

Annex III – Colombia

Financial Services Non-Conforming Measures

1. The Schedule of Colombia to this Annex sets out:

a. Headnotes that limit or clarify the commitments of Colombia with respect to the obligations described in subparagraphs (b) and (c);

b. In Section I, the reservations taken by Colombia pursuant to paragraphs 1 and 2 of Article 1109, with respect to existing measures that do not conform with obligations imposed by articles relating to:

- i. National Treatment (Article 1102);
- ii. Most-Favored-Nation Treatment (Article 1103);
- iii. Right of Establishment (Article 1104);
- iv. Cross-Border Trade (Article 1105), or
- v. Senior Management and Boards of Directors (Article 1108)

c. In Section II, the reservations taken by Colombia pursuant to paragraph 3 of Article 1109, for measures Colombia may adopt or maintain that do not conform with the obligations imposed by Article 1102, 1103, 1104, 1105 or 1108; and

d. In Section III, the specific commitments to liberalize measures undertaken by Colombia pursuant to paragraph 4 of Article 1109.

2. Each reservation in Section I sets out the following elements:

- a. **Sector** refers to the general sector in which the reservation is taken;
- b. **Subsector** refers to the specific sector in which the reservation is taken;
- c. **Type of Reservation** specifies the obligation referred to in paragraph 1(b) for which the reservation is taken;
- d. **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken;
- e. **Measures** identifies the laws, regulations, or other measures, for which the reservation is taken. A measure cited in the **Measures** 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;

- f. **Description** provides a general description for informative and transparency purposes of the measure for which the entry is made.

3. Each reservation in Section II sets out the following elements:

- a. **Sector** refers to the general sector in which the reservation is taken;
- b. **Sub-sector** refers to the specific sector in which the reservation is taken;
- c. **Type of Reservation** specifies the obligation referred to in paragraph 1(c) for which the reservation is taken;
- d. **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken; and
- e. **Description** sets out the scope of the sectors, subsectors, or activities covered by the reservation.

4. The interpretation of a reservation in Section I, (except the reservation regarding the limitation on the number of primary dealers), all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Articles against which the reservation is taken. To the extent that:

- a. The **Measures** element is qualified by a specific reference in the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and
- b. The **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

5. Notwithstanding paragraph 4, for the reservation in Section I regarding the limitation on the number of primary dealers, in accordance with subparagraph 1(a) of Article 1109., and subject to subparagraph 1(c) of Article 1109, the articles of this Agreement specified in the **Type of Reservation** element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Description** element of that entry, except to the extent that such non-conforming aspects are inconsistent with a Specific Commitment in Annex III – Section III.

6. In the interpretation of a reservation in Section II, all elements of the reservation shall be considered. The **Description** element shall prevail over all other elements.

7. Where Colombia maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 1102, 1103, 1104, or 1105 shall operate as a Schedule entry with respect to Article 803 (Investment – National Treatment), 804 (Investment – Most-Favored-Nation Treatment), or 807 (Investment Performance Requirements) to the extent of that measure.

Schedule of Colombia

Headnotes

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2. To clarify the commitment of Colombia with respect to Article 1104 (Right of Establishment), financial institutions constituted under the laws of Colombia are subject to non-discriminatory limitations on juridical form. [Footnote 1](#)

3. Subparagraph 1(c) of Article 1109 shall not apply to those non-conforming measures relating to the obligation not to impose requirements of specific types of juridical form on the establishment of a financial institution by an investor of the other Party in paragraph 1 of Article 1104, except that, with respect to the specific commitments in subsections III (B) and (C), subparagraph 1(c) of Article 1109 shall apply.

Section – I

Sector

Financial Services

Sub-sector

Banking and other financial services (excluding insurance)

Level of Government

National

Type of Reservation

Right of Establishment (Article 1104)

Measures

Decreto 656 de 1994, Art. 8.

Description

At least every 12 months during the five years after its establishment, a Sociedad Administradora de Fondos de Pensiones and a Sociedad Administradora de Fondos de Pensiones y de Cesantía must offer shares of its capital stock to entities of the social solidarity sector^{Footnote2} and to participants in and beneficiaries of the public social security system (Régimen de Ahorro Individual con Solidaridad) so that they may subscribe to a total of at least 20 percent of its capital stock. The same requirement applies with regard to increases in capital, but only with regard to the increase.

Sector:

Financial Services

Sub-sector

Banking and other financial services (excluding insurance)

Level of Government

National

Type of Reservation

Right of Establishment (Article 1104)

National Treatment (Article 1102)

Measures

Decreto 2419 de 1999, Art. 1 (en concordancia con la Ley 270 de 1996, Art. 203 y Decreto 1065 de 1999, Art. 16).

Description

The sums of money subject to court or police order, including cauciones^{Footnote3}, and funds consigned under leases must be deposited in the Banco Agrario de Colombia. S.A., which may derive a competitive advantage with respect to its overall operations from all or some portion of that exclusive right.

Sector:

Financial Services

Sub-sector

Banking and other financial services (excluding insurance)

Level of Government

National

Type of Reservation

National Treatment (Article 1102)

Measures

Estatuto Orgánico del Sistema Financiero

Description

Colombia may grant advantages or exclusive rights to the following financial entities:

- Fondo para el Financiamiento del Sector Agropecuario (FINAGRO);
- Banco Agrario de Colombia;
- Fondo Nacional de Garantías;
- Financiera Eléctrica Nacional (FEN);
- Financiera de Desarrollo Territorial (FINDETER);
- Fiduciaria La Previsora;
- Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior (ICETEX);
- Banco de Comercio Exterior (BANCOLDEX);
- Fondo Financiero de Proyectos de Desarrollo (FONADE).

The advantages or exclusive rights may include, but are not limited to, the following: [Footnote4](#)

- Exemption from certain taxation;
- Exemption from registration and periodic reporting requirements under federal securities laws; and
- Purchase by the government of Colombia, through any public entity of Colombia, of obligations issued by the entities listed above.

Sector:

Financial Services

Sub-sector

Banking and other financial services (excluding insurance)

Level of Government

National

Type of Reservation

Right of Establishment (Article 1104)

Measures

Resolución 6186 de 2006 del Ministerio de Hacienda y Crédito Público
- Dirección General de Crédito Público, as amended.

Description

The number of primary dealers in the debt securities of the Republic of

Colombia is limited to a certain number of financial institutions, which can be varied from time to time.

Sector:

Financial Services

Sub-sector

Insurance and insurance-related services

Level of Government

National

Type of Reservation

Cross-Border Trade (Article 1105)

Measures

Estatuto Orgánico del Sistema Financiero - E.O.S.F., Art. 39, 108 numeral 3, y 188 numeral 1.

Description

The obligations of Colombia under paragraph 2 of Article 1105 (Cross-Border Trade) are limited to the provisions of subsection III (D) (Specific Commitment Regarding Cross-Border Consumption of Insurance and Insurance-Related Services).

Sector

Financial Services

Sub-sector

Insurance and insurance-related services

Level of Government

National

Type of Reservation

National Treatment (Article 1102)

Measures

Estatuto Orgánico del Sistema Financiero - E.O.S.F., Art. 41, numeral 6, literal (d)

Description

A foreign national who has resided in Colombia for less than one year may not supply services in Colombia as an insurance agent.

Section - II

Sector:

Financial Services

Sub-sector

All

Level of Government

National

Type of Reservation

Right of Establishment (Article 1104)

Description

Colombia reserves the right to adopt or maintain any measure requiring that financial institutions of Canada be constituted under the laws of Colombia. [Footnote5](#) Therefore, market access through branching is not permitted. This restriction is modified with respect to bank branches and insurance branches as provided in subsections III (B) (Specific Commitment Regarding Establishment of Bank Branches) and (C) (Specific Commitment Regarding Establishment of Insurance Company Branches).

Sector:

Financial Services

Sub-sector

All

Level of Government

National

Type of Reservation

Most-Favored-Nation Treatment (Article 1103)

Description

Colombia reserves the right to adopt or maintain any measure that accords treatment inconsistent with most-favored-nation treatment under any bilateral or multilateral international agreement in effect or signed before the date of entry into force of this Agreement.

In accordance with the prior paragraph, Colombia reserves the right to adopt or maintain any measure that accords treatment inconsistent with most-favored-nation treatment, for the purpose of complying with the Cartagena Accord and judicial decisions of the Andean Community.

Sector:

Financial Services

Sub-sector

All

Level of Government

National

Type of Reservation

Most-Favored-Nation Treatment (Article 1103)

Description

Colombia reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Colombia reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement.

Sector:

Financial Services

Sub-sector

Social services

Level of Government

National

Type of Reservation

Right of Establishment (Article 1104)

Description

Colombia reserves the right to adopt or maintain measures concerning to social services that do not conform with the obligations of Article 1104.

Section - III[Footnote6](#)**Specific Commitments****1. Specific Commitment Regarding Portfolio Management**

Not later than four years following 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 the territory of Colombia:[Footnote7](#)

- 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.
- c. This commitment is subject to Article 1101 and to paragraph 3 of Article 1105.
- d. This commitment is also subject to Colombia' s right to:
 - i. Adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement;
 - ii. Adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement.
- e. For purposes of this commitment, **collective investment scheme** means:
 - a. Any mechanism or vehicle that takes or manages money or other assets contributed by more than one person, who can be identified once the scheme is in operation, and is subject to collective management or administration in order to obtain a financial return for that group. [Footnote 8](#)
 - b. 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).

2. Specific Commitment Regarding Establishment of Bank Branches

- a. Notwithstanding Colombia' s reservations in Section II of this Annex for banking services, no later than four years following the entry into force of this Agreement, Colombia will allow banks of Canada to establish in its territory by way of branches.
- b. For that purpose, Colombia may require that the capital assigned to the branches of banks of Canada in Colombia be effectively brought into Colombia and converted into local currency, in accordance with

Colombian law. The operations of branches of banks of Canada shall be limited by the capital assigned and brought into Colombia.

- c. For greater certainty, Colombia may choose how to regulate branches of banks of Canada, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments. [Footnote9](#)

3. Specific Commitment Regarding Establishment of Insurance Company Branches

- a. Notwithstanding Colombia's reservations in Section II of this Annex for insurance services, no later than four years following the entry into force of this Agreement, Colombia will allow insurance companies of Canada to establish in its territory by way of branches
- b. For greater certainty, Colombia may choose how to regulate branches of insurance companies of Canada, including their characteristics, structure, relationship to their parent company, capital requirements, technical reserves [Footnote10](#) and obligations regarding risk patrimony and their investments. [Footnote11](#)

4. Specific Commitment Regarding Cross-Border Consumption of Insurance and Insurance-Related Services

No later than four years following the entry into force of this Agreement, Colombia will allow, in accordance with paragraph 2 of Article 1105, persons located in its territory, and its nationals wherever located, to purchase any insurance service [Footnote12](#) from cross-border financial service suppliers of Canada located in the territory of Canada or Colombia [Footnote13](#), except for the following services: [Footnote14](#)

- 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).

5. Specific Commitment Regarding Pension Fund Managers

Notwithstanding the Colombia's reservation in Section II of this Annex for social services, and subject to Article 1101, including Annex 1101.3(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"): [Footnote 15](#)

- a. Extend the obligations of paragraphs 1 and 2 of Article 1102 to the supply, by SAFPs that are financial institutions of Canada established in Colombia, of those activities and services described in subparagraph 3(a) of Article 1101 that are not reserved for supply by the government of Colombia, a public entity, or a financial institution;
- b. 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 Canada seeking to establish SAFPs to supply those activities and services referred to in paragraph 1;
- c. No later than four years following entry into force of the Agreement, permit SAFPs to subcontract to financial institutions of Canada established in Colombia the services described in subsection III (A) (Specific Commitment Regarding Portfolio Management);
- d. No later than four years after entry into force of the Agreement, and subject to Articles 1101 and paragraph 3 of Article 1105, permit a financial institution organized under the laws of the Canada 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. [Footnote 16](#)

Footnotes

Footnote 1

For example, sociedades de responsabilidad limitada and sole proprietorships are generally not acceptable juridical forms for financial institutions established in Colombia. For greater clarity, the choice, where available, by an investor between branches and subsidiaries is not addressed by this headnote

[Return to footnote¹referrer](#)

Footnote 2

For greater clarity, the social solidarity sector includes, among others, current and former employees of the relevant entity, whether individually or in association, labor unions, federations and confederations of labor unions, employee savings funds (fondos de empleados), pension funds, severance payment funds (fondos de cesantías), and cooperatives.

[Return to first footnote²referrer](#)

Footnote 3

A caution, under Colombian law, is a deposit of money made under court order – for example, by a civil defendant in return for the court lifting an injunction won by the plaintiff against certain assets of the defendant

[Return to first footnote³referrer](#)

Footnote 4

For greater certainty, and notwithstanding the location of this non-conforming measure within Section I, the Parties understand that the advantages or exclusive rights that a Party may grant to the specified entities are not limited only to the cited examples.

[Return to first footnote⁴referrer](#)

Footnote 5

For greater clarity, the following measures, among others, currently limit juridical form for the establishment of financial institutions in the territory of Colombia: Estatuto Orgánico del Sistema Financiero, Art. 53, 44; Ley 510 de 1999, Art. 101; Decreto 656 de 1994, Art. 1 in accordance with Ley 100 de 1993, Art. 91(a); Ley 45 de 1990, Art. 1(a), 7; Ley 27 de 1990, Art. 2; Ley 9 de 1991, Art. 8; Res. 8 de 2000 de la Junta Directiva del Banco de la República, Art. 64(a); Decreto 2016 de 1992, Art. 1; Decreto 573 de 2002, Arts. 1– 2; Decreto 437 de 1992, Art. 2; Decreto 384 de 1980, Art. 4; Decreto 1719 de 2001, Art. 1; Decreto 2080 de 2000, Arts. 26, 31.

[Return to first footnote⁵referrer](#)

Footnote 6

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.

[Return to first footnote6referrer](#)

Footnote 7

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.

[Return to first footnote7referrer](#)

Footnote 8

The Parties understand that subparagraph (i) includes those mechanisms or vehicles previously referred to as ordinary and special collective funds as defined in Decreto 663 de 1993, securities funds as defined in Ley 45 de 1990 and Titulo 4 de la Resolución 400 de 1995, and investment funds as defined in Titulo 4 de la Resolución 400 de 1995, and excludes any mechanism or vehicle forming part of a public retirement plan or statutory system of social security.

[Return to first footnote8referrer](#)

Footnote 9

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

1. Require branches to comply with the same obligations currently required or that may be required in the future of banks established under Colombian law;
2. Ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular bank of Canada from Canada' s financial supervisory or regulatory authorities before permitting the establishment of a branch by that bank;
3. 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;
4. Require that the acts undertaken and contracts entered into in Colombia by branches of banks of Canada established in Colombia be subject to Colombian law and authorities;
5. 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;

6. 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 Canada be liable for the obligations contracted by its branch in Colombia;
7. 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
8. 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.

[Return to first footnote](#)⁹[referrer](#)

Footnote 10

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

1. Require branches to comply with the same obligations currently required or that may be required in the future of banks established under Colombian law;
2. Ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular bank of Canada from Canada's financial supervisory or regulatory authorities before permitting the establishment of a branch by that bank;
3. 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;
4. Require that the acts undertaken and contracts entered into in Colombia by branches of banks of Canada established in Colombia be subject to Colombian law and authorities;
5. 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;

6. Require that any subsequent capitalization have the same treatment as the branch's initial capital;
7. 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 Canada be liable for the obligations contracted by its branch in Colombia;
8. 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
9. 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.

[Return to first footnote](#)¹⁰[referrer](#)

Footnote 11

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

1. 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;
2. Ensure that mechanisms exist to ensure the availability to Colombia of information pertaining to a particular insurance company of Canada from Canada's financial supervisory or regulatory authorities before permitting the establishment of a branch by that insurance company;
3. 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;
4. Require that the acts undertaken in Colombia and contracts entered into in Colombia by branches of insurance companies of Canada established in Colombia be subject to Colombian law and authorities;

5. 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;
6. Require that any subsequent capitalization or reserve increase have the same treatment as the branch's initial capital and reserves;
7. 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 Canada be liable for the obligations contracted by its branch in Colombia;
8. 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
9. 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.

[Return to first footnote¹¹referrer](#)

Footnote 12

For greater certainty, policies covered by subparagraphs (a) and (b) of the definition of financial service in Article 1118 are financial instruments, consistent with the meaning of financial instruments in paragraph 3 of Article 1105.

[Return to first footnote¹²referrer](#)

Footnote 13

For greater certainty, Colombia may, as permitted under paragraph 3 of Article 1105, require cross-border financial service suppliers to provide information such as the aggregate value of premiums paid to them by persons resident in Colombia

[Return to first footnote¹³referrer](#)

Footnote 14

For greater certainty, the Parties understand that Colombia may, in accordance with subparagraph (d) of Annex 1101.3(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 subparagraph 3(a) of Article 1101.

[Return to first footnote¹⁴referrer](#)

Footnote 15

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 Article 1101, including Annex 1101.3 (a).

[Return to first footnote¹⁵referrer](#)

Footnote 16

Nothing in paragraph 4 of this specific commitment requires Colombia to permit a financial institution organized under the laws of the Canadá 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 III Canada

Financial Services Non-Conforming Measures

1. The Schedule of Canada to this Annex sets out:

a. Headnotes that limit or clarify the commitments of Canada with respect to the obligations described in subparagraphs (b) and (c);

b. In Section I, the reservations taken by Canada pursuant to paragraphs 1 and 2 of Article 1109 with respect to existing measures that do not conform with obligations imposed by articles relating to:

- i. National Treatment (Article 1102),
- ii. Most-Favored-Nation Treatment (Article 1103),
- iii. Right of Establishment (Article 1104),
- iv. Cross-Border Trade (Article 1105), or
- v. Senior Management and Boards of Directors (Article 1108)

c. In Section II, the reservations taken by Canada, pursuant to paragraph 3 of Article 1109, for measures Canada may adopt or maintain that do not conform with obligations imposed by Article 1102, 1103, 1104, 1105, or 1108; and

d. In Section III, the specific commitments to liberalize measures undertaken by Canada pursuant to paragraph 4 of Article 1109.

2. Each reservation in Section I sets out the following elements

- a. **Sector** refers to the general sector in which the reservation measure is taken;
- b. **Sub-Sector** refers to the specific sector in which the reservation is taken;
- c. **Type of Reservation** specifies the obligation referred to in paragraph 1(b) for which the reservation is taken;
- d. **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken;
 - 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
- f. **Description** sets out references, if any, for liberalization on the date of entry into force of this Agreement pursuant to other sections of Canada's Schedule to this Annex, and the remaining non-conforming aspects of the existing measures for which the reservation is taken.

3. Each reservation in Section II sets out the following elements:

- a. **Sector** refers to the general sector in which the reservation is taken;
- b. **Sub-Sector** refers to the specific sector in which the reservation is taken;
- c. **Type of Reservation** specifies the obligation referred to in subparagraph 1(c) for which the reservation is taken;
- d. **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken; and
- e. **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the reservation.

4. In the interpretation of a reservation in Section I, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapter against which the reservation is taken. To the extent that:

- a. The **Measures** element is qualified by a specific reference in the **Description** element, the **Measures** element as so qualified shall prevail over all other elements; and
- b. The **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

5. In the interpretation of a reservation in Section II, all elements of the reservation shall be considered. The **Description** element shall prevail over all other elements.

6. Where Canada maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 1102, 1103, 1104, or 1105 shall operate as a Schedule entry with respect to Article 803 (Investment – National Treatment), 804 (Investment – Most-Favored-Nation Treatment), or 807 (Investment – Performance Requirements) to the extent of that measure.

Schedule of Canada

Headnotes

1. Commitments under this Agreement, in the sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.

2. To clarify the commitment of Canada with respect to Article 1104, juridical persons supplying financial services and constituted under the laws of Canada are subject to non-discriminatory limitations on juridical form [Footnote 1](#)

Schedule of Canada

Section - I

Sector:

Financial Services

Sub-sector:

Insurance

Type of Reservation:

Cross-Border Trade (Article 1105)

Level of Government:

National

Measures:

Insurance Companies Act, S.C. 1991, c. 47

Reinsurance (Canadian Companies) Regulations, SOR/92-298

Reinsurance (Foreign Companies) Regulations, SOR/92-302

Descripción:

The purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from a non-resident reinsurer is limited to no more than 25 percent of the risks undertaken by the insurer purchasing the reinsurance.

Section - II

Sector:

Financial Services

Sub-sector:

Banking and Other Financial Services (Excluding Insurance)

Type of Reservation:

Right of Establishment (Article 1104)

National Treatment (Article 1102)

Level of Government:

National

Description:

Canada reserves the right to adopt or maintain any measure requiring that a foreign bank establish as a subsidiary in order to accept or maintain retail deposits of less than CDN\$150,000.

Sector:

Financial Services

Sub-sector:

Banking and Other Financial Services (Excluding Insurance)

Type of Reservation:

Right of Establishment (Article 1104)

National Treatment (Article 1102)

Level of Government:

National

Description:

Canada reserves the right to adopt or maintain any measure requiring that foreign banks that have been authorized to establish a branch in Canada be members of the Canadian Payments Association. Canada also reserves the right to adopt or maintain any measure prohibiting foreign lending branches from being members of the Canadian Payments Association.

Sector:

Financial Services

Sub-sector:

All

Type of Reservation:

Most-Favoured-Nation Treatment (Article 1103)

Level of Government:

National and Sub-national

Description:

Canada reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Canada reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement.

Section - III

Specific Commitment Regarding Portfolio Management

1. Subject to paragraph 2, Canada shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:

- 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
 - execution services, unless they are related to managing a collective investment scheme.

2. This commitment is subject to Article 1101, paragraph 3 of Article 1105 and the Appendix to this Section.

3. This commitment is also subject to Canada' s right to:

- a. adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement;
- b. adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement

4. Notwithstanding paragraph 1, Canada may require a collective investment scheme located in Canada to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

5. For purposes of this commitment, in Canada collective investment scheme means investment funds or fund management companies regulated or registered under provincial securities laws and regulations.

Appendix

1. Canada' s commitment in subsection III (A) applies at the sub-national level only to the following provinces or territories and subject to paragraph 2:

Alberta
British Columbia

Manitoba
New Brunswick
Quebec
Ontario
Saskatchewan

2. The commitment in respect of any of the provinces or territories listed in paragraph 1 does not apply to any existing reservation of any of those provinces or territories, the continuation or prompt renewal of any such measure or any amendment to any such measure to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with the commitment.

3. Not later than four years following the entry into force of this Agreement, the Parties shall consult on the liberalization of cross-border trade in portfolio management services, further to that set out in this specific commitment. In such consultations, the Parties shall determine whether Canada's specific commitment shall be maintained or further liberalized.

Footnotes

Footnote 1

For example, partnerships and sole proprietorships with limited or unlimited liability are generally not acceptable juridical forms for financial institutions in Canada. This headnote does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.