

ANNEX III

SCHEDULE OF NICARAGUA

EXPLANATORY NOTE

1. The Schedule of Nicaragua to Annex III sets Out:
 - (a) headnotes that limit or clarify the commitments of Nicaragua with respect to the obligations described in clauses (i)-(v) of subparagraph (b);
 - (b) in Section A, pursuant to Article 9.9 (Non-Conforming Measures), the existing measures of Nicaragua that do not conform to some or all of the obligations imposed by:
 - (i) Article 9.2 (National Treatment);
 - (ii) Article 9.3 (Most-Favored-Nation Treatment);
 - (iii) Article 9.4 (Market Access for Financial Institutions);
 - (iv) Article 9.5 (Cross-Border Trade); or
 - (v) Article 9.8 (Senior Management and Boards of Directors);
 - (c) in Section B, pursuant to Article 9.9 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Nicaragua may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 9.2 (National Treatment), 9.3 (Most-Favored-Nation Treatment), 9.4 (Market Access for Financial Institutions), 9.5 (Cross-Border Trade), or 9.8 (Senior Management and Boards of Directors).
2. Each entry in Section A sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Subsector** refers to the specific sector for which the entry is made;
 - (c) **Obligations Concerned** specifies the obligation(s) referred to in subparagraph 1(b) that, pursuant to Article 9.9 (Non-Conforming Measures), do not apply to the listed measure(s);
 - (d) **Level of Government** indicates the level of government maintaining the listed measure(s);
 - (e) **Measures** identify 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;

(f) Description provides a general, nonbinding description of the Measures.

3. Each entry in Section B sets out the following elements:

(a) Sector refers to the general sector for which the entry is made;

(b) Subsector refers to the specific sector for which the entry is made;

(c) Obligations Concerned specifies the article(s) referred to in paragraph 1(c) that, pursuant to Article 9.9, do not apply to the sectors, subsectors, or activities scheduled in the entry;

(d) Description sets out the scope of the sectors, subsectors, or activities covered by the entry.

4. In the interpretation of a non-conforming measure in Section A, all elements of the non-conforming measures listing shall be considered. A non-conforming measure shall be interpreted in the light of the relevant provisions of the Financial Services Chapter with respect to which the non-conforming measure is taken. To the extent that:

(a) the **Measures** element is qualified by a liberalization commitment from the **Description** element, if any, or a Specific Commitment from an Annex to the Financial Services Chapter, the **Measures** element as so qualified shall prevail over all other elements; and

(b) the **Measures** element is not so qualified, the **Measures** element shall prevail over all other elements, unless any discrepancy between the **Measures** element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the **Measures** element should prevail, in which case the other elements shall prevail to the extent of the discrepancy..

5. For entries in Section B, in accordance with Article 9.9.2 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry shall not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

6. Where Nicaragua maintains a measure that requires that a service supplier be a citizen, as a condition to the provision of a service in its territory, a listing for that measure taken in Annex III with respect to Articles 9.2 (National Treatment), 9.3 (Most-Favored-Nation Treatment), 9.4 (Market Access for Financial Institutions), or 9.5 (Cross-Border Trade) shall operate as a non-conforming measure with respect to Articles 11.2 (National Treatment), 11.3 (Most-Favored-Nation Treatment) and 11.8 (Performance Requirements), to the extent of that measure.

Headnotes

1. Commitments in these subsectors under the Agreement are undertaken subject to the limitations and conditions set forth in these headnotes and in Section A and B below.
2. In order to clarify the Nicaraguan commitment with respect to Article 9.4, juridical persons supplying financial services and organized under the laws of Nicaragua are subject to non-discriminatory limitations on juridical form.¹
3. The commitments of Nicaragua under Articles 9.2 (National Treatment) and 9.4 (Market Access for Financial Institutions) are subject to the limitation that in order to establish or acquire a controlling interest in a financial institution in Nicaragua, a foreign investor must own or control a financial institution that engages in supplying financial services within the same financial services subsector in its home country.
4. Nicaragua limits its commitments under Article 9.9.1(c) (Non-Conforming Measures) with respect to Article 9.4 (Market Access for Financial Institutions) in the following manner: Article 9.9.1(c) shall apply only to non-conforming measures relating to 9.4.1(a) and not to those non-conforming measures relating to Article 11.4.1(b)².

¹ For example, partnerships and sole proprietorships are not considered acceptable legal forms for incorporating financial institutions in Nicaragua. This note is not intended to affect, or otherwise limit, the ability of a financial institution of the other Party to choose its form of incorporation through either branch or subsidiary.

² Article 9.3 (Most-Favored-Nation Treatment) shall not apply with regard to the limitation in the application of Article 9.9.1(c) described above in paragraph 4.

Section A
Entry 1 - Financial Services

Sector: Financial Services

Subsector: Banking

Obligations Concerned: National Treatment (Article 9.2)

Level of Government: Central

Measures:

Law No. 561, General Law of Banks, Non-Banking Financial Institutions and Financial Groups, hereinafter “LGB”, published in La Gaceta, Diario Oficial, No. 232 of November 30, 2005, Consolidated Text with its amendments, contained in Law No. 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Resolution No.CD-SIBOIF-473-1-ABR11-2007, Standard on the requirements for the Establishment of banks, financial companies, branches of foreign banks and representative offices, hereinafter “Rule of Constitution”, published in La Gaceta, Diario Oficial, No. 106 of June 6, 2007 and its amendments.

Law No. 551, Deposit Guarantee System Law hereinafter “FOGADE”, published in La Gaceta, Diario Oficial, No. 168 of August 30, 2005, Consolidated Text with its amendments, contained in Law 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Law No. 587, Capital Markets Law, published in La Gaceta, Diario Oficial, No. 222 of November 15, 2006, Consolidated Text with its amendments, contained in Law No. 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Law No. 899, Investment Companies Law, published in La Gaceta, Diario Oficial, No. 76 of April 27, 2015, contained in Law No. 974, Nicaraguan Legal Digest Law on Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018.

Law 977, Law against Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction, published in La Gaceta, Diario Oficial, No. 138 of July 20, 2018 and its amendments, contained in Law 974, Law of Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018, and its amendments.

Description:

Banking activity can only be practiced by legal entities constituted and domiciled in the country as corporations or by legally constituted bank branches abroad authorized for this purpose by the regulatory entity. Articles 2, 3, 4 and 9 of Law No. 561, (LGB).

The capital that foreign banks assign to their branches in Nicaragua shall meet the minimum required for Nicaraguan institutions and be effectively paid and entered into the country. Article 17 of Law No. 561, (LGB) and Article 11 section a) of the Rule of Constitution (Norma de Constitución).

Branches of foreign banks may not announce or advertise the amount of capital and reserves of its parent company, without announcing or advertising both the assigned capital and reserves of the branch in Nicaragua, Article 18 of Law No. 561, (LGB).

The administration and legal representation of foreign bank branches established in Nicaragua will be the responsibility of duly authorized administrators and managers with residence in the country, Article 32 of Law No. 561, (LGB).

The legal address of foreign banking companies' branches, regarding its business performed in Nicaragua, shall be Nicaragua, Article 13 of Law No. 561, (LGB).

Banks incorporated abroad that establish branches in Nicaragua, cannot use diplomatic channels in any case regarding its operations in Nicaragua, Article 13 of Law No. 561, (LGB).

The capital of branches of foreign banks established in the country, if any, may be transferred abroad only with prior approval of the Superintendent of Banks, once completed the liquidation of its business, Article 26 of Law No. 561, (LGB).

If a foreign bank that has branches in Nicaragua is liquidated under national law, those branches will also be liquidated. Article 77 FOGADE Act.

Applications will only be made for the establishment of branches of foreign banks, when institutional information can be exchanged between the supervisors of both countries and the parent bank has more than five years of operation and financial banking intermediation in the country which granted it the license. If it is a foreign bank originated from a merger, those of the oldest entity will be counted as years of operation. Article 8 of the Rule of Constitution.

Foreign Banks Representative Offices can place funds in the country in the form of loans and investments, and act as information centers for their customers, but they are prohibited from accepting deposits from the public in Nicaragua. Article 14 of Law No. 561, (LGB).

Foreign natural or legal persons who are regulated entities under the Act and who intend to develop or are developing activities in the national territory, must maintain a physical presence in the national territory. (Art. 11, Act No. 977).

Entry 2 - Financial Services

Sector:	Financial Services
Subsector:	Non-banking Financial Institutions and Other Financial Services: financial corporations, companies issuing credit cards, bonded warehouses, stock exchanges, brokerage firms, management companies of investment funds, fund management companies of securitization, central securities depository, clearing and settlement companies, entities operating with electronic money and special regime financial enterprises. (Excluding insurance).
Obligations Concerned:	National Treatment (Article 9.2)
Level of Government:	Central
Measures:	<p>Law No. 561, General Law of Banks, Non-Banking Financial Institutions and Financial Groups (LGB), published in La Gaceta, Diario Oficial, No. 232 of November 30, 2005, Consolidated Text with its amendments, contained in Law No. 974, Law of the Nicaraguan Legal Digest on Banking and Finance, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018; and its amendments.</p> <p>Law No. 515, Law for the Promotion and Regulation of the Use of Credit Cards, published in La Gaceta, Diario Oficial, No. 11 of January 17, 2005 Consolidated Text contained in Law No. 974, Law of the Nicaraguan Legal Digest on Banking and Finance, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018.</p> <p>Resolution No. CD-SIBOIF-629-4-MAY26-2010, Regulations for Credit Card Operations, published in La Gaceta, Diario Oficial, No. 150 and 151 of August 9 and 10, 2010 and its amendments.</p> <p>Law No. 587, Capital Markets Law, published in La Gaceta, Diario Oficial, No. 222 of November 15, 2006. (MDC Law), Consolidated Text with its amendments, contained in Law No. 974, Nicaraguan Legal Digest Law on Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980,</p>

published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Law 734, Law of General Warehouses of Deposits, published in La Gaceta, Diario Oficial, No. 201 and 202 of October 21 and 22, 2010. Law of Warehouses, contained in Law No. 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No.980, published in La Gaceta, Diario Oficial,,No. 200 of October 17, 2018.

Law 977, Law against Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction, published in La Gaceta, Diario Oficial, No. 138 of July 20, 2018 and its amendments, contained in Law No. 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Description:

Those interested in operating as financial companies (Title IV LGB), general bonded warehouses (Articles 7 and 13 Law No. 734, Ley de Almacenes), stock exchanges (Article 36 MDC Law), stock exchange posts (Article 63 MDC Law), investment fund management companies (Article 74 MDC Law), securitization fund management companies (Article 122 MDC Law), central securities depositories (Article 139 MDC Law), settlement and clearing companies (Article 154 MDC Law), and financial companies of the regime of the MDC Law 977) and special regime financial enterprises (Chapter IV, Title V, Law No.561 LGB), private credit bureaus (Article 115, Law No.561 LGB), appraisal experts (Article 10, Law No.316 SIBOIF Law), risk rating agencies (Article 170, Law No.587 MDC Law), must obtain authorization from the respective regulatory body and be incorporated in the country as corporations or through branches of entities legally incorporated abroad.

The capital that Non-Banking Financial Institutions established in foreign countries assign to their branches in Nicaragua, must be effectively paid and internalized in Nicaragua.

In the case of Non-Banking Financial Institutions the same provisions indicated for the Banks subsector apply to them.

Entry 3 – Financial Services

Sector: Financial Services

Subsector: Insurances

Obligations Concerned: Cross-Border Trade (Article 9.5)
Senior Management and Boards of Directors (Article 9.8)

Level of Government: Central

Measures:

Law No. 733, General Law of Insurance, Reinsurance and Bonds, published in La Gaceta, Diario Oficial, No. 162, 163 and 164 of August 25, 26 and 27, 2010 (Insurance Law), contained in Law No. 974, Law of the Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018.

Resolution CD-SIBOIF-665-1-FEB7-2011, Rule on the requirements for the incorporation of insurance, reinsurance and surety companies and branches of foreign insurance companies, published in La Gaceta, Diario Oficial, No. 99 and 100 of May 31 and June 1, 2011, respectively.

Resolution CD-SIBOIF-719-2-MAR14-2012, Regulation for the authorization and operation of insurance intermediaries, published in La Gaceta, Diario Oficial, No. 79 of May 1, 2012.

Law 977, Law against Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction, published in La Gaceta, Diario Oficial, No. 138 of July 20, 2018 and its amendments, contained in Law 974, Law of Nicaraguan Legal Digest of Banking and Finance Matters, published in La Gaceta, Diario Oficial, No. 164 of August 27, 2018 and its Update Law No. 980, published in La Gaceta, Diario Oficial, No. 200 of October 17, 2018 and its amendments.

Description:

The activity of insurance and reinsurance can be only practiced by legal entities constituted and domiciled in the country as corporation and authorized by the respective regulator. Article 9 of Insurance Act.

Insurance companies (insurance, reinsurance, guarantees and reconciliation) legally incorporated abroad can also operate in the country by establishing a branch. Article 20 of Insurance Act.

Insurance companies incorporated abroad establishing branches in Nicaragua, are considered domiciled in Nicaragua for any legal effect. Article 24 of Insurance Act.

The domicile of the branches of foreign insurance companies, with respect to their performed business in Nicaragua, will be Nicaraguan; and shall be deemed as their legal representatives, the attorneys or agents incorporated in the Republic of Nicaragua. Article 24 of Insurance Act.

Insurance companies incorporated abroad that establish branches in Nicaragua, cannot use diplomatic channels in any case related to its operations in Nicaragua. Article 24 of Insurance Act.

Natural or legal persons domiciled in Nicaragua are prohibited from buying insurance from companies without the proper authorization to operate in Nicaragua, except those for export and import transportation, or accidental damage that may occur outside of Nicaragua and if it can be demonstrated to the Superintendent that the specific insurance in question is not available in the country from authorized institutions or that these institutions do not have approved insurance policies covering those risks. Article 174 of Insurance Act.

Foreigners wishing to engage in insurance brokerage or to be insurance agents in Nicaragua must be residents in the country, have a work permit and be authorized to exercise the activity under the law.

Foreign natural or legal persons that are Regulated Entities under the Law and that intend to develop or are developing activities in the national territory, must maintain a physical presence in the national territory (Art. 11, Act No. 977).

Section B
Entry 1 - Financial Services

Sector: Financial Services

Subsector: All sub-sectors except Banking and Insurances

Obligations Concerned: Market Access (Article 9.4)
Cross-Border Trade (Article 9.5)

Level of Government: Central

Measures:

Description: Nicaragua reserves the right to adopt or maintain measures necessary for the incorporation in Nicaragua of financial institutions organized under the laws of foreign countries, excluding those seeking to operate as banks or insurances companies within Nicaragua.

Entry 2 - Financial Services

Sector:	Financial Services
Sub sector:	All sub-sectors except Banking and Insurances
Obligations Concerned:	National Treatment (Article 9.2) Cross-Border Trade (Article 9.5)
Level of Government:	Central
Measures:	

Description: Nicaragua reserves the right to accord benefits to financial institutions or public entities wholly or majority owned by the State that supply financial services and are established with a public interest purpose, including but not limited to agriculture production finance, housing credits for low income families, and credits for small and midsize enterprises.

Such benefits shall not disadvantage the core operations of commercial competitors and include, but are not limited to: extension of State guarantees, tax exemptions, exceptions to the usual juridical form requirements, and exceptions to the legal requirements to begin operations.