

ANNEX III
NON-CONFORMING MEASURES OF MOROCCO
WITH RESPECT TO FINANCIAL SERVICES

Introductory Note for the Schedule of Morocco

1. The Schedule of Morocco to Annex III sets out:
 - (a) Headnotes that limit or clarify the commitments of Morocco with respect to the obligations described in clauses (i) – (v) of subparagraph (b) and in subparagraph (c),
 - (b) in Section A, pursuant to Article 12.9.1 (Non-Conforming Measures), the existing measures of Morocco that are not subject to 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 12.9.2 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which Morocco may maintain existing, or adopt new or more restrictive, measures that are not or will not be subject to some or all of the obligations imposed by Article 12.2 (National Treatment) or Article 12.4 (Market Access for Financial Institutions).
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 obligations referred to in paragraph 1(b) that, pursuant to Article 12.9, do not apply to non-conforming aspects of the law, regulation, or other measure that are set out in the **Description** element of the entry;
 - (d) **Level of Government** indicates the level of government maintaining the listed 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** sets out the non-conforming aspects 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 obligation(s) referred to in paragraph 1(c) that, pursuant to Article 12.9.2, do 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, subsectors, or activities covered by the entry.
4. For entries in Section A, in accordance with Article 12.9.1(a), 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 that are set out in the **Description** element of that entry.

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, sub-sectors, or activities identified in the **Description** element of that entry.

Headnotes

1. Commitments in these subsectors under this Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.
2. To clarify the Moroccan commitments with respect to Article 12.4(b) (Market Access for Financial Institutions), legal persons constituted under the laws of Morocco and offering financial services shall be subject to non-discriminatory limitations on juridical form.¹
3. Morocco hereby limits its commitment under Article 12.9.1(c) (Non-Conforming Measures) with respect to Article 12.4 (Market Access for Financial Institutions) as follows: Article 12.9.1(c) shall not apply:
 - (a) with respect to Article 12.4(a)(i), to the non-conforming measures relating to the Casablanca Stock Exchange and to the central depository for securities (which, as of the date of signature of this Agreement, is *Maroclear*); and
 - (b) with respect to Article 12.4(b), to any non-conforming measure.
4. (a) Solely in the context of regulation of non-insurance financial institutions with respect to:
 - (i) financial services supplied in Morocco but not previously regulated, such as asset management by *societes de gestion*, or
 - (ii) financial services previously neither supplied nor regulated in Morocco, such as trading in derivatives products,

Morocco may adopt or maintain new non-conforming measures that are inconsistent with Article 12.4 (Market Access for Financial Institutions), provided they are not inconsistent with other applicable provisions of this Chapter.

 - (b) Prior to imposition of any new non-conforming measure described in subparagraph (a), Morocco shall:

¹ 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.

- (i) notify the authority of the United States responsible for non-insurance financial services of its intent at least 45 days in advance of implementation of the measure, and
 - (ii) at the request of the United States, consult concerning the measure and give due consideration to the views expressed by the United States in this respect.
- (c) Any new non-conforming measure described in subparagraph (a) shall be subject to the following limitations:
 - (i) Morocco shall ensure that the measure does not significantly disadvantage the core activities or competitive positions of financial institutions of the United States or other enterprises of the United States supplying a financial service that are operating in Morocco, or that have been authorized to operate in Morocco, at the time of adoption of such new measure;
 - (ii) Morocco may not require financial institutions or enterprises of the United States operating, or authorized to operate, as branches or agencies at the time of adoption of the new measure to incorporate in Morocco;
 - (iii) Morocco may not authorize or designate an exclusive supplier of management or administration services with respect to privately managed pension or retirement savings; and
 - (iv) Morocco shall comply with the obligations of Article 12.4 (a) (Market Access for Financial Institutions) at such time as it authorizes the supply of financial services by more than one financial institution.
- (d) If Morocco adopts or maintains a new non-conforming measure described in subparagraph (a) at any time between the signing of this Agreement and its entry into force, Morocco shall act in a manner consistent with the obligations of subparagraph (c).

Section A

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligation Concerned:	National Treatment (Article 12.2) Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	Articles 29 and 26 of the <i>Dahir</i> No. 1-93-147 of <i>Moharrem</i> 15, 1414 (July 6, 1993) on the exercise of credit institution activities and on the monitoring thereof.
Description:	<p>The operations of credit institutions² incorporated abroad and functioning as branches or agencies in Morocco are limited by the amount effectively allocated by those institutions to their operations in Morocco (<i>dotation en capital</i>), in conformity with the provisions in force, under applicable law.</p> <p>Morocco may grant certain credit institutions the right to establish in a juridical form other than that usually required of credit institutions under the cited measures. Such institutions, which currently include regional mutual banks, mutual guarantee associations, and the <i>Fond d'Equipement Communal</i> (FEC), shall be established with a public interest purpose.</p>

² Credit institutions, as defined in the cited measures, include banks and financing companies.

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:	Article 3 of the Royal Decree No. 552-67 of <i>Ramadan</i> 26, 1388 (December 17, 1968) on credit extended in the building and hotel industries, as amended and supplemented.
Description:	Advantages may be accorded to credit institutions that carry out credit operations in favor of the real estate, building, and hotel industries. Only credit institutions incorporated in Morocco may receive such advantages and only if they are specifically licensed by the relevant Moroccan authorities to carry out such operations.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligation Concerned:	National Treatment (Article 12.2)
Level of Government:	Central
Measures:	Article 17 of Law No. 12-96 of <i>Rejeb</i> 19, 1421 (October 17, 2000) on reform of the <i>Crédit Populaire du Maroc</i> .
Description:	At least 51 percent of the share capital belonging to the <i>Banque Centrale Populaire</i> shall be held by the State and the regional mutual banks. No other natural or legal person may hold, directly or indirectly, an interest of more than five percent in the share capital of the <i>Banque Centrale Populaire</i> .

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:	Article 7 of Law 35/94 of <i>Chaabane</i> 24, 1415 (January 26, 1995) on negotiable debt securities.
Description:	Foreign banks or financing companies operating through branches or other entities not incorporated in Morocco are not permitted to issue negotiable debt securities, including certificates of deposit or bonds, in Morocco.

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:	Articles 1, 7, 8, and 75 of the <i>Dahir</i> No. 1-93-211 of <i>Rabii II</i> 4, 1414 (September 21, 1993) on the stock exchange, as modified or supplemented.
Description:	All transactions involving capital stock issued by legal persons listed or desiring to list on a stock exchange in Morocco must be carried out only on the Casablanca Stock Exchange. Administration of the stock exchange is assigned to a limited liability corporation incorporated in Morocco in which stock brokerage firms must be equal shareholders.

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:	Article 36 of the <i>Dahir</i> No. 1-93-211 of <i>Rabii</i> II 4, 1414 (September 21, 1993) on the Stock Exchange, as modified or supplemented.
Description:	Stock brokerage firms must be incorporated in Morocco.

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:	Articles 2 and 3 of Law No. 35/96 of <i>Chaabane</i> 29, 1417 (January 9, 1997) on creation of a central depository and on the institution of an all-encompassing system for registration of certain specific securities.
Description:	Morocco reserves the right to maintain a single entity empowered to ensure: (i) the safekeeping of the securities covered under its operations; and (ii) the administration of the current securities accounts opened on behalf of its affiliated entities.

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>Dahir</i> No. 1-59-074 of <i>Chaabane I</i>, 1378 (February 10, 1959) establishing the <i>Caisse de Dépôt et de Gestion</i>, as amended or supplemented;</p> <p>Law No. 47-95 of <i>Rabii I</i> 21, 1417 (August 7, 1996) on reorganisation of the <i>Caisse Centrale de Garantie</i>;</p> <p>Law No. 31-90, of <i>Safar</i> 5, 1413 (August 5, 1992) on reorganisation of the “<i>Fonds d’Equipement Communal</i>”;</p> <p>Law No. 15-99, of <i>Ramadan</i> 16, 1424 (November 11, 2003) on Reform of the <i>Credit Agricole</i>;</p> <p>Decision of the Finance Minister, No. 1641-91, of <i>Joumada I</i> 12, 1412 (November 20, 1991) related to uses in CNCA bonds;</p> <p>Royal Decree No. 552-67 of <i>Ramadan</i> 26, 1388 (December 17, 1968) on credit extended in the building and hotel industries, as amended and supplemented; and</p> <p>Law No. 24-96, of <i>Rabii II</i> 2, 1418 (August 7, 1997) related to Post and Telecommunications.</p>
Description:	<p>Morocco reserves the right to grant advantages to the wholly or majority government-owned financial institutions listed below, including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Extension of State guarantees

- Institution of mechanisms facilitating collection of receivables
- Potential ability to have financial resources available in deposit form
- Tax exemptions for specific acts linked to ongoing activities.

Institutions:

Caisse de depot et de gestion

Caisse centrale de garantie

Fonds d'equipement communal

Caisse nationale de credit agricole

Credit immobilier et hotelier

Caisse d'epargne nationale

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:	Exchange Control Law of 1939
Description:	<p>The purchase of non-insurance financial services from financial service suppliers of the United States by persons located in the territory of Morocco and by Moroccan nationals wherever located is subject to restrictions imposed by exchange control regulations.</p> <p>Four years after the date of entry into force of this Agreement, these restrictions shall not apply to U.S. investors and investments located in the territory of Morocco.</p>

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	Article 165 of Law No. 17-99 (the Insurance Code) of <i>Rejeb</i> 25, 1423 (October 3, 2002).

Description: Reinsurance companies may establish as branches, whereas insurance companies must be incorporated in Morocco.

No later than four years after entry into force of this Agreement, Morocco shall also allow insurance companies to establish as branches.

Morocco reserves the right to regulate branches mainly in terms of:³

- their capital requirements and reserves;
- location of assets and patrimony;
- investment policy and placements;
- product commercialization; and
- transfer of profits.

In particular, the operations of a branch of a U.S. insurance company in Morocco will be based only on the dotation capital effectively paid off and transferred to Morocco.

Morocco may also require that a person representing the branch in Morocco be professionally qualified and be

³ For greater clarity, Morocco reserves the right to apply to branches of insurance companies operating or desiring to operate in its territory licensing, management, operating and control rules applied to any insurance company incorporated in Morocco under the terms of Law No. 17-99 and its related regulations except for the requirement of incorporation and to have a board of directors in Morocco.

sufficiently empowered to effectively represent the branch *vis-à-vis* third parties and to respond in a legal action.

The abovementioned organization and management rules will also apply to reinsurance companies seeking to establish or established in Morocco as branches.

Morocco acknowledges the importance of consultation in the Subcommittee on Financial Services on branching issues, including ways to promote market-enhancing regulatory and supervisory approaches in Morocco, without prejudice to the outcome of such consultations.

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	National Treatment (Article 12.2) Market Access for Financial Institutions (Article 12.4) Senior Management and Board of Directors (Article 12.8)
Level of Government:	Central
Measures:	Articles 299 and 304 of Law No. 17-99 (the Insurance Code) of <i>Rejeb</i> 25, 1423 (October 3, 2002).
Description:	Natural persons working in the capacity of insurance agents must be Moroccan nationals. Legal persons working as insurance agents and as insurance-brokerage firms must be incorporated in Morocco. Furthermore, at least 49 percent of such legal persons must be held by natural persons of Moroccan nationality or by legal persons established under Moroccan law, and their duly authorized representatives must be Moroccan nationals.

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	Cross-Border Trade (Article 12.5)
Level of Government:	Central
Measures:	<p><i>Dahir</i> No. 1-61-085 of April 20, 1960 approving the agreement signed March 9, 1960 for the purpose of creating the <i>Societe Centrale de Reassurances</i> (SCR) and mandating cession to said company of a portion of the premiums paid to the insurance entities.</p> <p>Order of the Finance Minister No. 389-68 of June 28, 1968, establishing the mandatory legal reinsurance terms and conditions imposed on the SCR.</p>
Description:	<p>Insurance companies established in Morocco must cede a portion of the premiums arising from their operations in the territory of Morocco to the SCR. This percentage shall be set by decree of the Financial Minister and may not exceed 10 percent. This percentage has been set at 10 percent since January 1, 1969. Morocco shall eliminate this restriction no later than eight years after entry into force of this Agreement with regard to cross-border trade in reinsurance between a U.S reinsurance company and an insurance company established in Morocco, and no later than five years after entry into force of this Agreement with regard to a U.S. insurance company established in Morocco.</p>

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	Cross-Border Trade (Article 12.5)
Level of Government:	Central
Measures:	Exchange Control Law of 1939 and Law No. 17-99 (Insurance Law)
Description:	The purchase of insurance financial services, other than those set out in paragraphs 3 and 4 of Annex 12-A, from financial service suppliers of the United States by persons located in the territory of Morocco and by Moroccan nationals wherever located is subject to restrictions imposed by exchange control regulations and by insurance regulations.

Section B

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligation Concerned:	National Treatment (Article 12.2) Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	
Description:	<p>Morocco reserves the right to accord advantages to financial institutions, other than insurance companies, wholly or majority owned by the State, or controlled by the State, that are established for a public interest purpose, such as improving access to financing by small and medium enterprises. Such advantages shall not significantly disadvantage the operations of commercial competitors and include, but are not limited to, the following:</p> <ul style="list-style-type: none">• Extension of State guarantees;• Tax exemptions.

Sector:	Financial Services
Sub-Sector:	Banking and Other Financial Services (Excluding Insurance)
Obligation Concerned:	National Treatment (Article 12.2)
Level of Government:	Central
Measures:	
Description:	Morocco reserves the right to limit interests held by foreign entities in the share capital of any major bank, or of a bank holding company having a majority interest in a major bank, if holding or acquiring such interests would involve an acquisition of control.

For the purposes of this non-conforming measure:

- (a) a “major bank” means any bank:
 - (i) of which the assets, deposits, or credits granted represent at least 12 percent, respectively, of at least two of the following three factors, respectively: total assets, total deposits, or total credits of the entire Moroccan banking system, and
 - (ii) that is controlled by Moroccan nationals or enterprises controlled by Moroccan nationals;
- (b) “control” has the meaning specified in Article 24 of the Banking Law as of the date of entry into force of this Agreement.

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:	Articles 23 and 29 of <i>Dahir</i> No. 1-93-213 of <i>Rabii II</i> 4, 1414 (September 21, 1993) on unit investment trusts; and others.
Description:	<p>Morocco reserves the right to adopt or maintain measures that require incorporation in Morocco of institutions conducting, either directly or through delegation, the management of a mutual fund.</p> <p>Morocco reserves the right to adopt or maintain measures that require incorporation in Morocco of the custodian of a mutual fund.</p>

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	National Treatment (Article 12.2)
Level of Government:	Central
Measures:	
Description:	<p>Morocco reserves the right to accord advantages to wholly or majority state-owned or controlled insurance companies that are established for the public interest purpose of providing insurance for risks that are not adequately covered by the private sector, including insurance for natural disaster risks.</p> <p>For greater certainty, in the event that Morocco were to consider invoking this provision, or if it decides to reconsider such invocation based on changes in the market, Morocco affirms that it would include this issue as part of the regular consultations it undertakes with its industry within the framework of the Insurance Consultative Committee as outlined under its Insurance Code (Article 285) and its related regulations. Within the framework of these consultations, the opportunity is given to the private sector to demonstrate whether the risk coverage is available and if this coverage is adequate and if not, whether it is in a position to adequately cover the particular risk.</p>

Sector:	Financial Services
Sub-Sector:	Insurance
Obligation Concerned:	Market Access for Financial Institutions (Article 12.4)
Level of Government:	Central
Measures:	
Description:	<p>Morocco does not currently regulate services auxiliary to insurance, such as claim settlement, risk assessment, insurance consultancy, or actuarial services, as financial services. However, in the event that Morocco would choose to regulate any of the suppliers of such services as a financial institution, Morocco may adopt or maintain new market access restrictions on such services. The measure shall not significantly affect the activities or competitive positions of financial institutions already operating in Morocco. Morocco shall notify the United States of its intent at least 45 days in advance of implementation of any such new measure; and, at the request of the United States, consult concerning the measure and give due consideration to the views expressed by the United States in this regard.</p> <p>For greater certainty, this non-conforming measure does not apply to the supply of insurance services.</p>