

ANNEX III
SCHEDULE OF AUSTRALIA

Introductory Note for the Schedule of Australia

1. The Schedule of Australia to Annex III sets out:
 - (a) headnotes that limit or clarify the commitments of Australia with respect to the obligations described in subparagraphs (b) and (c);
 - (b) in Section A, pursuant to Article 8.9.1 (Non-Conforming Measures), the existing measures of Australia that do not conform with some or all of the obligations imposed by:
 - (i) Article 8.2 (National Treatment);
 - (ii) Article 8.3 (Most-Favoured-Nation);
 - (iii) Article 8.4 (Market Access for Financial Institutions);
 - (iv) Article 8.5 (Cross-Border Trade); or
 - (v) Article 8.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, pursuant to Article 8.9.2 (Non-Conforming Measures), the specific sectors, sub-sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by:
 - (i) Article 8.2 (National Treatment);
 - (ii) Article 8.3 (Most-Favoured-Nation Treatment);
 - (iii) Article 8.4 (Market Access for Financial Institutions);
 - (iv) Article 8.5 (Cross-Border Trade); or
 - (v) Article 8.8 (Senior Management and Boards of Directors).
2. Each entry in Section A as described in subparagraph 1(b) sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 8.9.1, do not apply to the listed measure(s);
 - (c) **Level of Government** indicates the level of government maintaining the listed measure(s);
 - (d) **Source of Measure** identifies the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure 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 thereunder; and
- (e) **Description** sets out the non-conforming aspects of the measure for which the entry is made.

3. Each entry in Section B as described in subparagraph 1(c) sets out the following elements:

- (a) **Sector** refers to the general sector for which the entry is made;
- (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(c) that, pursuant to Article 8.9, do not apply to the sectors, sub-sectors, or activities listed in the entry;
- (c) **Level of Government** indicates the level of government maintaining the listed measure(s); and
- (d) **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the entry.

4. For entries in Section A, in accordance with Article 8.9.1(a), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the measures identified in the **Description** element of that entry except to the extent the measure identified in the **Description** element is inconsistent with a Specific Commitment in Annex 8-B.

5. For entries in Section B, in accordance with Article 8.9.2, the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, sub-sectors and activities identified in the **Description** element of that entry.

6. Where Australia 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 this Annex with respect to Articles 8.2 through 8.5 shall operate as a non-conforming measure with respect to Articles 11.3 (National Treatment– Investment), 11.4 (Most-Favoured-Nation Treatment– Investment) and Article 11.9 (Performance Requirements– Investment), to the extent of that measure.

Headnotes

1. Commitments under Chapter 8 (Financial Services) are undertaken subject to the limitations and conditions set forth in these headnotes and the Schedule below.
2. To clarify Australia's commitment with respect to Article 8.4, juridical persons supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form¹.
3. Australia limits its commitments under Article 8.9.1(c) with respect to Article 8.4 in the following manner: Article 8.9.1(c) shall apply only to non-conforming measures relating to Article 8.4(a) and not to those non-conforming measures relating to Article 8.4(b).
4. For greater certainty, notwithstanding the listing of any reservation by Australia or Korea in Annex III, Australia may adopt or maintain measures for prudential reasons pursuant to Article 8.10. Australia's right to adopt or maintain any measure subject to Article 8.10 shall not be affected by any listing by Korea in "Certain Measures Not Inconsistent With Article 8.2 or 8.4 or Subject to Article 8.10.1" in Annex III.

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

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Section A

Sector:	Financial Services
Obligations Concerned:	National Treatment (Article 8.2) Market Access for Financial Institutions (Article 8.4)
Level of Government:	Central
Source of Measure:	<i>Banking Act 1959</i> (Cth) <i>Payment Systems (Regulation) Act 1998</i> (Cth)
Description:	A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$A250,000. A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.

Sector:	Financial Services
Obligations Concerned:	Senior Management and Boards of Directors (Article 8.8)
Level of Government:	Central
Source of Measure:	<i>Corporations Act 2001 (Cth)</i> <i>Corporations Regulations 2001 (Cth)</i>
Description:	At least two directors of a public company must be ordinarily resident in Australia. At least one director of a private company must be ordinarily resident in Australia.

Sector:	Financial Services
Obligations Concerned:	National Treatment (Article 8.2) Most-Favoured-Nation Treatment (Article 8.3) Market Access for Financial Institutions (Article 8.4) Cross-Border Trade (Article 8.5) Senior Management and Boards of Directors (Article 8.8)
Level of Government:	Regional
Source of Measure:	All existing non-conforming measures at the regional level of government.
Description:	All existing non-conforming measures at the regional level of government.

Sector: Financial Services

Obligations Concerned: National Treatment (Article 8.2)

Level of Government: Central

Source of Measure: *Commonwealth Banks Act 1959* (Cth)

Description: Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

Section B

Sector: Financial Services

Obligations Concerned: National Treatment (Article 8.2)

Level of Government: Central and Regional

Description: Australia reserves the right to adopt or maintain any measure² with respect to the guarantee by government of government-owned entities, including guarantees related to the privatisation of such entities, which may conduct financial operations.

² That is, measures that would be excluded from the application of Chapter 8 (Financial Services) under Article 8.1.3(b), except for the application of Australia's policy on competitive neutrality which in general allows competition and avoids providing a net competitive advantage to an entity by virtue of its public sector ownership.