engage in other business except insurance transactions and businesses which are directly related to insurance operations. - Insurance and reinsurance companies have to obtain a separate licence from the Undersecretariat of Treasury for each different insurance branch in which they would like to operate.

2.

Sector	Financial Services
Sub-sector	Insurance and Insurance Related Services/ <i>Life Insurance</i>
Type of Reservation	National Treatment (Article 10.3) Cross-Border Trade in Financial Services (Article 10.5)
Source of Measure	Income Tax Law No. 193
Description of Reservation	Tax benefits provided to employers and wage earners by way of deduction of a certain percentage of life insurance premiums from gross income can only be provided when the life insurance policies are underwritten by insurance companies established in Turkey or branches of foreign insurance companies established in Turkey.

3.

Sector	Financial Services
Sub-sector	Insurance and Insurance Related Services/ <i>Insurance Intermediaries, Insurance Loss Adjusters</i>
Type of Reservation	National Treatment (Article 10.3) Market Access for Financial Institutions (Article 10.4) Cross-Border Trade in Financial Services (Article 10.5)
Source of Measure	Insurance Law No. 5684 Regulation on Insurance Agencies Regulation on Insurance Loss Adjusters Regulation on Insurance and Reinsurance Brokers
Description of Reservation	- The Council of Ministers is authorised to take measures relating to the activities of foreign insurance agents in Turkey and the intermediation activities in Turkey by Turkish agents on behalf of foreign insurance companies. - Juridical person agencies shall be established in Turkey in the form of a joint-stock or limited liability company. - Natural person agencies and agency managers of juridical person agencies shall reside in Turkey. - Principles and procedures relating to foreign loss adjusters are determined by the Council of Ministers. - Natural person insurance loss adjusters shall reside in Turkey. - Juridical person insurance loss adjusters shall be established in Turkey. - Natural person insurance brokers shall reside in Turkey. - Juridical person insurance brokers shall be established in Turkey in the form of a joint-stock or limited-liability company. - The general manager and the deputy managers responsible for technical departments shall reside in Turkey both for the natural person and juridical person insurance brokers. - Brokers that are established in foreign countries shall engage in insurance brokerage activities only by means of opening branches in Turkey. Residency requirements stipulated above apply for branches as well.

4.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance); <i>Banking</i>
Type of Reservation	National Treatment (Article 10.3) Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Banking Law No. 5411, - Regulation on Operations of Banks Subject to Permission and Indirect Shareholding - Regulation On Internal Systems Of The Banks and ICAAP
Description of Reservation	- Establishment of a bank or opening the first branch of a foreign bank in Turkey is subject to the permission of Banking Regulation and Supervision Board. A bank or a branch of a foreign bank in Turkey must have permission to operate in order to start receiving deposits and/or conducting banking activities. Request for such permission shall be submitted following the completion of the process of establishment of the bank or the opening of a branch of a foreign bank in Turkey. - Banks and first branches of foreign banks have to be established in the form of a joint-stock company. - Lending limits for a branch of a foreign bank in Turkey is based on its capital rather than the bank's worldwide capital. - At least one member of the board of directors of the banks must reside in Turkey.

5.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance); <i>Acceptance of deposits</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	Banking Law No. 5411
Description of Reservation	No natural or juridical person other than credit institutions or those authorised under specific regulations under Turkey's laws can accept deposits or other repayable funds from the public in Turkey.

6.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance); <i>Lending of all types including consumer credit, mortgage credit, factoring and financing of commercial transaction</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	Banking Law No. 5411, and Financial Leasing, Factoring and Financing Companies Law No. 6361
Description of Reservation	- Only banks and financing companies can grant consumer credits. - Only banks and factoring companies can engage in factoring activities. - Only banks, financial leasing companies, factoring companies, and financing companies can engage in financing of commercial transactions. - Only financial leasing companies and financing companies which are found eligible to operate in housing finance by the Banking Regulation and Supervision Agency (BRSA), and banks can engage in trading of mortgage credits. - BRSA has the authority to determine, modify or limit the type of financial institutions eligible for engaging in lending of all types including consumer credit, mortgage credit, factoring and financing of commercial transactions.

7.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance); <i>All payment and money transmission services, including credit and debit cards and travelers cheques</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493 and Regulation on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions, - Banking Law No. 5411, and the Regulations on Banking Law, - Bank Cards and Credit Cards Law No. 5464, - Regulation on Bank Cards and Credit Cards, - Law Regarding the Protection of the Value of Turkish Currency No. 1567, - Decree No.32 on the Protection of the Value of Turkish Currency
Description of Reservation	- All payment and money transmission services can only be conducted by banks and institutions authorised in accordance with the “Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493”. - The institutions engaging in the provision of payment and money transmission services are required to be established in Turkey, in the form of a joint-stock company. - Credit and debit cards services can only be provided by banks. Transfers of foreign exchange from Turkey to abroad must be carried out through the banking system.

8.

Sector	Financial Services
Sub-sector	Payment and Settlement Systems
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493 and its Implementing Regulations, - Cheque Law No. 5941 and its Implementing Regulations
Description of Reservation	- Only the institution authorised by the Central Bank of Republic of Turkey (CBRT), in accordance with the Cheque Law No. 5941 and Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493, can provide cheque clearing services. - All payment and securities settlement systems can only be operated by financial institutions authorised by CBRT in accordance with the “Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493”. - Financial institutions operating payment and securities settlement systems are required to be established in Turkey, in the form of a joint-stock company.

9.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>Financial Leasing, Factoring and Financing</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Law No.6361 on Financial Leasing, Factoring and Financing Companies; - Regulation on Principles for Establishment and Operations of Financial Leasing, Factoring and Financing Companies,
Description of Reservation	<u>Financial Leasing:</u> - Financial leasing companies (lessors) can only be established in the form of a joint-stock company. For further clarity, financial leasing companies established abroad cannot operate in Turkey through opening a branch in Turkey. - Establishing a financial leasing company is subject to prior permission of the Banking Regulation and Supervision Board. A permission to operate should also be received following the completion of the establishment process. - Only banks which are not authorised to accept deposits and financial leasing companies can engage in financial leasing transactions. BRSA has the authority to determine, modify or limit the type of financial institutions eligible for engaging in financial leasing. <u>Factoring and Consumer Financing Services:</u> - Factoring companies and financing companies must be established in the form of a joint-stock company. For further clarity, factoring companies and financing companies established abroad cannot operate in Turkey through opening a branch. - Establishing a factoring company or a financing company is subject to prior permission of the Banking Regulation and Supervision Board. A permission to operate should also be received following the completion of the establishment process. - BRSA has the authority to determine and limit the type of financial institutions eligible for engaging in factoring and financing services.

10.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>Securities Market</i>
Type of Reservation	National Treatment (Article 10.3) Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Capital Market Law No. 6362 - CMB Communiqué on Principles of Investment Funds, - CMB Communiqué on Principles of Exchange Traded Funds, - CMB Communiqué on Real Estate Investment Funds, - CMB Communiqué on Principles of Venture Capital Investment Funds, - CMB Communiqué on Portfolio Management Companies and Activities of Such Companies, - CMB Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services, - CMB Communiqué on Principles Regarding Establishment and Activities of Investment Firms, - CMB Communiqué on Principles of Real Estate Investment Companies, - CMB Communiqué on Principles of Venture Capital and Private Equity Investment Companies, - CMB Communiqué on Principles of Securities Investment Companies, - CMB Communiqué on Portfolio Depository Service and Providers of Such Service, - The Individual Pension Savings and Investment System Law No. 4632 - CMB Implementing Regulation on the Principles Applicable to the Establishment and Operations of Pension Investment Funds - Law on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions No.6493 and Regulation on Payments and Securities Settlement Systems, Payment Services and Electronic Money Institutions.
Description of Reservation	- For the establishment and operations of capital market institutions ² , permission of the Capital Markets Board

² According to the Capital Market Law, capital market institutions are specified as follows:

- (a) Investment firms,
- (b) Collective investment schemes,
- (c) Independent auditors, appraisal companies and rating agencies performing activities in capital market,
- (d) Portfolio management companies

	(CMB) is required. Establishment of branches and agencies by capital market institutions established in Turkey also requires the CMB's permission. Banks engaging in capital market activities (investment services) are required to obtain appropriate authorisation certificates for these activities from the CMB. - The CMB may take any measure to ensure that the establishment of capital market institutions or their branches and agencies are beneficial to the economic development of Turkey as well as to the stability, soundness and development of capital markets. - Securities intermediary institutions, investment companies, and other capital market institutions with the exception of investment funds³ can only be established in the form of a joint-stock company. - Establishment of branches and representative offices by foreign securities intermediary institutions is not permitted. - The CMB has the authority to regulate investment services, activities, capital market institutions and capital market instruments and the performance of investment services and activities by different types of capital market institutions within its area of competence. Other Reservations, Conditions and Qualifications concerning Financial Services: - With respect to the provision of custodial, depository and trust services, depository accounts related with capital market instruments, with the exception of government debt instruments held in bank portfolios, can only be kept by Central Registry Agency. - Only Takasbank A.Ş. can provide securities settlement and clearing services with respect to transactions concluded in organised markets.
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- (e) Mortgage finance corporations,
(f) Housing finance and asset finance funds,
(g) Asset lease companies,
(h) Central clearing institutions,
(i) Central securities depositories,
(j) Trade repositories,
(k) Other capital market institutions, the establishment and operation principles for which are determined by the Capital Markets Board.

³ According to Capital Market Law, investment funds can be established in contractual type within the fund rules in conformity with the fiduciary ownership principles.

11.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>Trading for own account or for account of customer, whether on an exchange, in an over-the-counter market or otherwise, of:</i> - <i>Money market instruments (including cheques and bills),</i> - <i>Foreign exchange,</i> - <i>Derivative products including, but not limited to, futures and options,</i> - <i>Exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,</i> - <i>Transferable securities,</i> - <i>Other negotiable instruments and financial assets, including bullion.</i>
Type of Reservation	National Treatment (Article 10.3) Market Access for Financial Institutions (Article 10.4)
Source of Measure	Capital Market Law No. 6362, - CMB Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services, - CMB Communiqué on Principles Regarding Establishment and Activities of Investment Firms
Description of Reservation	- Securities intermediary institutions cannot engage in the trading of cheques and bills; only banks can perform such transactions. - Only banks, foreign exchange dealers, securities intermediary institutions (limited to investment services and activities), and national postal administration (the General Directorate of Post and Telegraph Organization) can engage in foreign exchange trading. - Only authorised banks and securities intermediary institutions can engage in trading of derivative products (including, but not limited to, futures and options) in compliance with the CMB legislation. Authorised banks can execute orders in derivative instruments except for those based on stock indices and stocks, and deal on own account in derivative instruments except for those based on stocks. - Only authorised banks and securities intermediary institutions can engage in trading of exchange rate and interest rate instruments, including products such as swaps and forward rate agreements.

	- Only banks and securities intermediary institutions can engage in trading of transferable securities in compliance with CMB legislation. Regarding execution of orders and dealing on own account in shares, only securities intermediary institutions can provide such investment services. - Only banks and related intermediary institutions can engage in trading of other negotiable instruments and financial assets, including bullion. - Only securities intermediary institutions can provide “leveraged transactions” as defined in Capital Market Law No. 6362 (i.e. retail forex brokerage). - The CMB has the authority to regulate investment services, activities, capital market institutions and capital market instruments and the performance of investment services and activities by different types of capital market institutions within its area of competence.
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12.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance)
Type of Reservation	National Treatment (Article 10.3) Market Access for Financial Institutions (Article 10.4)
Source of Measure	Capital Market Law No.6362
Description of Reservation	The establishment of exchanges and market operators ⁴ needs to be authorised by the Council of Ministers after the CMB has assented to it. The launching of the activities of these institutions is subject to the permission of the CMB.

⁴ A market operator is a joint-stock company managing and/or operating exchanges, or markets under exchanges.

13.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>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</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	Capital Market Law No.6362, CMB Communiqué on Principles Regarding Investment Services, Activities and Ancillary Services
Description of Reservation	Only Development and Investment Banks and securities intermediary institutions authorised by the CMB can provide underwriting and placement services for the securities to be issued after being registered by the CMB.

14.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>Foreign Exchange Dealers</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Law No. 1567 Regarding the Protection of the Value of Turkish Currency, - Decree No.32 on the Protection of the Value of Turkish Currency, - Communiqué No. 2006-32/32 Regarding the Decree No.32
Description of Reservation	In order to engage in activities as a foreign exchange dealer (“yetkili müessese”), authorisation from the Undersecretariat of Treasury must be obtained. The Undersecretariat may take any measure to ensure that the establishment of foreign exchange dealers or their subsequent branches and agencies are beneficial to the economic development of Turkey as well as to the stability, soundness and development of financial markets. Foreign exchange dealers are required to be established in the form of a joint-stock company. The Undersecretariat, the BRSA and the CMB have the authority to determine and limit the type of financial institutions eligible for engaging in foreign exchange services, within their areas of competence.

15.

Sector	Financial Services
Sub-sector	Banking and Other Financial Services (excl. Insurance) <i>Precious Metal Intermediary Institutions (PMII)</i>
Type of Reservation	Market Access for Financial Institutions (Article 10.4)
Source of Measure	- Law No. 1567 Regarding the Protection of the Value of Turkish Currency, - Decree No.32 on the Protection of the Value of Turkish Currency, - Communiqué No. 2006-32/32 Regarding the Decree No.32, - Communiqué Concerning the Principles of Operations of Precious Metals Exchange Intermediary Institutions and Foundation of Precious Metals Brokerage Houses
Description of Reservation	<u>Precious Metals Exchange:</u> To operate as a “Precious Metal Intermediary Institution (PMII)”, operation licence from the Undersecretariat of Treasury must be obtained. Institutions which are allowed to operate by the Undersecretariat for trading at the Exchange, must apply to Borsa İstanbul for “Precious Metals Exchange Membership Certificate”. The operation licence of precious metals intermediary institutions is deemed cancelled in case of not fulfilling the application to Exchange Presidency within 60 days as from the operation licence date. Banks, foreign exchange dealers, joint-stock companies engaging in trade and production of precious metals, and branches, which are located in Turkey, of the companies resident abroad engaging in trade and production of precious metals, may apply to the Undersecretariat of Treasury to operate as a PMII. It is also possible to apply for permission to the Undersecretariat to operate solely as a precious metal brokerage institution and to be established as a joint stock company to operate as such.