

## รายการอ้างอิง

### ภาษาไทย

- ชาริษา วัฒนเกษตร. การเปิดเสรีและเสถียรภาพของระบบธนาคารพาณิชย์ไทย. เอกสารวิจัยส่วนบุคคล. วิทยาลัยป้องกันราชอาณาจักร. หลักสูตรการป้องกันราชอาณาจักรภาครัฐเอกชน และการเมือง รุ่นที่ 3. ปีการศึกษา 2548-2549 : หน้า 9
- สถาบันวิจัยและให้คำปรึกษาแห่งมหาวิทยาลัยธรรมศาสตร์. เสนอนโยบายประกันภัย กระทรวงพาณิชย์. ร่างรายงานการวิจัยฉบับสมบูรณ์ โครงการศึกษาวิเคราะห์ผลกระทบต่อภาคธุรกิจประกันภัย จากการทำเขตการค้าเสรี. กรกฎาคม 2548 : หน้า 3-1 ถึง 3-8, 2-7 ถึง 2-15
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ภาคผนวก

## **Chapter Twelve**

### **Financial Services**

#### **Article 12.1: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Articles 10.8 through 10.12 and 11.11 are hereby incorporated into and made a part of this Chapter. Section B of Chapter Ten (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.8 through 10.11, as incorporated into this Chapter.<sup>1</sup> No other provision of Chapter Ten (Investment) or Chapter Eleven (Cross Border Trade in Services) shall apply to a measure described in paragraph 1.

3. This Chapter does not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities, except that this Chapter shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

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<sup>1</sup> For greater certainty, the provisions of Chapter Ten (Investment) hereby incorporated include, are subject to, and shall be interpreted in conformity with, Annexes 10-A through 10-H of that Chapter, as applicable.



**Article 12.2: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 12.5(1), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

**Article 12.3: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or

will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under paragraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

**Article 12.4: Market Access for Financial Institutions**

Neither Party may, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory adopt or maintain measures that:

- (a) impose limitations on:
  - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive financial service suppliers, or the requirements of an economic needs test,
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
  - (iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or
  - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

**Article 12.5: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12.5.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article as long as such definitions are not inconsistent with the obligations of paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

**Article 12.6: New Financial Services**<sup>2</sup>

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

**Article 12.7: Treatment of Certain Information**

Nothing in this Chapter requires a Party to furnish or allow access to:

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<sup>2</sup> The Parties understand that nothing in Article 12.6 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is supplied within neither Party’s territory. Such application shall be subject to the domestic law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 12.6.

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

**Article 12.8: Senior Management and Boards of Directors**

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

**Article 12.9: Non-Conforming Measures**

1. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex III,

(ii) a regional level of government, as set out by that Party in its Schedule to Annex III, or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.2, 12.3, 12.4, and 12.8 and Section A of Annex 12.9.

2. Articles 12.2 through 12.5 and 12.8 and Section A of Annex 12.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex III.

3. Annex 12.9 sets out certain specific commitments by each Party.

4. Where a Party has set out in its Schedule to Annexes I and II a measure that does not conform to Articles 10.2, 10.3, 11.2, 11.3, or 11.4 pursuant to paragraphs 1 and 2 of Articles 10.7 and 11.6, that measure shall be deemed to constitute a non-conforming measure, pursuant to paragraphs 1 and 2 of this Article, with respect to Article 12.2, Article 12.3, or Article 12.4, or Section A of Annex 12.9, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the Schedule of non-conforming measures is covered by this Chapter.

**Article 12.10: Exceptions**

1. Notwithstanding any other provision of this Chapter or of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications -Relationship to Other Chapters), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>3</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.<sup>4</sup>

2. Nothing in this Chapter or Chapters Ten (Investment), Eleven (Cross-Border Trade

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<sup>3</sup> It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers

<sup>4</sup> The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, in addition to those who have regulatory responsibilities with respect to financial institutions, such as ministries or departments of labor.

in Services), Thirteen (Telecommunications), Fifteen (Electronic Commerce), and Sixteen (Competition Policy, Designated Monopolies, and State Enterprises), including specifically Article 13.16 (Telecommunications – Relationship to Other Chapters), applies to nondiscriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.5 (Performance Requirements) with respect to measures covered by Chapter Ten (Investment) or Article 10.8 (Transfers).

3. Notwithstanding Article 10.8 (Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

#### **Article 12.11: Transparency**

1. The Parties recognize that transparent regulations and policies and reasonable, objective, and impartial administration governing the activities of financial institutions and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.



2. In lieu of Article 20.2 (Publication), each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

3. Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

4. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

5. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

8. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

9. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

**Article 12.12: Self-Regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles 12.2 and 12.3 by such self-regulatory organization.

**Article 12.13: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

**Article 12.14: Expedited Availability of Insurance Services**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

**Article 12.15: Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.15.

2. In accordance with Article 21.1(2)(d) (The Free Trade Commission), the Committee shall:
- (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party; and
  - (c) participate in the dispute settlement procedures in accordance with Articles 12.17 and

12.18.



3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

**Article 12.16: Consultations**

1. A Party may request in writing consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Officials from the authorities specified in Annex 12.15 shall participate in the consultations under this Article.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

**Article 12.17: Dispute Settlement**

1. Chapter Twenty-Two (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For purposes of Article 22.4 (Consultations), consultations held under Article 12.16 with respect to a measure or matter shall be deemed to constitute consultations under Article 22.4(1), unless the Parties otherwise agree. Upon initiation of consultations, the Parties shall provide information and give confidential treatment under Article 22.4(4)(b) to the information exchanged. If the matter has not been resolved within 45 days after commencing consultations under Article 12.16 or 90 days after the delivery of the request for consultations under Article 12.16, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations to the Commission.

3. The Parties shall establish by January 1, 2005, and maintain a roster of up to 10 individuals who are willing and able to serve as financial services panelists, up to four of whom shall be non-Party nationals. The roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

4. Financial services roster members shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, either Party; and
- (d) comply with a code of conduct to be established by the Commission.

5. Where a Party claims that a dispute arises under this Chapter, Article 22.9 ( Panel Selection) shall apply, except that, unless the Parties otherwise agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 4.

6. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

**Article 12.18: Investment Disputes in Financial Services**

1. Where an investor of one Party submits a claim under Article 10.15 (Submission of a Claim to Arbitration) to arbitration under Section B of Chapter Ten (Investment) against the other Party and the respondent invokes Article 12.10, on request of the respondent, the tribunal shall refer

the matter in writing to the Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 12.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Commission. The decision shall be binding on the tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.6 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 12.17. Further to Article 22.13 (Final Report), the panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

#### **Article 12.19: Definitions**

For purposes of this Chapter:

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

**cross-border trade in financial services or cross-border supply of financial services**

means the supply of a financial service:

- (a) from the territory of one Party into the territory of the other Party,
- (b) in the territory of a Party by a person of that Party to a person of the other Party, or
- (c) by a national of a Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by an investment in that territory;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities: *Insurance and insurance related services*

(a) Direct insurance (including co-insurance):

(i) life

(ii) non-life

(b) Reinsurance and retrocession;

(c) Insurance intermediation, such as brokerage and agency;

(d) Service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

***Banking and other financial services (excluding insurance)***

(e) Acceptance of deposits and other repayable funds from the public;

(f) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:

(i) money market instruments (including checks, bills, certificates of deposits);

- (ii) foreign exchange;
  - (iii) derivative products including, futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (v) transferable securities;
  - (vi) other negotiable instruments and financial assets, including bullion;
  - (k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  - (l) Money broking;
  - (m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
  - (n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
  - (p) Advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;
- investment** means “investment” as defined in Article 10.27 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:
- (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
  - (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (a), is not an

investment; for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.27 (Definitions);

**investor of a Party** means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;

**new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

**person of a Party** means "person of a Party" as defined in Article 2.1 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

**tribunal** means an arbitration tribunal established under Article 10.18 (Selection of Arbitrators).



## Annex 12.5

### Cross-Border Trade

#### *Insurance and insurance-related services*

1. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession, services auxiliary to insurance as described in subparagraph (d) of the definition of financial service, and insurance intermediation such as brokerage and agency as described in subparagraph

(c) of the definition of financial service.

2. For the United States, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 12.19 with respect to insurance services.

3. For Chile, Article 12.5(1) applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 12.19 with respect to:

(a) insurance of risk relating to:

(i) international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving there from; and

(ii) goods in international transit.

(b) brokerage of insurance of risks relating to subparagraph (a)(i) and (a)(ii).

(c) reinsurance and retrocession; reinsurance brokerage; and consultancy actuarial, and risk assessment.

4. Chile's commitments regarding sale and brokerage of insurance for international maritime transport, international commercial aviation, and goods in international transit shall apply one year after the entry into force of this Agreement or when Chile has made and implemented the necessary amendments to its pertinent legislation, whichever occurs first.

***Banking and other financial services (excluding insurance)***

5. For the United States, Article 12.5(1) applies with respect to the provision and transfer of financial information and financial data processing as described in subparagraph(o) of the definition of financial service and advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

6. For Chile, Article 12.5(1) applies with respect to:

(a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service.

(b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required.<sup>5</sup>

(c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

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<sup>5</sup> It is understood that where the financial information or financial data processing referred to in subparagraphs(a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.



Notwithstanding subparagraph (c), in the event that after the date of entry into force of this Agreement Chile allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.2(3)) to cross-border financial service suppliers of the United States. Nothing in this commitment shall be construed to prevent Chile from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.

7. It is understood that a Party's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

## Annex 12.9

### Specific Commitments

#### *Section A: Right of Establishment with Respect to Certain Financial Services*

1. In lieu of Article 12.4 with respect to banking and other financial services (excluding insurance):

(a) Each Party shall permit an investor of the other Party

(i) that does not own or control a financial institution in the Party's territory to establish in that territory a financial institution permitted to supply financial services that such an institution may supply under the domestic law of the Party at the time of establishment, without the imposition of numerical restrictions, and

(ii) that owns or controls a financial institution in the Party's territory to establish in that territory such additional financial institutions as may be necessary to permit the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. The right of establishment shall include the acquisition of existing entities.

(b) Neither Party may restrict or require specific types of juridical form with respect to the initial financial institution that the investor seeks to establish pursuant to subparagraph (a)(i).

(c) Except with respect to the imposition of numerical or juridical form restrictions on establishment of the initial financial institution described in subparagraph (a)(i), a Party may, consistent with Article 12.2, impose terms and conditions on establishment of additional financial institutions described in subparagraph (a)(ii) and determine the institutional and juridical form through which particular permitted financial services or activities are supplied.

(d) A Party may, consistent with Article 12.2, prohibit a particular financial service or activity.<sup>6</sup>

2. For purposes of this Annex:

(a) an “investor of the other Party” means an investor of the other Party engaged in the business of providing banking and other financial services (excluding insurance) in the territory of that Party.

(b) “numerical restrictions” means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory of the Party, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test.

3. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, Chile, with respect to the establishment by an investor of the United States of an *Administradora de Fondos de Pensiones* under *Decreto Ley* 3.500, shall:

(a) apply subparagraph 1(a) of Section A of this Annex, and

(b) not apply an economic needs test.

No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.

4. The specific commitments of the United States under paragraph 1 are subject to the head-notes and non-conforming measures set forth in Sections A and B of Annex III with respect to banking and other financial services (excluding insurance).

5. The specific commitments of Chile under paragraphs 1 and 3 are subject to the head-notes and non-conforming measures set forth in Annex III of Chile with respect to banking and other financial services (excluding insurance).

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<sup>6</sup> The Parties understand that a Party may not prohibit all financial services or a complete financial services sub-sector such as banking.

***Section B: Voluntary Savings Plans; Non-Discriminatory Treatment of U.S. Investors***

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section II, referring to social services, with respect to voluntary savings pension plans established under *Ley 19.768*, Chile shall extend the obligations of Article 12.2(1) and (2) and of Article 12.3 to financial institutions of the United States, investors of the United States, and investments of such investors in financial institutions established in Chile. The specific commitment contained in this paragraph shall enter into force by March 1, 2005.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to U.S. investors in *Administradoras de Fondos de Pensiones* under *Decreto Ley 3.500*.

***Section C: Portfolio Management***

1. Each Party shall allow a financial institution (other than a trust company or insurance company), organized outside its territory, to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services, and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in the Party's territory. This commitment is subject to Article 12.1 and to the provisions of Article 12.5(3) regarding the right to require registration, without prejudice to other means of prudential regulation.

2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.

3. For purposes of paragraphs 1 and 2, **collective investment scheme** means:

(a) in the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*; and

(b) in Chile, the following fund management companies subject to supervision

by the *Superintendencia de Valores y Seguros*:

- (i) *Compañías Administradoras de Fondos Mutuos (Decreto Ley 1.328 de 1976)*;
- (ii) *Compañías Administradoras de Fondos de Inversión (Ley 18.815 de 1989)*;
- (iii) *Compañías Administradoras de Fondos de Inversión de Capital Extranjero (Ley 18.657 de 1987)*;
- (iv) *Compañías Administradoras Generales de Fondos (Ley 18.281 de 1993)*; and
- (v) *Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981)*.

#### ***Section D: Expedited Availability of Insurance Services***

Each Party should endeavor to maintain existing opportunities or may wish to consider policies or procedures such as: not requiring product approval for insurance other than sold to individuals or compulsory insurance; allowing introduction of products unless those products are disapproved within a reasonable period of time; and not imposing limitations on the number or frequency of product introductions. This Section does not apply to the specific category of Chilean government-supported insurance programs, such as climate insurance.

#### ***Section E: Insurance Branching***

1. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section II, referring to insurance market access, excluding any portion of those nonconforming measures referring to financial conglomerates and social services, no later than four years after the date of entry into force of this Agreement, Chile shall allow U.S. insurance suppliers to establish in its territory through branches. Chile may choose how to regulate branches, including their

characteristics, structure, relationship to their parent company, capital requirements, technical reserves, and obligations regarding risk patrimony and their investments.<sup>7</sup>

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States will work with the National Association of Insurance Commissioners (NAIC) in its review of those states that do not allow initial entry of a non-US insurance company as a branch to supply life, accident, health (excluding worker's compensation) insurance, non-life insurance, or reinsurance and retrocession to determine whether such entry could be provided in the future. Those states are Arkansas, Arizona, Connecticut, Georgia, Hawaii (branching allowed for reinsurance), Kansas, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, Vermont, and Wyoming.

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<sup>7</sup> The Parties understand that for this purpose, Chile may establish the following requirements among others:

(a) that the capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Chilean law;

(b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;

(c) that in the transactions between a branch and its parent or other related companies each shall be considered as independent entities;

(d) that the branch owners or shareholders meet the solvency and integrity requirements established in Chile's insurance legislation;

(e) that branches of foreign insurance companies that operate in Chile may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

### **Annex 12.11**

The Parties recognize that Chile's implementation of the obligations of paragraphs 2 and 9 of Article 12.11 may require legislative and regulatory changes. Chile shall implement the obligations of these paragraphs no later than two years after the date of entry into force of this Agreement.

### **Annex 12.15**

#### **Authorities Responsible for Financial Services**

The authority of each Party responsible for financial services shall be:

- (a) for Chile, the *Ministerio de Hacienda*; and
- (b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance services.



## Annex I

1. The Schedule of a Party sets out, pursuant to Articles 10.7 (Investment – Non- Conforming Measures) and 11.6 (Cross-Border Trade in Services – Non-Conforming Measures), a Party’s existing measures that are not subject to some or all of the obligations imposed by:

- (a) Article 10.2 or 11.2 (National Treatment);
- (b) Article 10.3 or 11.3 (Most-Favored-Nation Treatment);
- (c) Article 11.5 (Local Presence);
- (d) Article 10.5 (Performance Requirements);
- (e) Article 10.6 (Senior Management and Boards of Directors); or
- (f) Article 11.4 (Market Access).

2. Each annex entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.7(1)(a) and 11.6(1)(a), do not apply to the listed measure(s);
- (c) **Level of Government** indicates the level of government maintaining the listed measure(s);
- (d) **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;
- (e) **Description** provides a general, nonbinding, description of the **Measures**.



3. In accordance with Article 10.7(1)(a) and 11.6(1)(a), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation, or other measure identified in the **Measures** element of that entry.

4. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident, or resident of its territory as a condition to the provision of a service in its territory, an annex entry for that measure taken with respect to Article 11.2, 11.3, or 11.5 shall operate as an annex entry with respect to Article 10.2, 10.3, or 10.5 to the extent of that measure.

5. For greater certainty, Article 11.4 refers to non-discriminatory measures.

## Annex II

1. The Schedule of a Party sets out, pursuant to Articles 10.7 (Investment – Non-Conforming Measures) and 11.6 (Cross-Border Trade in Services – Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 10.2 or 11.2 (National Treatment);
- (b) Article 10.3 or 11.3 (Most-Favored-Nation Treatment);
- (c) Article 11.5 (Local Presence);
- (d) Article 10.5 (Performance Requirements);
- (e) Article 10.6 (Senior Management and Boards of Directors); or
- (f) Article 11.4 (Market Access).

2. Each annex entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 10.7(2) and 11.6(2), do not apply to the sectors, sub-sectors, or activities listed in the entry;
- (c) **Description** sets out the scope of the sectors, sub-sectors, or activities covered by the entry; and
- (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, sub-sectors, or activities covered by the entry.

3. In accordance with Article 10.7(2) and 11.6(2), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, sub-sectors, and activities identified in the **Description** element of that entry.

4. For greater certainty, Article 11.4 refers to non-discriminatory measures.

**Annex III**  
**Non-Conforming Measures of the United States with Respect to**  
**Financial Services**

**Introductory Note for the Schedule of the United States**

*Relating to Banking and Other Non-Insurance Financial Services*

1. The Schedule of the United States to Annex III with respect to banking and other non-insurance financial services sets out:

(a) in Section A, the head-notes that limit or clarify the commitments of the United States with respect to the obligations described in subparagraph (b)(i)-(iv), and

(b) in Section B, pursuant to Article 12.9 (Non-Conforming Measures), the existing measures of the United States 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 12.8 (Senior Management and Boards of Directors); or

(iv) Annex 12.9, Section A (Right of Establishment with Respect to Certain Financial Services).

2. Each entry in Section B as described in paragraph 1(b) sets out the following elements:

(a) **Description of Non-Conforming Measures** sets out the non-conforming aspects of the entry and the sub-sector, financial institution, or activities covered by the entry;

(b) **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;

(c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);

### *Relating to Insurance*

3. The Schedule of the United States to Annex III with respect to insurance sets out:

(a) head-notes that limit or clarify the commitments of the United States with respect to the obligations described in subparagraph (b)(i)-(v), and

(b) pursuant to Article 12.9 (Non-Conforming Measures), a schedule of existing measures of the United States that do not conform to some or all of the obligations imposed by:

(i) Article 12.2 (National Treatment);

(ii) Article 12.3 (Most-Favored-National 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).

4. Each entry in the schedule of non-conforming measures described in paragraph 3(b) sets out the following elements:

(a) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 3(b) that, pursuant to Article 12.9, do not apply to the listed measure(s);

(b) **Level of Government** indicates the level of government maintaining the listed measure(s);

(c) **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;

***Common Provision***

5. In accordance with Article 12.9(1)(a) (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the law, regulation, or other measure identified in the **Measures** element or in the **Description of Non-Conforming Measures** element of that entry.

## **Annex III**

### **Schedule of the United States with Respect to Insurance**

#### **Head-notes**

1. Commitments in this sector under this Agreement are undertaken subject to the limitations and conditions set forth in these head-notes and the schedule below.

2. National treatment commitments in the insurance sector are subject to the following limitation: national treatment with respect to insurance financial institutions will be provided according to a non-U.S. insurance financial institution's state of domicile, where applicable, in the United States. State of domicile is defined by individual states, and is generally the state in which an insurer either is incorporated, is organized or maintains its principal office in the United States.

3. Market access commitments in the insurance sector are subject to the following limitation: Article 12.9(1)(c) shall not apply to non-conforming measures relating to Article 12.4.

<b>Sector:</b>	Insurance
<b>Obligations Concerned:</b>	National Treatment, Cross-Border Trade
<b>Level of Government:</b>	Central
<b>Measures:</b>	31 U.S.C. § 9304
<b>Description:</b>	Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.

**Sector:** Insurance

**Obligations Concerned:** National Treatment, Cross-Border Trade

**Level of Government:** Central

**Measures:** 46 C.F.R. § 249.9

**Description:** When more than 50 percent of the value of a maritime vessel is insured by a non-U.S. insurer and the hull of such vessel was built under federally guaranteed mortgage funds, the insured must demonstrate that the risk was substantially first offered in the U.S. market.



**Sector:** Insurance

**Obligations Concerned:** Market Access

**Level of Government:** All

**Measures:**

**Description:** The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the GATS.

**Sector:** Insurance

**Obligations Concerned:** National Treatment, Most-Favored-Nation Treatment, Cross-Border Trade, Senior Management and Boards of Directors

**Level of Government:** Regional

**Measures:** All existing non-conforming measures of all U.S. states, the District of Columbia, and Puerto Rico.

**Description:**

**Annex III**  
**Non-Conforming Measures of Chile with Respect to**  
**Financial Services**  
**Introductory Note for the Schedule of Chile**

1. The Schedule of Chile to Annex III sets out:

(a) in the head-notes, the limitations or clarifications to the commitments of Chile with respect to the obligations described in Sections I and II;

(b) in Section I, pursuant to article 12.9(1) (Non-Conforming Measures), the existing measures of Chile that are not subject to some or all of the obligations imposed by:

(i) Article 12.2 (National Treatment);

(ii) Article 12.4 (Market Access for Financial Institutions);

(iii) Article 12.5 (Cross-Border Trade);

(iv) Article 12.8 (Senior Management and Boards of Directors); or

(v) Annex 12.9, Section A (Right of Establishment with Respect to Certain Financial Services); and

(c) in Section II, pursuant to article 12.9(2) (Non-Conforming Measures), the existing and future measures of Chile 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);

(v) Article 12.8 (Senior Management and Boards of Directors); or

(vi) Annex 12.9, Section A (Right of Establishment with Respect to Certain Financial Services).

2. Each entry in Section I as described in paragraph 1(b) sets out the following elements:

(a) **Sector** to which the non-conforming measure applies;

(b) **Sub-sector** of the financial services sector to which the non-conforming measure applies;

(c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 12.9, do not apply to the listed measures;

(d) **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;

(e) **Description** provides a general, non-binding description of the **Measures**.

3. Each entry in Section II as described in paragraph 1(c) above sets out the following elements:

(a) **Sector** to which the non-conforming measure applies or will apply;

(b) **Sub-sector** of the financial services sector to which the non-conforming measure applies or will apply;

(c) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(c) that, pursuant to Article 12.9(2), do not or will not apply to the listed measures;

(d) **Measures**, as applicable, 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;

(e) **Description** provides a general, non-binding description of the **Measures**.

4. In accordance with Article 12.9(1)(a) and 12.9(2), the articles of this Agreement specified

in the Obligations Concerned element of an entry do not apply to the law, regulations, or other measure identified in the Measure or in the Description element of that entry.

### **Head-notes**

1. Commitments in the financial services sector under this Agreement are undertaken subject to the limitations and conditions set forth in these head-notes and the schedule below.

2. Juridical persons supplying financial services and constituted under the laws of Chile are subject to non-discriminatory limitations on juridical form.<sup>8</sup>

3. Article 12.9(1)(c) (Non-Conforming Measures) shall not apply to non-conforming measures relating to Article 12.4 (Market Access for Financial Institutions) and Annex 12.9 Section A ( Right of Establishment with Respect to Certain Financial Services )

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<sup>8</sup> For example, partnerships (sociedades de personas) are generally not acceptable juridical forms for financial institutions in Chile. This head-note is not in and of itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

**Section I****Insurance and Insurance-related Services**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	Senior Management and Board of Directors
<b>Measures:</b>	<i>Decreto con Fuerza de Ley N°251</i> Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title III, Article 58. <i>Decreto Supremo N° 863 de 1989</i> <i>del Ministerio de Hacienda</i> , Official Gazette of April 5, 1990, <i>Reglamento de los Auxiliares del Comercio de Seguros</i> , Title I, Article 2, letter c).
<b>Description:</b>	Administrators and legal representatives of legal entities performing the activity of insurance brokerage must be Chileans or foreigners with a residence permit.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	National Treatment
<b>Measures:</b>	<i>Decreto con Fuerza de Ley N° 251</i> , Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title I, Article 16.
<b>Description:</b>	<p>Reinsurance brokerage can be performed by foreign reinsurance brokers.</p> <p>These brokers shall be juridical persons, demonstrate that the entity is legally established in its country of origin and authorized to intermediate risks ceded from abroad, and provide the date that such authorization was granted. Such entities shall designate a representative in Chile to represent them with broad powers. The representative may be subject to summons and must have residence in Chile.</p>
<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	Market Access, Senior Management and Board of Directors
<b>Measures:</b>	<i>Decreto con Fuerza de Ley 251</i> , Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title III, Article 62.
<b>Description:</b>	<p>Legal entities performing the activity of claim settlement must be organized under Chilean law. The administrators and legal representatives of these legal entities must be Chileans or foreigners with a residence permit.</p>



<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	National Treatment
<b>Measures:</b>	<i>Decreto con Fuerza de Ley N° 251</i> , Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title I, Article 20.
<b>Description:</b>	In the case of the types of insurance covered in <i>Decreto Ley 3.500</i> , involving the cession of reinsurance to foreign Re-insurers, then deduction for reinsurance can not exceed 40 percent of the total of the technical reserves associated with those types of insurance or a higher percentage if set by the <i>Superintendencia de Valores y Seguros</i> .

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	National Treatment
<b>Measures:</b>	<i>Decreto con Fuerza de Ley N° 251</i> , Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title I, Articles 58 and 62. <i>Decreto Supremo N° 863 de 1989 del Ministerio de Hacienda</i> , Official Gazette of April 5, 1990, <i>Reglamento de los Auxiliares del Comercio de Seguros</i> , Title I, Article 2, letter c).
<b>Description:</b>	Natural persons performing the activity of insurance brokerage and claim settlement must be Chileans or foreigners with a residence

## Section II

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All Sub-sectors
<b>Obligations Concerned:</b>	Right of Establishment, Market Access
<b>Description:</b>	Chile reserves the right to adopt measures that restrict or require specific types of juridical form or establishment, such as subsidiaries, with respect to financial conglomerates, including the entities forming part of it.

**Sector:** Financial Services

**Sub-sector:** All Sub-sectors

**Obligations Concerned:** Cross Border Trade

**Measure:** *Ley 18.840*, Official Gazette of October 10, 1989, *Ley Orgganica Constitucional del Banco Central de Chile*, Title III.

**Description:** The purchase of financial services, by persons located in the territory of Chile and its nationals wherever located, from financial services suppliers of the United States shall be subject to the exchange rate regulations adopted or maintained by the *Banco Central de Chile* in accordance with its Organic Law (*Ley 18.840*).

**Sector:** Financial Services

**Sub-sector:** All Sub-sectors

**Obligations Concerned:** National Treatment, Senior Management and Board of Directors

**Description:** In the transfer or disposal of any interest in stock or asset held in an existing state enterprise or governmental entity, Chile reserves the right to prohibit or impose limitations on the ownership of said interest or asset, and on the right of foreign investors or their investment to control any State company created thereby or investments made by the same: In connection with any such transfer or disposal, Chile may adopt or maintain any measure related to the nationality of senior management and member of the Board of Directors.

**A State company** shall mean any company owned or controlled by

Chile by means of an interest share in the ownership thereof, and it shall include any company created after the effective date of this Agreement for the sole purpose of selling or disposing of its interest share in the capital or assets of an existing state enterprise governmental entity.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and Other Financial Services
<b>Obligations Concerned:</b>	National Treatment
<b>Measure:</b>	<i>Decreto Ley N° 2.079</i> , Official Gazette of January 18, 1978, <i>Ley Orgánica del Banco del Estado de Chile</i> . <i>Decreto Ley N° 1.263</i> , Official Gazette of November 28, 1975, <i>Decreto Ley Orgánico de Administración Financiera del Estado</i> Article 6.
<b>Description:</b>	Chile may grant advantages or exclusive rights to <i>Banco del Estado de Chile</i> , a Chilean state owned bank, including but not limited to the following: the management of the Chilean government financial resources is made only through deposits in the <i>Cuenta Única Fiscal</i> and in its subsidiary accounts, all of which must be kept at <i>Banco del Estado de Chile</i> .
<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	Market Access
<b>Description:</b>	Chile reserves the right to adopt or maintain any measure with respect to Article 12.4 (Market Access), except for the insurance services scheduled below and under the terms, limitations and conditions specified therein.

### **Sub-sector Limitation on Market Access**

#### **Insurance and reinsurance services:**

1.- In Chile, the insurance business is divided into two groups: the first group comprises companies that ensure goods and property against the risk of loss or damage, while the second comprises those that provide insurance or guarantee, within or at the end of a certain term, a capital sum, a paid-up policy or an income for the insured or his beneficiaries. The same insurance company may not be constituted in such a way as to cover both categories of risk.

2.- Credit insurance companies, even though classified in the first group, must be established as corporations with the sole purpose of covering this type of risk, i.e. loss of or damage to the property of the insured as a result of the non-payment of a money debt or loan, being also permitted to cover guarantee and fidelity risks.

3.- The Chilean insurance schedule does not include insurance related to the social security system.

**Insurance:**

Sale of direct life insurance (does not include insurance related to the social security system) (CPC 81211)

Sale of direct general insurance (CPC 8129, except 81299) (excluding social security institutions (*ISAPRES*) i.e. legal persons set up for the purpose of providing health benefits to persons who opt to become members and financed through the statutory contribution of a percentage of taxable income fixed by law or a higher amount, as the case may be. It also excludes the National Health Fund (*FONASA*), a public Insurance services can be provided only by insurance corporations established in Chile for the exclusive purpose of developing this line of business, either direct life insurance or direct general insurance. In the case of general credit insurance (CPC 81296), they must be established as insurance corporations with the exclusive purpose of covering this type of risk.

Insurance corporations can be legally constituted only in accordance with the provisions of the law on corporations. Insurance may be taken out directly or through insurance brokers who, to engage in that activity, must be enrolled in the Register maintained by the *Superintendencia de Valores y Seguros* service financed by the government and the statutory contribution of a percentage of taxable income fixed by law, which is jointly responsible for paying benefits under the optional health scheme which persons not members of an *ISAPRE* may join). *Superintendencia de Valores y Seguros* (SVS) and must satisfy the requirements of the law.

**Insurance brokers**

Must be enrolled in the Register maintained by the SVS and fulfill the requirements established by the SVS. Only legal persons legally constituted in Chile for this specific purpose may provide this service.



**Reinsurance and retrocession (Including reinsurance brokers)**

Reinsurance services are provided by reinsurance corporations established in Chile in accordance with the provisions of the law on corporations and authorized by the SVS. Corporations may also provide reinsurance services as a complement to their insurance business if their articles of association so allow. Reinsurance services may also be provided by foreign re-insurers and foreign reinsurance brokers enrolled in the Register maintained by the SVS.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and Insurance-related Services
<b>Obligations Concerned:</b>	Cross-border Trade
<b>Measures:</b>	<i>Decreto con Fuerza de Ley N° 251</i> , Official Gazette of May 22, 1931, <i>Ley de Seguros</i> , Title I, Article 4.
<b>Description:</b>	All types of insurance that Chilean law makes or may make compulsory,  and all insurance related to social security, cannot be contracted outside Chile. This reservation shall not apply to the types of insurance included in Chile's commitments listed in paragraph 3(a)(i) and 3(a)(ii) of Annex 12.5.

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Social Services
<b>Obligations Concerned:</b>	National Treatment, Most Favored Nation Treatment Market Access, Cross-border Trade, Senior Management and Board of Directors Right of Establishment
<b>Description:</b>	Chile reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for reasons of public interest: income security or insurance, social security or insurance, social welfare, public education, public training, health care and child care.

## ประวัติผู้เขียนวิทยานิพนธ์

นายสุทธิศักดิ์ อัจฉริยะเกียรติ เกิดเมื่อวันที่ 3 มกราคม พ.ศ. 2495 ณ แขวงวัดเทพศิรินทร์ เขตป้อมปราบศัตรูพ่าย กรุงเทพมหานคร บุตรชายคนโตในจำนวน บุตรชาย-หญิง 9 คน ของคุณพ่อ เช่งเซียม แซ่เตีย และ คุณแม่เควงเอง แซ่ก้วย เจ้าของ "ห้างหุ้นส่วนจำกัด ฮั่วฮะเซ่ง" ธุรกิจค้ากระดาษ และอุปกรณ์การพิมพ์ กรุงเทพมหานคร

เมื่อวัยเด็กได้ช่วยเหลือคุณพ่อ-คุณแม่ในการดูแลกิจการ งานในครอบครัวและการศึกษาของน้องๆ ปี พ.ศ. 2519 ได้รับความไว้วางใจให้บริหารกิจการต่อจากพี่สาว (ซึ่งได้รับช่วงบริหารกิจการแทนคุณพ่อซึ่งได้ถึงแก่กรรม ตั้งแต่ ปี พ.ศ.2515) ทั้งได้สืบทอดภารกิจในด้านการสนับสนุนการศึกษาของน้องๆ จนสำเร็จการศึกษาระดับปริญญาครบหมดทุกคน ตามปณิธานที่คุณพ่อได้ตั้งไว้ และน้องๆ ทุกคนต่างได้ประกอบวิชาชีพรับใช้สังคมและประเทศชาติ ในสาขาต่างๆ ตั้งแต่ ธุรกิจส่วนตัว พนักงานธนาคาร ตลอดจน อธิบดีผู้พิพากษาศาลแรงงานภาค 5 ในศาลยุติธรรม ปัจจุบัน ผู้เขียนปฏิบัติหน้าที่หุ้นส่วนผู้จัดการ " ห้างหุ้นส่วนจำกัด กรุงเทพค้ากระดาษแอนด์เทรดดิ้ง" สมรสแล้วกับคุณ โชติรส เกียรติเทพวรรณ มีบุตรชาย 1 คน

### งานด้านสังคม

รองประธาน คณะกรรมการการศึกษา โรงเรียนวัดมหาพฤฒาราม ปี พ.ศ.2542-7

รองประธาน และ กรรมการผู้ทรงคุณวุฒิ คณะกรรมการการศึกษา โรงเรียนวัดมหาพฤฒาราม ปี พ.ศ.2548-ปัจจุบัน

### ประวัติการศึกษา

สำเร็จชั้นมัธยมศึกษาตอนปลาย โรงเรียนสวนกุหลาบวิทยาลัย รุ่นที่ 85 ปี พ.ศ. 2514

สำเร็จปริญญาวิทยาศาสตรบัณฑิต คณะสาธารณสุขศาสตร์ (ภาควิชาสุขาภิบาล) มหาวิทยาลัยมหิดล รุ่นที่ 23 ปี พ.ศ. 2519

สำเร็จปริญญาวิทยาศาสตรบัณฑิต มหาวิทยาลัยธรรมศาสตร์(ภาคบัณฑิต) รุ่น 2520 ปี พ.ศ. 2524

สำเร็จชั้นเนติบัณฑิต สำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา

เนติบัณฑิตไทย รุ่นที่ 58 ปี พ.ศ. 2549

เข้ารับการศึกษา

หลักสูตรนิติศาสตรมหาบัณฑิต สาขากฎหมายระหว่างประเทศ

คณะนิติศาสตร์จุฬาลงกรณ์มหาวิทยาลัย ปี พ.ศ.2547- ปัจจุบัน