

Annex III

Financial Services Non-Conforming Measures

Schedule of Panama

Explanatory Notes

1. The Schedule of Panama to Annex III sets out, pursuant to Article 12.9 (Non-Conforming Measures), a schedule of the existing measures of Panama that do not conform to some or all of the obligations imposed by:

- (a) Article 12.2 (National Treatment);
- (b) Article 12.3 (Most-Favored-Nation Treatment);
- (c) Article 12.4 (Market Access for Financial Institutions);
- (d) Article 12.5 (Cross-Border Trade); or
- (e) Article 12.8 (Senior Management and Boards of Directors).

2. Each entry in the schedule of non-conforming measures described in paragraph 1 sets out the following elements:

- (a) **Sector** refers to the general sector for which the entry is made;
- (b) **Subsector** refers to the specific sector for which the entry is made;
- (c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Article 12.9 (Non-Conforming Measures), do not apply to the listed measure(s);
- (d) **Level of Government** indicates the level of government maintaining the listed measure(s);
- (e) **Measures** identifies the laws, regulations, or other measures for which the entry is made. 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; and
- (f) **Description** provides a general, nonbinding description of the Measures.

3. In the interpretation of an entry in the schedule described in paragraph 1, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of Chapter Twelve (Financial Services) with respect to which the non-conforming measure is taken. To the extent that:

- (a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, if any, or a Specific Commitment from an Annex to Chapter Twelve, 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 the discrepancy.

4. Where Panama maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Article 12.2 (National Treatment), 12.3 (Most-Favored-Nation Treatment), 12.4 (Market Access for Financial Institutions), or 12.5 (Cross-Border Trade) shall operate as a non-conforming measure with respect to Articles 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), and 10.9 (Performance Requirements) to the extent of that measure.

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| Sector: | Financial Services |
| Subsector: | Banking Services and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 12.2) |
| Level of Government: | Central |
| Measures: | Article 37 of Decree-Law No. 9 of February 26, 1998 |
| Description: | Panamanian branches of foreign banks must designate at least two general proxies, both of whom must be individuals who are residents of Panama. One of the two proxies must also be a Panamanian national. |

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| Sector: | Financial Services |
| Subsector: | Insurance companies Administrators of insurance enterprises Insurance brokers or adjustors |
| Obligations Concerned: | National Treatment (Article 12.2) Cross-Border Trade (Article 12.5) Senior Management and Board of Directors (Article 12.8) |
| Level of Government: | Central |
| Measures: | Article 293 of the 1972 Constitution Articles 26, 90, 105, and 108 of Law No. 59 of July 29, 1996 Articles 1 and 7 of Executive Decree No. 12 of April 7, 1998 |
| Description: | <p>All property and persons in the territory of Panama, if insured, must be insured by insurance companies authorized to operate in Panama. A waiver of this requirement is available from the Insurance and Reinsurance Supervisory Board in the event insurance cannot be obtained in the Panamanian market.</p> <p>Panama agrees that, on entry into force of this Agreement, nationals and enterprises of the United States may supply financial services described in Annex 12.5.1 (Cross-Border Trade). For greater certainty, paragraph 1(c) of that Annex applies only with respect to the services indicated in paragraph 1(a) and (b) of the Annex that are supplied outside the territory of Panama.</p> <p>Independent loss adjuster services covered by paragraph 1(d) of Annex 12.5.1 may be provided on a cross-border basis only for the services indicated in paragraph 1(a) and (b) of that Annex that are supplied outside the territory of Panama.</p> <p>Only an individual described in the entry at I-PA-1 in Panama's Schedule to Annex I may be licensed as an insurance broker in Panama.</p> <p>At least 49 percent of the shares of a legal person operating as an insurance brokerage enterprise in Panama must be owned by Panamanian nationals licensed as insurance brokers in Panama.</p> |

The legal representative of such an enterprise must be a Panamanian national licensed as an insurance broker in Panama.

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| Sector: | Financial Services |
| Subsector: | Reinsurance or Underwriting Entities Administrators of Reinsurance Reinsurance Brokers |
| Obligations Concerned: | Senior Management and Boards of Directors (Article 12.8) |
| Level of Government: | Central |
| Measures: | Article 10 of Law No. 63 of September 19, 1996 |
| Description: | Companies authorized to engage in the reinsurance business must designate at least two general proxies, both of whom must be individuals who are residents of Panama. One of the two proxies must also be a national of Panama. |

Sector: Financial Services

Subsector: Insurance and Banking

Obligations Concerned: Cross-Border Trade (Article 12.5)

Level of Government: Central

Measures: Article 4 of Decree 90-LEG of April 9, 2002
Article 111 of Law 56 of December 27, 1995

Description: Only insurance companies and banks established in Panama that are in good standing with the Superintendency of Insurance or the Superintendency of Banks, as the case may be, may provide surety bonds or banking guarantees, respectively, that are associated with government procurement bids or contracts.