

ANNEX III FINANCIAL SERVICES (NON-CONFORMING MEASURES)

INTRODUCTORY NOTES

1. The Section A of the list of a Party sets out, pursuant to Article 11.10.1 (Non-Conforming Measures), the reservations taken by that Party with respect to existing measures that are inconsistent with the obligations imposed by:

- (a) Article 11.2 (National Treatment);
- (b) Article 11.3 (Most-Favored-Nation Treatment);
- (c) Article 11.5 (Market Access for Financial Institutions);
- (d) Article 11.6 (Cross-Border Trade in Financial Services); or
- (e) Article 11.9 (Senior Management and Board of Directors)

and that, in certain cases, sets out commitments of immediate or future liberalization.

2. Each reservation in Section A establishes the following elements:

- (a) **sector** means the sector in general in which the reservation is taken;
- (b) **sub-sector** means the specific sector in which the reservation is taken;
- (c) **industry classification** refers, where applicable, to the activity covered by the reservation according to the *United Nations Central Product Classification* ("CPC") code or domestic industry classification codes;
- (d) **type of reservation** specifies the obligation mentioned in the paragraph 1 on which a reservation is taken;
- (e) **Measure** identify the laws, regulations or other measures, as it is described, where it is indicated, with the Description of Reservation element, for which the reservation is taken. A measure cited in the Measure element:

- (i) means the measure, modified, continued or renewed, starting from date of entry into effect of this Agreement; and
- (ii) includes any subordinated measure, adopted or maintained under the authority of and consistent with the measure; and
- (f) **description of reservation** sets out the non-conforming measure to which the reservation applies.

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

- (a) Measure element is described by a liberalization commitment from the Description element, the Measure element as so qualified shall prevail over all other elements; and
- (b) measure is not so qualified, the Measure element shall prevail over all other elements, unless some discrepancy between the Measure element and other elements, considered in its totality is so substantial and significant, that it would be unreasonable to conclude that the Measure element must prevail, in this case the other elements shall prevail to the extent of that discrepancy.

4. Section B of the list of each Party indicates the reservations taken by that Party, in accordance with Article 11.10 (Non-Conforming Measures) regarding sectors, sub-sectors or specific activities for which it shall be able to maintain or to adopt new or more restrictive measures than are inconsistent with the obligations imposed by:

- (a) Article 11.2 (National Treatment);
- (b) Article 11.3 (Most-Favored-Nation Treatment);
- (c) Article 11.5 (Market Access for Financial Institutions);
- (d) Article 11.6 (Cross-Border Trade in Financial Services); or
- (e) Article 11.9 (Senior Management and Board of Directors)

5. Each reservation of Section B contains the following elements:

- (a) **sector** means the sector in general in which the reservation has been taken;

- (b) **sub-sector** means the specific sector in which the reservation has been taken;
- (c) **industry classification** refers, where applicable, to the activity covered by the reservation according to the CPC or domestic industry classification codes;
- (d) **type of reservation** specifies the obligation mentioned in the paragraph 4 on which a reservation is taken;
- (e) **description** describes the scope of the sector, sub-sector or activities covered by reservation; and
- (f) **existing measures** identifies, with transparency purposes only, existing laws, regulations, rules, procedures, decisions, administrative actions or any other forms in relation to the non-conforming measures that apply to the sector, sub-sector or activities covered by the reservation. The measures stipulated therein are not exhaustive.

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

HEADNOTES TO SECTION A AND SECTION B OF ANNEX III:

MODIFICATION OR ADDITION OF RESERVATIONS

1. A Party (referred to in the following paragraphs as the “modifying Party”) may, in accordance with paragraphs 2 and 3, modify or add to its non-conforming measures as set out in Section A and Section B of Annex III.
2. Such modifications or additions shall not:
 - (a) be introduced for the purpose of affording undue protection to financial institutions of the modifying Party; and
 - (b) discriminate between the other Party and any non-Party, except for measures that accord differential treatment to any non-Party under any bilateral or multilateral international agreement between either Party and such non-Party in force or signed prior to, on or after the date of entry into force of this Agreement.
3. The modifying Party may only make such modifications or additions if it:
 - (a) notifies the other Party in writing of its intent at least three months prior to the date of implementation of the measure;
 - (b) begins consultations with the other Party upon request by that other Party and gives due consideration to the views expressed by that Party in such consultations with an agreement on the appropriate compensatory adjustments; and
 - (c) makes compensatory adjustments to its Schedule to Section A or Section B of Annex III in accordance with any agreement reached between the Parties on compensatory adjustments, to the extent possible in the same sector or sub-sector of the financial institution that is affected by the modification so as to maintain a general level of mutually advantageous commitments that is not less favourable to investments and trade in financial services than that provided for in its Schedule prior to the modification.
4. If agreement is not reached between the Parties on any necessary compensatory adjustments, the matter may be referred to arbitration in accordance with the procedures set out in Chapter 15 (Dispute Settlement).