

Annex III

SCHEDULE OF EL SALVADOR

EXPLANATORY NOTE

1. The Schedule of El Salvador to Annex 3 sets out:
 - (a) headnotes that limit or clarify the commitments of El Salvador with respect to the obligations described in clauses (i)-(v) of subparagraph (b), and in subparagraph (c);
 - (b) in Section A, pursuant to Article 11.9 (Non-Conforming Measures), the existing measures of El Salvador that do not conform to some or all of the obligations imposed by:
 - (i) Article 11.2 (National Treatment);
 - (ii) Article 11.3 (Most-Favored-Nation Treatment);
 - (iii) Article 11.4 (Market Access for Financial Institutions);
 - (iv) Article 11.5 (Cross-Border Trade); or
 - (v) Article 11.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, pursuant to Article 11.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which El Salvador may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), 11.4 (Market Access for Financial Institutions), 11.5 (Cross-Border Trade), or 11.8 (Senior Management and Boards of Directors).
2. Each entry in Section A 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 subparagraph 1(b) that, pursuant to Article 11.9 (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. Each entry in Section B 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 subparagraph 1(c) that, pursuant to Article 11.9 (Non-Conforming Measures), do not apply to the sectors, subsectors, or activities listed in the entry;
 - (d) **Level of Government** indicates the level of government maintaining the listed measure(s); and
 - (e) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. In the interpretation of a non-conforming measure in Section A, 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 the Financial Services Chapter 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 the Financial Services Chapter, 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.
5. For entries in Section B, in accordance with Article 11.9.2 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element

of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

6. Where El Salvador 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 Articles 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment), 11.4 (Market Access for Financial Institutions), or 11.5 (Cross-Border Trade) shall operate as a non-conforming measure with respect to Articles 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment) and 9.9 (Performance Requirements), to the extent of that measure.

HEADNOTES

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Sections A and B below.
2. To clarify El Salvador's commitment with respect to Article 11.4, juridical persons supplying financial services and constituted under the laws of El Salvador are subject to non-discriminatory limitations on juridical form.¹

¹ For example, partnerships and sole proprietorships are not acceptable juridical forms for depositary financial institutions in El Salvador. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of another Party between branches or subsidiaries.

SECTION A

1. Sector:	Financial Services
Subsector:	All Insurance and Insurance-Related Services
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4)
Level of Government:	Central
Measures:	<p>Law of Insurance Companies, Legislative Decree Number 844, October 10th, 1996, Articles 1, 6, 41 and 111 (Ley de Sociedades de Seguros, Decreto Legislativo número 844, 10 de octubre de 1996, Artículos 1, 6, 41 y 111).</p> <p>Regulation of the Law of Insurance Companies, Legislative Decree Number 44, April 20th, 1999, Article 29 (Reglamento de la Ley de Sociedades de Seguros, Decreto Legislativo número 44, 20 de abril de 1999, Artículo 29).</p>
Description:	<p>Insurance companies must be legally incorporated in El Salvador. El Salvador shall permit foreign insurance companies to establish branches².</p> <p>For an enterprise to be established under Salvadoran law, at least 75 percent of its shares must be owned jointly or severally by:</p> <ul style="list-style-type: none"> (a) Salvadoran natural persons or Central American natural persons; (b) legal persons organized under Salvadoran law whose majority, shareholders or partners are Salvadoran natural persons or Central American natural persons; (c) Central American insurance or reinsurance companies; or (d) foreign insurance and reinsurance companies with a first rate Classification by an internationally recognized classification Institution (e.g. Moody's, A.M. Best or S&P).

² El Salvador may require that the branch owners or shareholders meet the solvency and integrity requirements established in El Salvador's insurance legislation.

2. Sector:	Financial Services
Subsector:	Banking Services
Obligations Concerned:	National Treatment (Article 11.2) Most- Favored- Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4)
Level of Government:	Central
Measures:	Banking Law, Legislative Decree Number 697, September 2nd, 1999, Articles 5, 10, 26, 27 and 150 (Ley de Bancos, Decreto Legislativo número 697, 2 de septiembre de 1999, Artículos 5, 10, 26, 27 y 150).
Description:	<p>Banks incorporated in El Salvador must be organized and operate as corporations with fixed capital broken down into registered shares and with no fewer than ten partners.</p> <p>At least 51 percent of the shares in banks legally incorporated in El Salvador must be owned by any of the following types of investor:</p> <ul style="list-style-type: none"> (a) nationals of El Salvador or another Central American country; (b) legal persons organized under the laws of El Salvador whose majority shareholders or partners are: <ul style="list-style-type: none"> (i) nationals of El Salvador or a Central American country; or (ii) other legal persons organized under the laws of El Salvador whose majority shareholders or partners are nationals of El Salvador or another Central American country; (c) banks established under the laws of a Central American country that: <ul style="list-style-type: none"> (i) are subject to prudential regulation and supervision in that country, in accordance with relevant international practice; (ii) have been approved by internationally recognized risk classification entities; and

	<p>(iii) that fully comply with the legal provisions and guidelines in force in those countries; or</p> <p>(d) banks and other foreign financial institutions that have been approved by internationally recognized risk classification entities as first-rate institutions and which meet other applicable requirements. Holding companies and other foreign financial institutions that fulfill these requirements are also covered by this subparagraph.</p> <p>To operate in El Salvador, a foreign bank branches must be part of a bank meeting the requirements of subparagraph (c) or (d).</p> <p>The operations of foreign branches in El Salvador are limited by their capital in El Salvador.</p> <p>A bank organized under the laws of El Salvador in which over 50 percent of the shares are owned by foreign banks or financial conglomerates shall only share names, assets or infrastructure or offer joint services to the public with other companies of the same foreign conglomerate as laid down in the Banking Law (Ley de Bancos).</p>
--	--

3. Sector:	Financial Services
Subsector:	Savings and Credit Institutions and Cooperatives
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4)
Level of Government:	Central
Measures:	<p>Law of Cooperative Banks and Savings and Credit Societies, Legislative Decree Number 849, February 16th, 2000, Articles 155 and 157 (Ley de Bancos Cooperativos y Sociedades de Ahorro y Crédito, Decreto Legislativo número 849, 16 de febrero de 2000, Artículos 155 y 157);</p> <p>Banking Law, Legislative Decree Number. 697, September 2nd, 1999, Article 10 (Ley de Bancos, Decreto Legislativo número 697, 2 de septiembre de 1999, Artículo 10);</p> <p>General Law of Cooperative Associations, Legislative Decree Number 339, May 6th, 1986, Articles 1 and 16 (Ley General de Asociaciones Cooperativas, Decreto Legislativo número 339, 6 de mayo de 1986, Artículos 1 y 16) ; and</p> <p>Code of Commerce, Legislative Decree Number. 671, May 8th, 1970, Article 17 (Código de Comercio Decreto Legislativo número 671, 8 de mayo de 1970, Artículo 17).</p>
Description:	<p>Savings and credit institutions shall be subject to the same ownership requirements as set forth for banks in the preceding entry regarding the Financial Services sector, Banking Services subsector.</p> <p>Savings and credit institutions and cooperatives must be incorporated in El Salvador.</p> <p>The share ownership limit set forth in Article 10 of the Banking Law (Ley de Bancos) shall not apply to foreign not-for-profit foundations and associations with legal personality extended, according to the laws of their countries of origin, and duly inscribed in the Register of Non Profit Associations and Foundations (Registro de Asociaciones y Fundaciones sin Fines de Lucro) of the Ministry of Governance and Territorial Development (Ministerio de Gobernación y Desarrollo Territorial), pursuant to the Nonprofit Associations and</p>

	Foundations Act (Ley de Asociaciones y Fundaciones sin Fines de Lucro) of El Salvador.
--	--

4. Sector:	Financial Services
Subsector:	Bureaux de Change
Obligations Concerned:	National Treatment (Article 11.2) Market Access for Financial Institutions (Article 11.4)
Level of Government:	Central
Measures:	Law of Foreign Currency Exchange Houses, Legislative Decree Number 480, April 5th, 1990, Article 4 (Ley de Casas de Cambio de Moneda Extranjera, Decreto Legislativo número 480, 5 de abril de 1990, Artículo 4).
Description:	<p>Bureaux de change must be incorporated in El Salvador as anonymous society. The shares of the bureaux de change shall be the property of national financial institutions or nationals of El Salvador or legal persons comprising exclusively Salvadorans.</p> <p>A Bureaux de change, it's a society whose usual activity is the buying and selling of foreign currency, bank drafts, travelers checks and other payment instruments denominated in foreign currency, to prices determine the supply and demand of the market.</p> <p>An anonymous society, it's a capital company in which the shareholders are liable up to the amount of their contributions to social obligations. The name is formed freely without any limitation being that different from any other existing company, immediately followed by the words "Anonymous Society" ("Sociedad Anónima") or its abbreviation: "A.S" ("S.A").</p>

5. Sector:	Financial Services
Subsector:	All Subsectors
Obligations Concerned:	National Treatment (Article 11.2)
Level of Government:	Central
Measures:	<p>Banking Law, Legislative Decree Number 697, September 2nd, 1999, Article 156 (Ley del Bancos, Decreto Legislativo número 697, 2 de septiembre de 1999, Artículo 156).</p> <p>Law of the Agricultural Development Bank, Legislative Decree Number 312, April 10th, 1973, Article 14 (Ley del Banco de Fomento Agropecuario, Decreto Legislativo número 312, 10 de abril de 1973, Artículo 14).</p>
Description:	The Agricultural Development Bank (The Banco de Fomento Agropecuario) will not be member of the Deposit Guarantee Institute (Instituto de Garantía de Depósitos).

6. Sector:	Financial Services
Subsector:	All Subsectors
Obligations Concerned:	Most-Favored-Nation Treatment (Article 11.3)
Level of Government:	Central
Measures:	Free Trade Agreement between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panamá (Tratado de Libre Comercio entre Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua y Panamá) as set out in the Description element.
Description:	Panama may be treated as a Central American Party for the purposes of the Financial Services Chapter.

SECTION B

7. Sector:	Financial Services
Subsector:	All Subsectors Other Than Banking and Insurance
Obligations Concerned:	Market Access for Financial Institutions (Article 11.4)
Description:	<p>Financial Services</p> <p>El Salvador reserves the right to adopt or maintain measures requiring the incorporation in El Salvador of foreign financial institutions, other than those seeking to operate as banks or insurance companies within El Salvador.</p>

8. Sector:	Financial Services
Subsector:	Information Services of Credit Data History
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Descripción:	El Salvador reserves the right to adopt or maintain any measure in relation with the information services of credit data history.

9. Sector:	Financial Services
Subsector:	Management of Mutual Funds
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Description:	El Salvador reserves the right to adopt or maintain any measure in relation with Management of Mutual Funds.

10. Sector:	Financial Services
Subsector:	Providers of Electronic Money
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Description:	El Salvador reserves the right to adopt or maintain any measure in relation with providers of electronic money.

11. Sector:	Financial Services
Subsector:	Securities Market Services
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Description:	El Salvador reserves the right to adopt or maintain any measure in relation with securities market services.

12. Sector:	Financial Services
Subsector:	Pension Funds Services
Obligations Concerned:	National Treatment (Article 11.2) Most-Favored-Nation Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.4) Senior Management and Boards of Directors (Article 11.8)
Descripción:	El Salvador reserves the right to adopt or maintain any measure in relation with pension funds services.

13. Sector:	Financial Services
Subsector:	Lendings of all Types
Obligations Concerned:	Market Access for Financial Institutions (Article 11.4)
Description:	El Salvador reserves the right to adopt or maintain any measure in relation with the establishment of maximum interest rates to lendings of all types to avoid usury.