

## **Annex III**

### **Canada**

#### **Financial Services Non-Conforming Measures**

1. The Schedule of Canada to this Annex sets out:
  - (a) headnotes that limit or clarify the commitments of Canada with respect to the obligations described in subparagraphs (b) and (c);
  - (b) in Section I, the reservations taken by Canada pursuant to paragraphs 1 and 2 of Article 1109 with respect to existing measures that do not conform with obligations imposed by articles relating to:
    - (i) National Treatment (Article 1102),
    - (ii) Most-Favored-Nation Treatment (Article 1103),
    - (iii) Right of Establishment (Article 1104),
    - (iv) Cross-Border Trade (Article 1105), or
    - (v) Senior Management and Boards of Directors (Article 1108);
  - (c) in Section II, the reservations taken by Canada, pursuant to paragraph 3 of Article 1109, for measures Canada may adopt or maintain that do not conform with obligations imposed by Article 1102, 1103, 1104, 1105, or 1108; and
  - (d) in Section III, the specific commitments to liberalize measures undertaken by Canada pursuant to paragraph 4 of Article 1109.
2. Each reservation in Section I sets out the following elements
  - (a) **Sector** refers to the general sector in which the reservation measure is taken;

- (b) **Sub-Sector** refers to the specific sector in which the reservation is taken;
- (c) **Type of Reservation** specifies the obligation referred to in paragraph 1(b) for which the reservation is taken;
- (d) **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken;
- (e) **Measures** identifies the laws, regulations or other measures, as qualified by the **Description** element, for which the reservation is taken. 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** sets out references, if any, for liberalization on the date of entry into force of this Agreement pursuant to other sections of Canada's Schedule to this Annex, and the remaining non-conforming aspects of the existing measures for which the reservation is taken.

3. Each reservation in Section II sets out the following elements:

- (a) **Sector** refers to the general sector in which the reservation is taken;
- (b) **Sub-Sector** refers to the specific sector in which the reservation is taken;
- (c) **Type of Reservation** specifies the obligation referred to in subparagraph 1(c) for which the reservation is taken;
- (d) **Level of Government** indicates the level of government maintaining the measure for which the reservation is taken; and
- (e) **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the reservation.

4. In the interpretation of a reservation in Section I, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapter against which the reservation is taken. To the extent that:

- (a) the **Measures** element is qualified by a specific reference in the **Description** element, 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 that discrepancy.

5. In the interpretation of a reservation in Section II, all elements of the reservation shall be considered. The **Description** element shall prevail over all other elements.

6. Where Canada 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 1102, 1103, 1104, or 1105 shall operate as a Schedule entry with respect to Article 803 (Investment - National Treatment), 804 (Investment - Most-Favored-Nation Treatment), or 807 (Investment - Performance Requirements) to the extent of that measure.

## **Annex III**

### **Schedule of Canada**

#### **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 Canada with respect to Article 1104, juridical persons supplying financial services and constituted under the laws of Canada are subject to non-discriminatory limitations on juridical form.<sup>1</sup>

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

## Schedule of Canada

### Section – I

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance
<b>Type of Reservation:</b>	Cross-Border Trade (Article 1105)
<b>Level of Government:</b>	National
<b>Measures:</b>	<i>Insurance Companies Act, S.C. 1991, c. 47</i> <i>Reinsurance (Canadian Companies) Regulations, SOR/92-298</i> <i>Reinsurance (Foreign Companies) Regulations, SOR/92-302</i>
<b>Descripción:</b>	The purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from a non-resident reinsurer is limited to no more than 25 percent of the risks undertaken by the insurer purchasing the reinsurance.

## Section – II

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Type of Reservation:</b>	Right of Establishment (Article 1104) National Treatment (Article 1102)
<b>Level of Government:</b>	National
<b>Descripción:</b>	Canada reserves the right to adopt or maintain any measure requiring that a foreign bank establish as a subsidiary in order to accept or maintain retail deposits of less than CDN\$150,000.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and Other Financial Services (Excluding Insurance)
<b>Type of Reservation:</b>	Right of Establishment (Article 1104) National Treatment (Article 1102)
<b>Level of Government:</b>	National
<b>Descripción:</b>	Canada reserves the right to adopt or maintain any measure requiring that foreign banks that have been authorized to establish a branch in Canada be members of the Canadian Payments Association. Canada also reserves the right to adopt or maintain any measure prohibiting foreign lending branches from being members of the Canadian Payments Association.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All
<b>Type of Reservation:</b>	Most-Favoured-Nation Treatment (Article 1103)
<b>Level of Government:</b>	National and Sub-national
<b>Descripción:</b>	<p>Canada reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.</p> <p>Canada reserves the right to adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement.</p>

## **Section - III**

### **A. Specific Commitment Regarding Portfolio Management**

1. Subject to paragraph 2, Canada shall allow a financial institution organized outside its territory to provide the following services to a collective investment scheme located in its territory:

- (a) investment advice and
- (b) portfolio management services, excluding:
  - (i) custodial services, unless they are related to managing a collective investment scheme;
  - (ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust; and
  - (iii) execution services, unless they are related to managing a collective investment scheme.

2. This commitment is subject to Article 1101, paragraph 3 of Article 1105 and the Appendix to this Section.

3. This commitment is also subject to Canada's right to:

- (a) adopt or maintain any measure relating to securities services that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement;
- (b) adopt or maintain any measure relating to securities services that accords differential treatment to a country under any future bilateral or multilateral international agreement.

4. Notwithstanding paragraph 1, Canada may require a collective investment scheme located in Canada to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

5. For purposes of this commitment, in Canada collective investment scheme means investment funds or fund management companies regulated or registered under provincial securities laws and regulations.

## Appendix

1. Canada's commitment in subsection III (A) applies at the sub-national level only to the following provinces or territories and subject to paragraph 2:

Alberta

British Columbia

Manitoba

New Brunswick

Quebec

Ontario

Saskatchewan

2. The commitment in respect of any of the provinces or territories listed in paragraph 1 does not apply to any existing reservation of any of those provinces or territories, the continuation or prompt renewal of any such measure or any amendment to any such measure to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with the commitment.

3. Not later than four years following the entry into force of this Agreement, the Parties shall consult on the liberalization of cross-border trade in portfolio management services, further to that set out in this specific commitment. In such consultations, the Parties shall determine whether Canada's specific commitment shall be maintained or further liberalized.