

ANNEX III
Schedule of Australia

Introductory Note for the Schedule of Australia

1. The Schedule of Australia to Annex III sets out:
 - (a) headnotes that limit or clarify the commitments of Australia with respect to the obligations described in sub-paragraph (b)(i) through (v) and in sub-paragraph (c);
 - (b) in Section A, pursuant to Article 13.9 (Non-Conforming Measures), the existing measures of Australia that do not conform with some or all of the obligations imposed by:
 - (i) Article 13.2 (National Treatment);
 - (ii) Article 13.3 (Most-Favoured-Nation Treatment);
 - (iii) Article 13.4 (Market Access for Financial Institutions);
 - (iv) Article 13.5 (Cross-Border Trade); or
 - (v) Article 13.8 (Senior Management and Boards of Directors); and
 - (c) in Section B, pursuant to Article 13.9 (Non-Conforming Measures), the specific sectors, sub-sectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by Article 13.2, 13.3, 13.4, 13.5, or 13.8.
2. Each entry in Annex A sets out the following elements:
 - (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(b) that, pursuant to Article 13.9 (Non-Conforming Measures), do not apply to the listed measure(s);
 - (c) **Level of Government** indicates the level of government maintaining the listed measure(s);
 - (d) **Source of Measure** identifies the laws, regulations, or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure 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 thereunder; and
 - (e) **Description** sets out the non-conforming aspects of the measure for which the entry is made.
3. Each entry in Section B sets out the following elements:
- (a) **Sector** refers to the general sector for which the entry is made;
 - (b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1(c) that, pursuant to Article 13.9, do not apply to the sectors, sub-sectors, or activities listed in the entry;
 - (c) **Level of Government** indicates the level of government maintaining the listed measure(s); and
 - (d) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry.
4. For entries in Section A, in accordance with Article 13.9.1(a) (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the measures identified in the **Description** element of that entry except to the extent the measure identified in the **Description** element is inconsistent with a Specific Commitment in Annex 13-B.
5. For entries in Section B, in accordance with Article 13.9.2, 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.
6. Where Australia maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory 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 13.2, 13.3, 13.4, or 13.5 shall operate as a non-conforming measure with respect to Articles 11.3 (National Treatment), 11.4 (Most-Favoured-Nation Treatment), and 11.9 (Performance Requirements), to the extent of that measure.

Headnotes

1. Commitments under this Chapter are undertaken subject to the limitations and conditions set forth in these headnotes and the Schedule below.
2. To clarify Australia's commitment with respect to Article 13.4 of the Agreement (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws of Australia are subject to nondiscriminatory limitations on juridical form.¹
3. Australia limits its commitment under Article 13.9.1(c) (Non-Conforming Measures) with respect to Article 13.4 (Market Access for Financial Institutions) in the following manner: Article 13.9.1(c) shall apply only to measures concerning banking and other financial services (excluding insurance) which do not conform with Article 13.4(a).

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This headnote is not itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

Annex III

Schedule of Australia Section A

Sector: Financial Services

**Obligations
Concerned:** National Treatment (Article 13.2)
Market Access for Financial Institutions (Article 13.4)

**Level of
Government** Central

**Source of
Measure:** *Banking Act 1959*
Payment Systems (Regulation) Act 1998

Description: A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$A250,000.

A foreign bank that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.

Sector:	Financial Services
Obligations Concerned:	Senior Management and Boards of Directors (Article 13.8)
Level of Government:	Central
Source of Measure:	<i>Corporations Act 2001</i>
Description:	At least two of the directors of a public company must be ordinarily resident in Australia.

Sector:	Financial Services
Obligations Concerned:	National Treatment (Article 13.2) Most-Favoured-Nation Treatment (Article 13.3) Market Access for Financial Institutions (Article 13.4) Cross-Border Trade (Article 13.5) Senior Management and Boards of Directors (Article 13.8)
Level of Government	Regional
Source of Measure:	All existing non-conforming measures at the regional level of government.
Description:	All existing non-conforming measures at the regional level of government.

Sector:	Financial Services
Obligations Concerned:	National Treatment (Article 13.2)
Level of Government	Central
Source of Measure:	<i>Commonwealth Banks Act 1959</i> <i>AIDC Sale Act 1997</i> <i>Australian Industry Development Corporation Act 1970</i>
Description:	Liabilities of the Commonwealth Bank and the Australian Industry Development Corporation (AIDC), previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

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Section B

Sector:	Financial Services
Obligations Concerned:	National Treatment (Article 13.2)
Level of Government	Central and regional
Description:	Australia reserves the right to adopt or maintain any measure ² with respect to the guarantee by government of government-owned entities, including guarantees related to the privatisation of such entities, which may conduct financial operations.

² That is, measures that would be excluded from the application of Chapter Thirteen (Financial Services) under Article 13.1.3(b), except for the application of Australia's policy on competitive neutrality which in general allows competition and avoids providing a net competitive advantage to an entity by virtue of its public sector ownership.