

ANNEX III: FINANCIAL SERVICES NON-CONFORMING MEASURE

Schedule of Peru

Introductory Note

1. The Schedule of Peru to 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 (v) and in subparagraph (c);
 - (b) in Section A, pursuant to 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, pursuant to Article 12.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Peru may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 12.2, 12.3, 12.4, 12.5, or 12.8.
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 article(s) referred to in paragraph 1(b) that, pursuant to Article 12.9.1(a), do 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) **Subsector** 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, do not apply to the sectors, subsectors, 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, subsectors, 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 do 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 12.15.
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 do not apply to the sectors, subsectors, 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, 12.3, 12.4, or 12.5 shall operate as a Schedule entry with respect to Article 10.3 (National Treatment), 10.4 (Most-Favored-Nation Treatment), or 10.9 (Performance Requirements) to the extent of that measure.

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Headnotes

1. Commitments in these subsectors under the Agreement 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. Article 12.9.1(c) (Non-Conforming Measures) shall not apply to those non-conforming measures relating to Article 12.4(b) (Market Access for Financial Institutions).

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

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Section A

Sector:	Financial Services
Subsector:	Banking and Other Financial Services (excluding insurance)
Obligation concerned:	Market Access for Financial Institutions (Article 12.4)
Measure:	<i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias.</i>
Description:	A financial institution of another 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 Article 12.10.1, the operations of the branch are limited by its capital located in Peru.

Sector:	Financial Services
Subsector:	Banking and Other Financial Services (excluding insurance)
Obligation concerned:	Cross-Border Trade (Article 12.5)
Measure:	<p><i>Texto Único Ordenado de la Ley del Mercado de Valores, aprobado por el Decreto Supremo N° 093-2002-EF; Artículos 280, 333, 337 y Décimo Séptima Disposición Final.</i></p> <p><i>Ley N° 26702 y sus modificatorias, Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros; Artículos 136 y 296.</i></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.

Sector:	Financial Services
Subsector:	Banking and Other Financial Services (excluding insurance)
Obligation concerned:	National Treatment (Article 12.2)
Measure:	<p><i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias.</i></p> <p><i>Ley de Creación del Banco Agropecuario, Ley N° 27603.</i></p> <p><i>Ley de creación de la Corporación Financiera de Desarrollo (COFIDE), Decreto Ley N° 18807.</i></p> <p><i>Ley de Creación del Banco de la Nación, Ley N° 16000.</i></p> <p><i>Ley N° 28579, Fondo MiVivienda.</i></p> <p><i>Decreto Supremo N° 157-90-EF.</i></p> <p><i>Decreto Supremo N° 07-94-EF y sus modificatorias.</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> <ul style="list-style-type: none"> • The <i>Banco de la Nación</i> and <i>Banco Agropecuario</i> are not required to diversify their risk; and • The <i>Cajas Municipales de Ahorro y Crédito</i> may directly sell collateral they repossess in cases of loan default, in accordance with pre-established procedures.

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 rights that a Party may grant to the specified entities are not limited only to the cited examples.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligations Concerned:	Market Access for Financial Institutions (Article 12.4)
Measures:	<p><i>Texto Único Ordenado de la Ley del Mercado de Valores, aprobado por el Decreto Supremo N° 093-2002-EF; Artículos 130, 167, 185, 204, 223, 259, 269, 270, 302, 324 y Décimo Séptima Disposición Final.</i></p> <p><i>Decreto Legislativo N° 862, Ley de Fondos de Inversión y sus Sociedades Administradoras, Artículo 12.</i></p> <p><i>Ley N° 26361, Ley sobre Bolsas de Productos, modificada por la Ley N° 27635, Artículos 2, 9 y 15.</i></p> <p><i>Decreto Ley N° 22014, Artículo 1.</i></p> <p><i>Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones, aprobado por el Decreto Supremo N° 054-97-EF, Artículo 13; y el Reglamento del Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones, aprobado por el Decreto Supremo N° 004-98-EF, Artículo 18.</i></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 by pension fund managers, must be constituted under the laws of Peru. Therefore, financial institutions of another Party established in Peru to supply these financial services may not be established as branches or agencies.</p>

Sector:	Financial Services
Subsector:	All
Obligation Concerned:	Cross-Border Trade (Article 12.5)
Measure:	<i>Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros, Ley N° 26702 y sus modificatorias.</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.

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Section B

Sector:	Financial Services
Subsector:	Social Services
Obligation Concerned:	Market Access for Financial Institutions (Article 12.4)
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).

Sector:	Financial Services
Subsector:	Insurance and Insurance-related Services
Obligation concerned:	Cross-Border Trade (Article 12.5)
Measure:	<p><i>Ley N° 27181 y su Reglamento aprobado mediante Decreto Supremo 024-2002-MTC.</i></p> <p><i>Ley N° 26790, Ley de la Modernización de la Seguridad Social en Salud, y el Reglamento aprobado por Decreto Supremo N° 03-98-SA.</i></p>
Description:	<p>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 <i>Seguro Obligatorio de Accidentes de Transito (SOAT)</i> and <i>Seguro Complementario de Trabajo en Riesgo</i>. These restrictions do not apply to any insurance covered by Annex 12.5.1.</p>