

Annex II

SCHEDULE OF PANAMA

EXPLANATORY NOTES

1. The Schedule of Panama to this Annex sets out, pursuant Articles 9.13 (Non-Conforming Measures) and 10.6 (Non-Conforming Measures), the specific sectors, subsectors or activities for which Panama may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 9.3 (National Treatment) or 10.2 (National Treatment);
- (b) Article 9.4 (Most-Favored-Nation Treatment) or 10.3 (Most-Favored-Nation Treatment);
- (c) Article 10.5 (Local Presence);
- (d) Article 9.9 (Performance Requirements);
- (e) Article 9.10 (Senior Management and Boards of Directors); or
- (f) Article 10.4 (Market Access).

2. Each Schedule entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Sub-Sector** refers to the specific sector in which the entry is made;
- (c) **Obligations Concerned** specifies the obligations referred to in paragraph 1 that, pursuant Articles 9.13 ((Non-Conforming Measures) and 10.6 (Non-Conforming Measures), do not apply to the sectors, subsectors or activities scheduled in the entry;
- (d) **Description** sets out the scope of the sector, subsector or activities covered by the entry; and
- (e) **Existing Measure** identifies, for transparency purposes, an existing measure applying to the sector, sub-sector or activities covered by the reservation.

3. In accordance with Articles 9.13.2 (Non-Conforming Measures) and 10.6.2 (Non-Conforming Measures), the articles of this Agreement specified in the obligations concerned element of a reservation, do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. In the interpretation of a reservation all its elements will be considered. The Description element shall prevail over the other elements.

5. For the purposes of this Agreement, Panama understands that:

fishing and related activities in Panamanian jurisdictional waters shall not be considered service and therefore need not be listed in Annexes I and II with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).

1. Sector:	Social Services
Sub-sector:	
Obligations Concerned:	National Treatment (Articles 9.3 and 10.2) Most-Favored-Nation Treatment (Articles 9.4 and 10.3) Performance Requirements (Article 9.9) Senior Management and Boards of Directors (Article 9.10) Market Access (Article 10.4) Local Presence (Article 10.5)
Level of Government:	Central
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain a measure for providing law enforcement and correctional services, as well as the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health care or child care.

2. Sector:	Native Populations and Minorities
Sub-sector:	
Obligations Concerned:	<p>National Treatment (Articles 9.3 and 10.2)</p> <p>Most-Favored-Nation Treatment (Articles 9.4 and 10.3)</p> <p>Performance Requirements (Article 9.9)</p> <p>Senior Management and Boards of Directors (Article 9.10)</p> <p>Local Presence (Article 10.5)</p>
Level of Government:	Central
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>Panama reserves the right to adopt or maintain a measure denying to foreign investors and their investments or to foreign service providers a right or privilege granted to minorities with social or economic disadvantages or native populations in their reservation areas.</p> <p>This includes the commitment of the Government of Panama in Decree No. 30 of February 22, 2011 to not initiate, promote, approve, the exploration and exploitation of mines in Cerro Colorado or in any other site within the jurisdiction of the Ngobe Bugle Region and other regions (Comarcas).</p>

3. Sector:	Issues Related to the Panama Canal
Sub-sector:	
Obligations Concerned:	National Treatment (Articles 9.3 and 10.2) Performance Requirements (Article 9.9) Senior Management and Boards of Directors (Article 9.10) Market Access (Article 10.4) Local Presence (Article 10.5)
Level of Government:	Central
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>1. Panama reserves the right to adopt or maintain a measure related to the management, administration, operation, maintenance, conservation, modernization, exploitation, development or ownership of the Panama Canal and the reverted areas that restrict the rights of foreign investors and services providers.</p> <p>2. The Panama Canal includes the aquatic route proper, as well as its anchorages, dock berths and entrances; lands and marine, lacustrine and fluvial waters; locks; auxiliary dams; docks; and water control structures.</p> <p>3. The reverted areas under the administration of the Reversed Assets Administrative Office of the Ministry of Economic and Finances (former Inter-Oceanic Region Authority) include the lands, buildings and facilities and other goods that have reverted to the Republic of Panama according to the <i>Treaty of the Panama Canal</i> of 1977 and its Annexes (Torrijos-Carter Treaty).</p>

4. Sector:	All Sectors
Sub-sector:	
Obligations Concerned:	National Treatment (Articles 9.3 and 10.2) Performance Requirements (Article 9.9) Senior Management and Boards of Directors (Article 9.10) Local Presence (Article 10.5)
Level of Government:	Central
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>1. Panama, when selling or disposing of equity interests or assets of an existing state enterprise or existing governmental entity reserves the right to prohibit or impose limitations on:</p> <ul style="list-style-type: none"> (a) the provision of services; (b) ownership of such interests or assets; (c) technical capacity, financial capacity and experience of the owners of such interests or goods; and (d) to control foreign participation in any resulting company. <p>2 In connection with the sale or other disposition, Panama may adopt or maintain any measure relating to the nationality of senior management or members of the Board.</p>

5. Sector:	Construction Services
Sub-sector:	
Obligations Concerned:	National Treatment (Article 10.2) Local Presence (Article 10.5)
Level of Government:	Central
Description:	<u>Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain residency, registration or other local presence requirements, or to require a financial guarantee, provided that it is necessary to ensure compliance with Panamanian law and private contractual obligations.

6. Sector:	Fisheries and Services Incidental to Fishing
Sub-sector:	
Obligations Concerned:	National Treatment (Articles 9.3 and 10.2) Most-Favored-Nation Treatment (Articles 9.4 and 10.3)
Level of Government:	Central
Description:	<u>Investment and Cross-Border Trade in Services</u> Panama reserves the right to adopt or maintain a measure relating to requirements for investments in, ownership or control of, and operation of, vessels engaged in fishing and related activities in waters under Panamanian jurisdiction.

7. Sector:	All Sectors
Sub-sector:	
Obligations Concerned:	Most-Favored-Nation Treatment (Articles 9.4 and 10.3)
Level of Government:	Central
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>1. Panama reserves the right to adopt or maintain a measure that accords differential treatment to countries under a bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>2. Panama reserves the right to adopt or maintain a measure that accords differential treatment to Central American countries under any agreement of the Central American Integration in force or signed after the date of entry into force of this Agreement.</p> <p>3. Panama reserves the right to adopt or maintain a measure that accords differential treatment to countries under a bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement, involving:</p> <ul style="list-style-type: none"> (a) aviation; (b) fisheries; (c) maritime matters, including salvage; or (d) railroad transportation.

8. Sector:	Transport Services
Sub-sector:	Road Transport Services
Obligations Concerned:	National Treatment (Articles 9.3 and 10.2) Performance Requirements (Article 9.9) Senior Management and Boards of Directors (Article 9.10) Market Access (Article 10.4) Local Presence (Article 10.5)
Level of Government:	Central
Description:	<p><u>Investment and Cross-Border Trade in Services</u></p> <p>1. Panama reserves the right to adopt or maintain a measure that restricts the provision of services and investment related to scheduled passenger transportation, non-scheduled passenger transportation, rental services of commercial freight vehicles with operator, and bus terminal services.</p> <p>2. Cabotage by land within the borders of Panama is reserved for domestic carriers.</p>

9. Sector:	All Sectors
Sub-sector:	
Obligations Concerned:	National Treatment (Article 9.3) Performance Requirements (Article 9.9)
Level of Government:	Central
Description:	<p><u>Investment</u></p> <p>Panama reserves the right to adopt, with respect to the establishment or acquisition of an investment, any measure that is necessary for the maintenance of public order according to the national regulations, provided that Panama promptly provides written notice to the other Party that it has adopted such a measure and that the measure:</p> <ul style="list-style-type: none"> (a) is applied in accordance with the procedural requirements set out in applicable law; (b) is adopted or maintained only where the investment poses a genuine and sufficiently serious threat to the fundamental interests of society; (c) is not applied in an arbitrary or unjustifiable manner; (d) does not constitute a disguised restriction on investment; and (e) is proportional to the objective it seeks to achieve.