

**ANNEX III
FINANCIAL SERVICES NON-CONFORMING MEASURES**

SCHEDULE OF PERU

INTRODUCTORY NOTE

1. The Schedule of Peru in this Annex sets out:
 - (a) headnotes that limit or clarify the commitments of Peru with respect to the obligations described in subparagraph (b)(i) through (b)(v) and in subparagraph (c);
 - (b) in Section A, in accordance with Article 12.9 (Non-Conforming Measures), the existing measures of Peru that do not conform with some or all of the obligations imposed by:
 - (i) Article 12.2 (National Treatment),
 - (ii) Article 12.3 (Most-Favored-Nation Treatment),
 - (iii) Article 12.4 (Market Access for Financial Institutions),
 - (iv) Article 12.5 (Cross-Border Trade), or
 - (v) Article 12.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, in accordance with Article 12.9 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which Peru may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Articles 12.2 (National Treatment), 12.3 (Most-Favored-Nation Treatment), 12.4 (Market Access for Financial Institutions), 12.5 (Cross-Border Trade), or 12.8 (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) **Sub-Sector** refers to the specific sector for which the entry is made;
 - (c) **Obligations Concerned** specifies the article(s) referred to in paragraph 1(b) that, pursuant to Article 12.9.1(a), shall not apply to the non-conforming aspects of the law, regulation, or other measure, as set out in paragraph 4;
 - (d) **Level of Government** indicates the level of government maintaining the scheduled 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, non-binding description of the measure for which the entry is made.

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) **Sub-Sector** refers to the specific sector for which the entry is made;
- (c) **Obligations Concerned** specifies the article(s) referred to in paragraph 1(c) that, pursuant to Article 12.9.2, shall not apply to the sectors, sub-sectors, or activities scheduled 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, sub-sectors, or activities covered by the entry.

4. For entries in Section A, in accordance with Article 12.9.1(a), and subject to Article 12.9.1(c), the Articles of this Agreement specified in the **Obligations Concerned** element of an entry shall not apply to the non-conforming aspects of a law, regulation, or other measure identified in the **Measures** element of that entry, except to the extent that such non-conforming aspects are inconsistent with a Specific Commitment in Annex 12C (Specific Commitments).

5. For entries in Section B, in accordance with Article 12.9.2, the Articles of this Agreement specified in the **Obligations Concerned** element of an entry shall not apply to the sectors, sub-sectors, and activities identified in the **Description** element of that entry.

6. Where Peru maintains a measure that requires that a service supplier be a citizen, permanent resident, or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken 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 Schedule entry with respect to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), or 9.7 (Performance Requirements) to the extent of that measure.

7. An entry in Annex I or Annex II specifying that Article 10.2 (National Treatment) shall not apply to the non-conforming aspects of a law, regulation, or other measure, shall not

be construed as limiting a Party's obligation under Article 12.5.1 to accord national treatment with respect to the supply of services specified in Annex 12B (Cross-Border Trade) to cross-border financial service suppliers of the other Party.

HEADNOTES

1. Commitments under this Agreement, in the sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.
2. To clarify the commitment of Peru with respect to Article 12.4 (Market Access for Financial Institutions), juridical persons supplying financial services constituted under the laws of Peru are subject to non-discriminatory limitations on juridical form.¹
3. Paragraph 1(c) of Article 12.9 (Non-Conforming Measures) shall not apply to those non-conforming measures relating to paragraph (b) of Article 12.4 (Market Access for Financial Institutions).

¹ For example, limited liability partnerships and sole proprietorships with limited liability are generally not acceptable juridical forms for financial institutions in Peru. This headnote does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.

SECTION A

1. Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	<i>General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments.</i>
Description:	A financial institution of the other Party providing banking services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose consistent with paragraph 1 of Article 12.10 (Exceptions) the operations of the branch are limited by its capital located in Peru.

2. Sector:	Financial Services
Sub-Sector:	Insurance and Insurance Related Services
Obligation concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	<i>General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments.</i>
Description:	A financial institution of the other Party providing insurance or insurance related services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose consistent with paragraph 1 of Article 12.10 (Exceptions) the operations of the branch are limited by its capital located in Peru.

3. Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	Cross-Border Trade (Article 12.5)
Level of Government:	Central
Measures:	<p>Consolidated Text of the <i>Securities Market Law</i> (Texto Unico Ordenado de la <i>Ley del Mercado de Valores</i>), approved by Supreme Decree N° 093-2002-EF (<i>Decreto Supremo</i> N° 093-2002-EF); articles 280, 333, 337 and Seventeenth Final Provision.</p> <p><i>General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros)</i>, Law N° 26702 and its amendments; articles 136 and 296.</p>
Description:	Financial institutions constituted under the laws of Peru and debt securities offered in a primary or secondary public offering in the territory of Peru must be rated by credit rating companies constituted under the laws of Peru. They may also be rated by other credit rating agencies, but only in addition to the mandatory rating.

4. Sector:	Financial Services
Sub-Sector:	Banking and other financial services (excluding insurance)
Obligation concerned:	National Treatment (Article 12.2)
Level of Government:	Central
Measures:	<p><i>General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments</i></p> <p><i>Law establishing the Banco Agropecuario (Ley de creación del Banco Agropecuario), Law N°27603</i></p> <p><i>Law establishing the Corporación Financiera de Desarrollo (COFIDE) (Ley de creación de la Corporación Financiera de Desarrollo (COFIDE)), Law Decree N° 208 and Law N° 25382</i></p> <p><i>Law establishing the Banco de la Nación (Ley de creación del Banco de la Nación), Law N°16000</i></p> <p><i>Law N° 28579, Fondo MiVivienda</i></p> <p><i>Supreme Decree N° 157-90-EF</i></p> <p><i>Supreme Decree N° 07-94-EF and its amendments</i></p>
Description:	<p>Peru may grant advantages or exclusive rights, without limitation, to one or more of the following financial entities, so long as they are partially or fully owned by the State: <i>Corporación Financiera de Desarrollo (COFIDE), Banco de la Nación, Banco Agropecuario, Fondo Mivivienda, Cajas Municipales de Ahorro y Crédito, and the Caja Municipal de Crédito Popular.</i></p> <p>Examples of such advantages are the following:²</p> <p>The <i>Banco de la Nación</i> and <i>Banco Agropecuario</i> are not required to diversify their risk; and</p>

² For greater certainty, and notwithstanding the location of this non-conforming measure within Section A of this Schedule, the Parties understand that the advantages or exclusive right that Peru may grant to the specified entities are not limited only to the cited examples.

The *Cajas Municipales de Ahorro y Crédito* may directly sell collateral they repossess in cases of loan default, in accordance with pre-established procedures.

5. Sector:	Financial Services
Sub-Sector:	Banking and other financial services (Excluding Insurance)
Obligations concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	<p>Consolidated Text of the <i>Securities Market Law</i> (Texto Unico Ordenado de la <i>Ley del Mercado de Valores</i>), approved by Supreme Decree N° 093-2002-EF (<i>Decreto Supremo</i> N° 093-2002-EF); articles 130, 167, 185, 204, 223, 259, 269, 270, 302, 324 and Seventeenth Final Provision</p> <p>Legislative Decree N° 862, <i>Law of the Investment Funds and their Management Corporations</i> (<i>Ley de Fondos de Inversión y sus Sociedades Administradoras</i>), article 12</p> <p>Law N° 26361, <i>Law on Commodities Exchange</i> (<i>Ley sobre Bolsas de Productos</i>), modified by Law N° 27635; articles 2, 9 and 15.</p> <p>Law Decree N° 22014, article 1.</p> <p><i>Consolidated Text of the Law of Private Pension Funds</i> (<i>Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones</i>), approved by Supreme Decree N° 054-97-EF; article 13; and the <i>Regulation of the Consolidated Text of the Law of Private Pension Funds</i> (<i>Reglamento del Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones</i>), approved by Supreme Decree N° 004-98-EF; article 18.</p>
Description:	<p>Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including pension fund managers, must be constituted under the laws of Peru. Therefore, financial institutions of the other Party established in Peru to supply these financial services may not be established as branches or agencies.</p>

6. Sector:	Financial Services
Sub-Sector:	All
Obligation concerned:	Cross-Border Trade (Article 12.5)
Level of Government:	Central
Measures:	<i>General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments</i>
Description:	Creditors domiciled in Peru have legal preference with regard to the assets located in Peru of a branch of a foreign financial institution, in case of liquidation of the financial institution or its branch in Peru.

SECTION B

1. Sector:	Financial Services
Sub-Sector:	Social services
Obligation concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Description:	Peru reserves the right to adopt or maintain measures that do not conform with the obligations of Article 12.4(a)(ii) and (iii) with respect to the supply of services described in Article 12.1.3(a).

2. Sector:	Financial Services
Sub-Sector:	Insurance and insurance-related services
Obligation concerned:	Cross-Border Trade (Article 12.5)
Level of Government:	Central
Measure:	Law N° 27181 and its Regulation approved by Supreme Decree 024-2002-MTC Law N° 26790, <i>Law on the Modernization of the Social Security in Health (Ley de la Modernización de la Seguridad Social en Salud)</i> , and its Regulation approved by Supreme Decree N° 03-98-SA
Description:	Peru reserves the right to adopt or maintain measures that restrict the acquisition of obligatory insurance outside of Peru, or that require that obligatory insurance be purchased from suppliers established in Peru, such as “Seguro Obligatorio de Accidentes de Transito (SOAT)” and “Seguro Complementario de Trabajo en Riesgo”. These restrictions shall not apply to any insurance covered by paragraphs 4 through 6 of Annex 12B (Cross-Border Trade).