

ANNEX III
SCHEDULE OF COLOMBIA
NON-CONFORMING MEASURES WITH REGARD TO FINANCIAL SERVICES

Introductory Note for the Schedule of Colombia

1. The Schedule of Colombia to this Annex sets out:
 - (a) headnotes that limit or clarify the commitments of Colombia 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, the existing measures of Colombia that do not conform with some or all of the obligations imposed by:
 - (i) Article 12.2;
 - (ii) Article 12.3;
 - (iii) Article 12.4;
 - (iv) Article 12.5; or
 - (v) Article 12.8, and
 - (c) in Section B, pursuant to Article 12.9, the specific sectors, subsectors, or activities for which Colombia 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 (except for the entry in Section A regarding the limitation on the number of primary dealers, for which the description is binding).
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 scheduled 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 (except the entry regarding the limitation on the number of primary dealers), 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 the 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 the entry in Section A regarding the limitation on the number of primary dealers, 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 the law, regulation, or other measure identified in the **Description** element of that entry, except to the extent that such non-conforming aspects are inconsistent with a Specific Commitment in Annex 12.15.
6. 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.
7. Where Colombia 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 10.8 (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 Colombia with respect to Article 12.4, financial institutions constituted under the laws of Colombia are subject to non-discriminatory limitations on juridical form.¹
3. Article 12.9.1(c) shall not apply to those non-conforming measures relating to Article 12.4(b).

¹ For example, *sociedades de responsabilidad limitada* and sole proprietorships are generally not acceptable juridical forms for financial institutions established in Colombia. For greater certainty, the choice, where available, by an investor between branches and subsidiaries is not addressed by this headnote.

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Schedule of Colombia
With Respect to the Financial Services Sector

Section A

Sector	Financial Services
Subsector	Banking and Other Financial Services (Excluding Insurance)
Level of Government	Central
Obligations Concerned	Market Access (Article 12.4)
Measure	<i>Decreto 656 de 1994, Art. 8.</i>

Description At least every 12 months during the five years after its establishment, a *Sociedad Administradora de Fondos de Pensiones* and a *Sociedad Administradora de Fondos de Pensiones y de Cesantía* must offer shares of its capital stock to entities of the social solidarity sector² and to participants in and beneficiaries of the public social security system (*Régimen de Ahorro Individual con Solidaridad*) so that they may subscribe to a total of at least 20% of its capital stock. The same requirement applies with regard to increases in capital, but only with regard to the increase.

² For greater certainty, the social solidarity sector includes, among others current and former employees of the relevant entity, whether individually or in association, labor unions, federations and confederations of labor unions, employee savings funds (fondos de empleados), pension funds, severance payment funds (fondos de cesantias), and cooperatives.

Sector	Financial Services
Subsector	Banking and Other Financial Services (Excluding Insurance)
Level of Government	Central
Obligations Concerned	National Treatment (Article 12.2) Market Access (Article 12.4)
Measure	<i>Decreto 2419 de 1999</i> , Art. 1 (in conformity with <i>Ley 270 de 1996</i> , Art. 203 y <i>Decreto 1065 de 1999</i> , Art 16).
Description	The sums of money subject to court or police order, including <i>cauciones</i> , ³ and funds consigned under leases must be deposited in the <i>Banco Agrario de Colombia. S.A.</i> , which may derive a competitive advantage with respect to its overall operations from all or some portion of that exclusive right.

³ A *caución*, under Colombian law, is a deposit of money made under court order – for example, by a civil defendant in return for the court lifting an injunction won by the plaintiff against certain assets of the defendant.

Sector	Financial Services
Subsector	Banking and Other Financial Services (Excluding Insurance)
Level of Government	Central
Obligations Concerned	National Treatment (Article 12.2)
Measure	<i>Estatuto Orgánico del Sistema Financiero</i>

Description	<p>Colombia may grant advantages or exclusive rights to the following financial entities:</p> <ul style="list-style-type: none"> ▪ <i>Fondo para el Financiamiento del Sector Agropecuario (FINAGRO);</i> ▪ <i>Banco Agrario de Colombia;</i> ▪ <i>Fondo Nacional de Garantías;</i> ▪ <i>Financiera Eléctrica Nacional (FEN);</i> ▪ <i>Financiera de Desarrollo Territorial (FINDETER);</i> ▪ <i>Fiduciaria La Previsora;</i> ▪ <i>Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior (ICETEX);</i> ▪ <i>Banco de Comercio Exterior (BANCOLDEX);</i> ▪ <i>Fondo Financiero de Proyectos de Desarrollo (FONADE).</i> <p>The advantages or exclusive rights may include, but are not limited to, the following:⁴</p> <ul style="list-style-type: none"> ▪ exemption from certain taxation; ▪ exemption from registration and periodic reporting requirements under federal securities laws; ▪ purchase by the government of Colombia, through any public entity of Colombia, of obligations issued by the entities listed above.
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⁴ For greater certainty, and notwithstanding the location of this non-conforming measure within Section A, the Parties understand that the advantages or exclusive rights that Colombia may grant to the specified entities are not limited only to the cited examples.

Sector	Financial Services
Subsector	Banking and Other Financial Services (Excluding Insurance)
Level of Government	Central
Obligations Concerned	Market Access (Article 12.4)
Measure	<i>Resolución 3331 de 2004 del Ministerio de Hacienda y Crédito Público – Dirección General de Crédito Público, as amended</i>
Description	The number of primary dealers in the debt securities of Colombia is limited to a certain number of financial institutions, which can be varied from time to time.

Sector	Financial Services
Subsector	Insurance and Insurance-Related Services
Level of Government	Central
Obligations Concerned	Cross-Border Trade (Article 12.5)
Measure	<i>Estatuto Orgánico del Sistema Financiero – E.O.S.F.</i> , Arts. 39, 108 numeral 3, y 188 numeral 1.
Description	The obligations of Colombia under Article 12.5.2 are limited to the provisions of Colombia’s Annex 12.15(D).

Sector	Financial Services
Subsector	Insurance and Insurance-Related Services
Level of Government	Central
Obligations Concerned	National Treatment (Article 12.2)
Measure	<i>Estatuto Orgánico del Sistema Financiero – E.O.S.F., Art. 41, numeral 6, literal (d).</i>
Description	A foreign national who has resided in Colombia for less than one year may not supply services in Colombia as an insurance agent.

Section B

Sector:	Financial Services
Subsector:	All
Level of Government:	Central
Obligations Concerned:	Market Access (Article 12.4)
Description:	Colombia reserves the right to adopt or maintain any measure requiring that financial institutions of another Party be constituted under the laws of Colombia. ⁵ Therefore, market access through branching is not permitted. This restriction is modified with respect to bank branches and insurance branches as provided in Colombia's Annex 12.15(B) and (C).

⁵ For greater certainty, the following measures, among others, currently limit juridical form for the establishment of financial institutions in the territory of Colombia: Estatuto Orgánico del Sistema Financiero, Art. 53, 44; Ley 510 de 1999, Art. 101; Decreto 656 de 1994, Art. 1 in accordance with Ley 100 de 1993, Art. 91(a); Ley 45 de 1990, Art. 1(a), 7; Ley 27 de 1990, Art. 2; Ley 9 de 1991, Art. 8; Res. 8 de 2000 de la Junta Directiva del Banco de la República, Art. 64(a); Decreto 2016 de 1992, Art. 1; Decreto 573 de 2002, Arts. 1-2; Decreto 437 de 1992, Art. 2; Decreto 384 de 1980, Art. 4; Decreto 1719 de 2001, Art. 1; Decreto 2080 de 2000, Arts. 26, 31.