



**TRADE DIRECTORATE
TRADE COMMITTEE**

Working Party of the Trade Committee

ASSESSING BARRIERS TO TRADE IN SERVICES

FINANCIAL INFORMATION SERVICES

This annex to TD/TC/WP(98)51/REV1 provides the country inventories and flowcharts of measures affecting trade in financial information services (FIS). An overview of FIS, classification issues, and the sources and methodology used to construct the inventories, are contained in TD/TC/WP(98)51/REV1. This document has been declassified and is issued under the responsibility of the Secretary-General.

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JT00100031

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ARGENTINA

Argentina's GATS bindings date from 1993. Sub-items of 7.B. Banking and Other Financial Services are listed individually; both 7B (k) and (l) are included therein.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **Advisory and other auxiliary services for any of the activities listed in Article I.B of MTN.TNC/W/50, including credit reference and analysis, investment and portfolio advice, and advice on acquisitions and on corporate restructuring and strategy.**
 - MA/NT modes 1, 2: bound as "none"
- **Provision and transfer of financial information, financial data processing and related software by suppliers of other financial services**
 - MA/NT modes 1, 2: bound as "none"
- The FS Understanding is not inscribed in Argentina's schedule, hence the extension of mode 2 to "purchase abroad" is presumably not covered.

(ii) Establishment/investment

GATS bindings

- **Advisory and other auxiliary services, (etc.)**
 - MA/NT mode 3: bound as "none"
- **Provision and transfer of financial information (etc.)**
 - MA/NT mode 3: bound as "none"
- **Banking and Other FS sub-items**
 - MA/NT mode 3: bound as "none"

Applied measures

- a) **Investment/ownership restrictions**
FS measures (as may be relevant to FIS provision)
 - Foreign investors are permitted to have 100% ownership and control of commercial banks, subject to receipt of a license to operate; and commercial banks are permitted to merge with or acquire 100% ownership of other types of financial institutions, subject to receipt of an operating license.
 - Foreign investors are also permitted to acquire 100% ownership of brokerage firms and commercial banks engaged in securities activities, subject to approval to operate a financial entity.

- Establishing a new financial entity or acquiring or merging with existing firms is subject to authorisation and supervision by the Central Bank.
 - Foreign investors are permitted to control a financial institution with less than 50% ownership.
- (b) Restrictions on form of company**
- Foreign financial firms regulated by the Financial Entities Law (FEL) have the option of conducting business in Argentina through a local branch, subsidiary, or representative office. Although these forms of ownership are authorised under Argentine law, they are not bound in the WTO.

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

▸ Unbound, except for measures concerning the following categories of personnel:

A. *Senior personnel*

II. *Managers*: persons in an enterprise or organisation who primarily direct a department or subdivision. They supervise and control the work of other supervisory, professional or managerial staff. They have the authority to hire or dismiss personnel, recommend their hiring or dismissal or take other personnel action such as promotion or leave authorisation. They exercise discretionary authority over day-to-day activities. Does not include first-line supervisors unless those supervised are professionals, nor employees who primarily perform tasks required for the provision of the service.

III. *Executives*: persons in the organisation who primarily direct the management of the organisation. They exercise wide latitude in decision-making and receive only supervision or direction from high-level executives, the board of directors or stockholders. In addition, they do not directly perform tasks related to the provision of the service(s) of the organisation.

IV. *Specialists*: persons in an enterprise or organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques or management. Independent professionals may be included in this category.

2. OPERATION IN THE MARKET

(i) Licensing/registration/notification

GATS bindings

None listed, apart from the requirement that, in order to engage in stock market transactions, it is necessary to be a member and shareholder of the Securities exchange.

Applied measures

- All financial institutions subject to the FEL are regulated and supervised by the Central Bank. Establishing a new financial entity or acquiring or merging with existing firms covered by the FEL is subject to authorisation and receipt of a license to operate.

(ii) Other operating restrictions

Applied measures

- Whilst commercial banks may engage in any of the activities regulated by the FEL; other FS firms are limited to specific activities as defined by the Law.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Restrictions on information and data flows

• **Banking and Other FS**

- Processed data must remain in the country so as to be available for consultation by the competent authority
- This measure does not prevent the data from also being transferred abroad.
- FS Understanding is not applied.

(ii) Monopolies & exclusive providers

- No entries for FS

(iii) Subsidies

- No entries in the Schedule

(iv) Government procurement

• **FS**

- Financial operations by the Government and State-owned enterprises are excluded from the conditions specified in this schedule; they may carry out their operations through the entities they designate

Applied measures

(v) Other

- Any company issuing public offerings is required to be rated by at least two local credit-rating agencies.

Intellectual Property Protection

The Government issued a degree in 1994 explicitly extending copyright protection to software and providing criminal sanctions for infringement. However a domestic court ruled in late 1994 that the decree cannot authorise criminal sanctions for software piracy. The Supreme Court of Argentina upheld that ruling in late 1997. The Chamber of Deputies has approved a bill making software piracy a crime; Senate approval is also required.

AUSTRALIA

Australia's GATS bindings date from the 1997 FS negotiations; with commitments made for "7.B. Banking and Other Financial Services" without individual sub-item listings.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

- Australia undertakes its specific commitments on financial services in accordance with the "Understanding on Commitments in Financial Services" (hereinafter referred to as the "Understanding").

- The market access commitments with respect to "cross-border supply" and "consumption abroad" (as described in paragraphs 2(a) and 2(b) of Article I of the Agreement) bound in this Schedule are limited to the services indicated in paragraphs B.3 and B.4 of the Understanding, respectively.

- **Banking and Other FS**

- None, other than limitations on certain deposit and fund-raising operations in Australia by foreign banks.

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Horizontal**

- Notification and examination under Australia's foreign investment policy guidelines and the Foreign Acquisitions and Takeovers Act 1975. In addition to the specific foreign investment policy requirement set out in those parts of this Schedule concerning financial services and international shipping, proposals for foreign interests to invest in the services identified in the Schedule are examined under the Government's policy guidelines without the need to demonstrate economic benefits or to provide for Australian equity participation and are approved unless national interest considerations arise.

- Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia

- **Banking and Other FS**

- None other than the criteria for authorisation of foreign banks, and monetary institutions responsible for both reserve assets and commercial investments.

(b) Restrictions on form of company

• **Banking and Other FS**

- Foreign banks may undertake banking operations in Australia through locally incorporated subsidiaries and/or an authorised branch (the latter may not accept “retail” deposits).
- The Australian Stock Exchange liquid capital requirements for stockbrokers may have the effect of favouring participation in the Exchange by subsidiaries rather than branches of foreign companies.
- An applicant must be a body corporate in order to obtain approval to conduct a stock exchange or a futures exchange.

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

- Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories:

(a) Executives and senior managers, as intra-corporate transferees, for periods of initial stay up to four years.

Executives and senior managers being natural persons who are employees of a company operating in Australia, and who will be responsible for the entire or a substantial part of that company's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business, including directing the company or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the company.

(b) Independent executives, without requiring compliance with labour market tests, for periods of initial stay up to a maximum of two years.

Independent executives being natural persons who meet the criteria of executives and senior managers who intend, or are responsible for the establishment in Australia, of a new business of a service supplier with its head of operations in the territory of another Member and which has no other representative, branch or subsidiary in Australia.

(c) Service sellers, as business visitors, without requiring compliance with labour market tests, for periods of initial stay of up to six months and up to a maximum of 12 months.

Service sellers being natural persons not based in Australia who are (sales) representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.

Applicants for business visitor visas are natural persons seeking to travel to Australia for business purposes and not intending to engage in work that might otherwise be carried out by an Australian citizen or permanent resident. This requirement will be satisfied where the service seller's remuneration and financial support for the duration of the visit are derived entirely from sources outside Australia.

(d) Specialists, subject to individual compliance to labour market testing, for periods of initial stay up to a maximum of two years with provision of extension provided the total stay does not exceed four years.

Specialists being natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of a company's operations in Australia. Skills are assessed in terms of the applicant's employment experience, qualifications and suitability for the position. Labour market testing is not required for (i) natural persons who have specialised knowledge at an advanced level of a proprietary

nature of the company's operations and have been employed by the company for a period of not less than two years and (ii) if the position in question is within a labour agreement in force at the time of application. A labour agreement is an agreement between the Australian Government, employers or industry organisations and unions for the entry of specialists from overseas.

The above commitments do not apply in cases of labour/management dispute.

(iv) Residency/nationality requirements

GATS bindings

- **Horizontal**
 - At least two of the directors of a public company must be ordinarily resident in Australia.
- **Banking and Other FS**
 - The provisions of the Act require that at least a majority of the directors of the Trust Bank be resident of Tasmania and that policy and control of the Trust Bank be exercised in Tasmania.
 - A majority of the directors of a member organisation of the Australian Stock Exchange must be Australian residents.

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications

GATS bindings

- **Banking and Other FS**
 - None specified, other than that dealings in foreign exchange in Australia must be carried out through a dealer authorised by the Reserve Bank. Only banks, including branches of overseas banks, and financial institutions incorporated in Australia with the required minimum capital base, are eligible to seek authorisation as a foreign exchange dealer.

3. OTHER DOMESTIC MEASURES

GATS bindings

Monopolies and exclusive providers

- No entries for FS.

Subsidies

- **Horizontal**
 - Unbound for subsidies for research and development.

Other

- **Horizontal**
 - Unbound for current and future measures at the federal, state or local government levels according rights or preferences to any indigenous person or organisation providing for the favourable treatment of any indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector. For the purposes of this Schedule, an indigenous person means a person of the Aboriginal race of Australia or a descendant of an indigenous inhabitant of the Torres Strait Islands.

BRAZIL

Brazil's GATS bindings date from the 1997 FS negotiations. Under Banking and Other Financial services, commitments are listed separately for "financial institutions" and "non-financial institutions", using a classification adapted from W/120. Both categories include "advisory services, investment and portfolio research and advice and credit analysis"; but 7B(1) "provision and transfer of financial information, (etc.)" is **not** included.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **Banking and Other FS (provided by both financial and non-financial institutions, incl. "advisory services, investment and portfolio research and advice and credit analysis")**
 - MA/NT modes 1, 2: unbound
- No reference to the "Understanding on Commitments in Financial Services"; no commitments on 7B(1).

Applied measures

- The government restricts the financing of purchases abroad with credit cards in an attempt to limit the demand for imports.

(ii) Establishment/investment

(a) Investment/ownership restrictions

GATS bindings

- **Horizontal**
 - In accordance with laws and regulations governing foreign investment, all foreign capital invested in Brazil must be registered with the Central Bank of Brazil to be eligible for remittances. The Central Bank establishes procedures related to remittances and transfer of funds abroad.
- **Banking and Other FS provided by financial institutions (incl. "advisory services, investment and portfolio research and advice and credit analysis")**
 - The establishment of new branches and subsidiaries of foreign financial institutions, as well as increases in the participation of foreign persons in the capital of financial institutions incorporated under Brazilian law, is only permitted when subject to a case-by-case authorisation by the Executive Branch, by means of a Presidential decree. Applying investors may be required to fulfil specific conditions. Foreign persons may participate in the privatisation program of public sector financial institutions and in each case commercial presence will be granted, also by means of a Presidential decree. *Otherwise, commercial presence is not allowed (IT added).*
 - For those banks established within Brazil before October 5th, 1988, the aggregate number of branches is limited to that existing on that date. For those banks authorised to operate in Brazil after that date, the number of branches is subject to the conditions set out, in each case, at the time authorisation is granted.

- **Banking and Other provided by non-financial institutions (incl. “advisory services, investment and portfolio research and advice and credit analysis”)**

Mode 3 MA bound as “none” except that:

- Legal persons must be incorporated under Brazilian law
- Only legal persons may provide clearing services for securities and derivatives; and public offering of securities in a regulated over-the-counter market.

Applied measures (as may be relevant to provision of FIS)

Regulations concerning foreign ownership and operations in the financial services industry are not completely transparent. Despite the fact that Brazil recently authorised a number of foreign investors in financial services to expand existing multipurpose banking operations, the Constitution still prohibits such activity unless it serves national interest, is based on reciprocal treatment, or reflects agreements made in an international treaty. A 1995 presidential decree declared that foreign investment in financial services is in the national interest, but market access is not guaranteed. Thus, market access continues to depend on authorisation from the Central Bank to establish operations, increase ownership, or open new branches (including ATMs). To date, no foreign investors have received authorisation to establish new, wholly owned financial services subsidiaries in Brazil.

Main points

- Foreign investment in the banking industry must be authorised by the Central Bank and is granted on a case-by-case basis. The Central Bank may authorise foreigners to hold 100% ownership of commercial banks. Most foreign investment in the financial services industry currently takes place through foreign firms’ acquisition of additional shares in firms in which they already hold shares.
- In its 1997 WTO financial services offer, Brazil offered to bind the right of establishment and guarantee 100% ownership of foreign banks. Foreign banks will be permitted to establish new branches and subsidiaries, although authorisation will continue to be granted only on a case-by-case basis.
- As with the banking sector, the establishment of new securities firms, as well as increases in foreign participation in these industries, is subject to authorisation on a case-by-case basis.

(b) Restrictions on form of company

GATS bindings

- **Horizontal**

Foreign service suppliers wishing to supply a service as a juridical person must be organised as a legal entity foreseen by the Brazilian law.

A joint venture may be accomplished by a capital association through the formation of any type of business organisation as set forth in the Brazilian law (usually a Private Limited Liability Company - Limitada - or a Corporation - Sociedade Anônima). A joint venture may also be carried out through a consórcio, which is neither a juridical person nor a form of capital association. A consórcio is used mainly with major contracts for rendering of services. It is a contract of two or more enterprises for a joint accomplishment of one specific undertaking. Each associate in a consórcio maintain its respective organisational structure.

- **FS provided by financial institutions**

Financial institutions, unless otherwise specified, shall take the form of a “sociedade anônima” when incorporated under Brazilian law.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Unbound, except for measures related to specialised technicians, highly qualified professionals, managers and directors, as follows:

Foreign specialised technicians and highly qualified professionals may work under a temporary contract with legal entities, whether of national or foreign capital, established in Brazil. The pertinent contract must be approved by the Ministry of Labour.

Approval of contracts of specialised technicians and highly qualified professionals takes into account the compatibility of their qualifications with the area of business in which the company is engaged. The company must justify the need to contract such professionals and technicians in relation to similar professionals and technicians available in Brazil.

Juridical persons must obey the proportionality of at least two Brazilians for three employees when engaged in the following activities listed in this offer: communications; land transportation; commercial stores in general; *commercial offices*; insurance; advertising; hotels and restaurants.

Managers and Directors appointed to affiliates of foreign companies established in Brazil will be granted access under the following conditions: designation to a position with full decision-making power; vacancy of such position; existence of associate link between the service provider in the Brazilian territory and its headquarters abroad; proof by the service provider in Brazil that the Manager or Director is performing his duties after receiving the visa. Appointment of such Managers or Directors must be related to the provision of new technology, increase in productivity or the foreign company must have invested a minimum amount of US\$ 200,000.00 (amount may be adjusted in the future to a corresponding US\$ value of 1993) in Brazil.

All other requirements, laws and regulations regarding entry, stay and work shall continue to apply.

- **Banking and Other Financial Services Headnote**

All members of senior management level of financial services suppliers must be permanent representatives in Brazil.

Applied measures

Non-transparent and arbitrary application of local partnership requirements, limits on foreign directorships and registration of foreign professionals.

2. OPERATION IN THE MARKET

(i) Registration/licensing

GATS bindings

Not specified except as already covered in reference to the case-by-case process for Presidential and Central Bank approval of establishment.

(ii) Other

GATS bindings

• **Banking and other financial services footnote**

- Financial institutions are defined as multiple banks, commercial banks, investment banks, consumer finance companies, real estate finance companies, leasing companies, brokers and dealers. Each may permit only those activities permitted by the National Monetary Council, the Central Bank and/or the Securities Commission.
- Representative offices may not engage in commercial business.

Applied measures

Lack of transparency in administrative procedures and arbitrary application of regulations and laws in the financial services sector; legal and administrative restrictions on remittances abroad.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

- No entries for FS
- (Applied -- state monopoly of the Banco do Brazil for settlement and clearing services).

(ii) Subsidies

• **Horizontal**

- MA modes 1-4: unbound
- NT modes 1-4: unbound for subsidies for Research and Development

CANADA

Canada's GATS bindings date from the 1997 FS negotiations, and were revised in June 2000. Under 7B Banking and Other Financial services, commitments are listed separately for Banking Services and for Other Financial Services; the latter grouping includes both 7 B.(k) and (l).

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

- Commitments are undertaken in accordance with the "Understanding on Commitments in Financial Services ("Understanding"); Market access commitments with respect to the "cross-border" and "consumption abroad" supply of services apply only to the transactions indicated in paragraphs 3 and 4 of the Understanding and it is understood that paragraph 4 (thereof) does not impose any obligation to allow non-resident financial services suppliers to solicit business.

- **"Other FS" (i.e. excl. Banking and Insurance)**

- MA modes 1: bound as none, except that (as may be relevant to FIS provision)

For supply of asset management and advisory and auxiliary financial services in a number of provinces, it is necessary to supply through a commercial presence in the jurisdiction in which the adviser is providing advice; and in all provinces, mutual funds which offer securities in Canada must use a resident custodian; a non-resident sub-custodian may be used if it has shareholder equity of at least \$100 million

- MA mode 2: bound as "none" except that there is a requirement to register in order to trade through dealers and brokers that are neither resident nor registered in the province in which the trade is effected.

- NT modes 1, 2: none.

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Horizontal**

- The acquisition of control of a Canadian business by a non-Canadian is subject to approval¹ for all direct acquisitions of Canadian businesses with assets not less than a monetary amount established and published in

¹For the purpose of this schedule of commitments, approval is granted by the responsible Minister if he is satisfied that the investment is likely to be of net benefit to Canada taking into account any information, undertakings and representations in respect of the application, and the following factors where relevant:

a) the effect of the investment on the level and nature of economic activity in Canada, including, without limiting the generality of the foregoing, the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;

January of each year in the Canada Gazette. The monetary amount for 1994 is \$C153 million to be adjusted thereafter annually for changes in nominal GDP

- **“Other FS” (i.e. excl. Banking and Insurance)**

- Advisory and auxiliary financial services (British Columbia): Must be incorporated, formed or continued under federal, provincial or territorial laws.

- Securities dealers and brokers (British Columbia, Ontario, Saskatchewan, Yukon): Must be incorporated, formed or continued under federal, provincial or territorial laws.

- (Quebec): Only brokerage firms incorporated under federal, provincial or territorial laws may be members of the Montreal Exchange.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

- Unbound except for the entry or temporary stay of a natural person who falls in one of the following categories:

Business visitors

A natural person who stays in Canada without acquiring remuneration from within Canada and without engaging in making direct sales to the general public or supplying services, for the purposes of participating in business meetings, business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing a commercial presence in Canada: Entry and stay shall be for a period of no more than 90 days

Intra Corporate Transferees

Natural persons of another Member who have been employed by juridical persons of another Member for a period of not less than one year and who seek temporary entry in order to render services to (i) the same juridical person which is engaged in substantive business operations in Canada or (ii) a juridical person constituted in Canada and engaged in substantive business operations in Canada which is owned by or controlled by or affiliated with the aforementioned juridical person

None, other than:

- Entry and stay shall be a maximum period of three years. These comprise:

a) Executives

Natural persons employed by a juridical person who primarily direct the management of the juridical person or establish goals and policies for the juridical person or a major component or function of the juridical person, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the juridical person

b) the degree and significance of participation by Canadians in the Canadian business or new Canadian business and in any industries in Canada of which the Canadian business or new Canadian business forms or would form a part;

c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;

d) the effect of the investment on competition within any industry or industries in Canada;

e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and

f) the contribution of the investment to Canada's ability to compete in world markets.

b) Managers

Natural persons employed by a juridical person who direct the juridical person, or department or subdivision of the juridical person, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions and exercise discretionary authority over day-to-day operations at a senior level

c) Specialists

Persons in the employ of a juridical person who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the juridical person's product, service, research equipment, techniques, or management

Professionals

Natural persons seeking to engage, as part of a services contract obtained by a juridical person of another Member (other than agencies as defined by CPC 872) in the activity at a professional level in a profession set out in Chart A below, provided that the person possesses the necessary academic credentials and professional qualifications, which have been duly recognised, where appropriate, by the professional association in Canada

Temporary entry and stay shall be for a period of up to 90 days or the time necessary to complete the services contract, whichever is less. Such persons may not engage in secondary employment while in Canada.

(iv) Residency/nationality requirements

GATS bindings

• **Horizontal-**

▸ A majority of the directors of federally incorporated corporations in Canada must be Canadian citizens or persons ordinarily resident in Canada

▸ Alberta: At least 50% of the directors of an Alberta Corporation must be resident Canadians. Extra-provincial corporations registered under the Alberta Business Corporations Act must appoint an individual who is resident in the province of Alberta as an attorney for service of legal documents.

▸ British Columbia: The majority of directors of every corporation incorporated under provincial law shall be resident Canadians and at least one director must be resident in the Province.

▸ Manitoba: The majority of directors of a meeting of the Board of a Manitoba Corporation must be Canadian residents.

▸ Newfoundland and Labrador: A majority of the directors of all corporations incorporated under provincial law must be Canadian residents. A co-operative must consist of at least five persons of full legal capacity residing in the province. All non-resident businesses must engage a local agent for the purposes of collective bargaining and execution of conveyances and mortgages.

▸ Ontario: The majority of directors of all Ontario corporations must be resident Canadians. The majority of the directors of any Ontario co-operative and the majority of a quorum must be resident Canadians.

▸ Saskatchewan: Under the Saskatchewan Companies Act, one director of a company incorporated for business in the province, or of a registered extra-provincial company, must be resident in that province and a majority of the directors must be resident in Canada. For a co-operative, the majority of the board of directors must be residents of Canada.

• **Banking and Other FS**

▸ Trading in securities and commodity futures and advisory and auxiliary financial services - dealers, brokers, and advisers: (Alberta, Ontario, Newfoundland, Nova Scotia, Manitoba and Saskatchewan): A director or officer of an applicant firm must have been a resident of Canada for a period of at least one year prior to the application.

- Advisory and auxiliary financial services, and Asset Management (Nova Scotia and Quebec): The establishment must be managed by a resident of the province.
- Trading in securities and commodity futures and advisory and auxiliary financial services - dealers, brokers and advisers: (all provinces except British Columbia, New Brunswick and Quebec): An individual applicant for registration is required to have been a resident of Canada for a period of at least one year prior to the application and a resident of the province in which he/she wishes to operate at the date of application.
- (Quebec): An individual acting as a representative of a dealer or adviser, subject to certain exemptions, must be a resident of the province.
- Federally regulated institutions (i.e. insurance, banks and trust and loan): A minimum of one half of directors must be either Canadian citizens ordinarily resident in Canada or permanent residents ordinarily resident in Canada.

2. OPERATION IN THE MARKET

(i) Registration/licensing

GATS bindings

Nothing specified.

3. OTHER DOMESTIC MEASURES

GATS bindings

(ii) Monopolies and exclusive providers

- **Horizontal**

- The Alberta Opportunity Fund gives priority to service suppliers owned and operated by Canadian citizens

- **Banking and other FS**

- Asset management (Quebec): The management of pension funds of public and para-public institutions in Quebec is provided by a public monopoly.

(ii) Subsidies

- **Horizontal-**

- The supply of a service, or its subsidisation, within the public sector is not in breach of this commitment

- Subsidies related to research and development - unbound

(iii) Government procurement

Nothing specific to FS or FIS.

(iv) Other

- Horizontal measures relating to land ownership and indigenous issues.

- FS- Supplies between resident and non-resident branches or representative offices of a financial institution are treated as supplies between separate persons for the purposes of value-added taxes.

CHILE

Chile's GATS bindings date from the 1997 FS negotiations. For Banking and Other FS activities, the commitments are organised as Banking services; Advisory and other auxiliary financial services (for the banking sector); and Securities services, including sub-items for "securities risk-rating" and "financial advisory services provided by securities intermediaries". There is no entry for Provision and transfer of financial information, and financial data processing and related software by providers of other financial services, or similar.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

No reference to the "Understanding on Commitments in Financial Services"

MA/NT modes 1, 2 are unbound for measures relating to payments and transfers to or from Chile and transactions relating to them.

- **Advisory and other auxiliary financial services (for the banking services listed in the schedule)**

MA/NT modes 1, 2: unbound

- **Securities risk-rating services**

MA/NT modes 1, 2: unbound

- **Financial advisory services provided by securities intermediaries**

MA/NT modes 1, 2: unbound.

(ii) Establishment/investment

(a) Restrictions on investment/ownership

GATS bindings

- **Horizontal**

Economic needs test and other criteria

Authorisation to deliver services through a commercial presence may take into account the following criteria:

a) The effect of the commercial presence on economic activity, including the effect on employment, on the use of parts, components and services produced in Chile and on exports of services;

b) The effect of the commercial presence on productivity, industrial efficiency, technological development and product innovation in Chile;

c) The effect of commercial presence on competition in the sector and other sectors, on consumer protection, on the smooth functioning, integrity and stability of the market, and on the national interest;

d) The contribution of the commercial presence to Chile's integration into world markets.

A supplier of financial services operating through a commercial presence may be subject to evidence of economic need. That is, he must obtain prior authorisation to start up, suspend or terminate operations from the Banking and Financial Institutions Supervision Department (SBIF), in the case of banking services, or from the Securities and Insurance Supervision Department, in the case of securities and insurance services.

Economic need test for mode 3 is also inscribed in "All FS" section of the schedule.

Foreign investors may transfer abroad their capital following the elapse of three years from the date of entry.

Foreign investors who participate in the financial services sector may transfer their capital abroad two (2) years after bringing it in.

Investments [...] coming from or going to a foreign country may be subject to a reserve requirement.

- **FS Headnote**

The Chilean FS sector is partially compartmentalised, that is to say the institutions, domestic and foreign, authorised to operate as banks may not encroach on the insurance and securities businesses and vice versa. However, subject to authorisation from the Banking and Financial Institutions Supervision Department, domestic and foreign banks operating in Chile may set up subsidiaries, with their own capital, to supply other financial services in addition to their main line of business. []

- **Banking Services**

No national or foreign natural or legal person may acquire directly or through third parties shares in a bank which, alone or added to the shares such person already possesses, represent more than 10% of the bank's capital without having first obtained the authorisation of the Banking and Financial Institutions Supervision Department. In addition, the partners or shareholders of a financial institution may not transfer a percentage of rights or shares in the company in excess of 10% without having obtained authorisation from the Supervision Department.

- **Advisory and other auxiliary financial services (for banking sector)**

In addition to the conditions (for investment and form of company as specified for the Banking services sector), in Chile advisory and other auxiliary financial services are regarded as complementary to the services which the established banks can provide. Consequently, domestic banks must set up subsidiaries with their own capital in order to be able to provide these services and must obtain the appropriate authorisation from the SBIF.

- **Financial advisory services provided by securities intermediaries**

Securities services headnote: Financial advisory services, which involve giving financial advice on financing alternatives, investment appraisal, investment possibilities, and debt rescheduling strategies may be undertaken by securities intermediaries (stockbrokers and securities agents) as an activity complementary to their sole purpose.

Mode 3 MA: Financial advisory services provided by securities intermediaries established as corporations in Chile require prior enrolment in the Register of Stockbrokers and Securities Agents maintained by the SVS. In addition to the legal requirement concerning assets, the SVS may impose more stringent non-discriminatory provisions regarding economic solvency on the intermediaries, taking into account the nature of their operations, the amounts involved, the type of instrument negotiated, and the category of intermediaries to which they apply.

- **Securities risk rating services**

Securities headnote: Publicly offered securities risk rating services are provided by rating agencies constituted for the sole purpose of rating publicly offered securities, and they must be enrolled in the Register of Risk Rating Agencies maintained by the SVS; they are inspected and controlled by the above-mentioned Supervision Department; on the other hand, the inspection of rating agencies with respect to the rating of securities issued by banks and finance companies is the responsibility of the Banks and Financial Institutions Supervision Department (SBIF)

Mode 3 MA: They must be established in Chile as a company of persons. One of the specific requirements to be fulfilled is that not less than 60% of the company's capital must be held by the principal partners (natural or legal persons in this line of business holding a minimum of 5% of the membership rights in the rating agency). They must be enrolled in the SVS Register of Risk Rating Agencies, and the rating board must consist of professionals with a university degree or equivalent higher education and an unblemished business record, the majority of whom must have had at least three years' work experience in the economic and financial field.

(b) Form of company

• **Horizontal**

(The commitments in the) schedule applies only to corporations, open or closed, private-limited companies, and subsidiaries; which under Chilean legislation are the equivalent of agencies of corporations.

Foreign banking institutions must be companies legally constituted in their country of origin, must acquire legal personality in Chile and must put up the capital required by Chilean law. Banking institutions may only operate as open corporations or subsidiaries.

• **FS Headnote**

There may be non-discriminatory restrictions or provisions regarding the type of commercial presence that must be adopted by firms operating in the securities or insurance sectors in Chile.

Subject to authorisation from the Banking and Financial Institutions Supervision Department, domestic and foreign banks operating in Chile may set up subsidiaries, with their own capital, to supply other financial services in addition to their main line of business

• **Advisory and other auxiliary financial services (only for services in the banking sector in the schedule)**

In addition to the conditions specified (for banks), in Chile advisory and other auxiliary financial services are regarded as complementary to the services which the established banks can provide. Consequently, domestic and foreign banks must set up subsidiaries with their own capital in order to be able to provide these services and must obtain the appropriate authorisation from the SBIF.

• **Securities risk rating services**

They must be established in Chile as a company of persons

• **Financial advisory services provided by securities intermediaries**

Brokerage activities must be provided through a corporation established in Chile (and registered, etc. -- see section 1(ii)(a) above)

In order to trade on the stock exchange, intermediaries (brokers) must be constituted as corporations in Chile. They must acquire a share in their respective stock exchange and be accepted as members of this exchange. (and registered, etc. -- see section 1(ii)(a) above).

Applied measures (as may be relevant to provision of FIS)

(a) Investment/ownership restrictions

- Economic needs test for establishment of new FS firms.
- There are no [...] restrictions on foreign ownership or operation in the Chilean financial services industry. BUT since 1980, there has been a moratorium on new licenses for commercial banks and Non-Bank Financial Institutions. New market entrants must therefore purchase an existing bank in order to operate a commercial bank.
- Foreign brokerage firms are allowed to operate in Chile, and as with the banking industry, are guaranteed non-discriminatory treatment under Decree Law 600.
- There are no investment banks in Chile. Many of the larger domestic and foreign banks do, however, have investment banking departments.
- The moratorium on new banking licenses may be repealed with the New Banking Law. Apart from the moratorium [...] foreigners have the right of establishment in all other financial service sectors and are allowed percent in these sectors. Neither foreign nor domestic firms, however, are permitted to have operations in more than one sector of the financial services market.
- There is no ceiling on foreign direct or portfolio investment, although foreign investments larger than US\$5 million must be approved by the Foreign Investment Committee.

(b) Form of company

- Foreign banks have the option of establishing a branch or subsidiary, although, in order to enforce bank liability on the legal parent as well as domestic lending laws, the Chilean government prefers that foreign banks establish branches.
- Securities firms establishing operations in Chile must do so through a subsidiary.

(iii) Entry and temporary stay of personnel**GATS bindings**

- **Horizontal**

Unbound, except for transfers of natural persons within a foreign enterprise established in Chile, in accordance with (3) commercial presence, of senior and specialised personnel who have been in the employ of the organisation for a period of at least two years immediately preceding the date of their application for admission performing the same type of duties in the parent company of their country of origin. In any case, in accordance with (3) commercial presence, foreign natural persons may not make up more than 15% of the total staff employed in Chile.

The category of senior and specialised personnel does not include members of the board of directors of a company established in Chile.

Senior personnel are those executives who come under the direct supervision of the board of directors of the enterprise established in Chile and who, *inter alia*: direct the management of the organisation or one of its departments or subdivisions; supervise and control the work of other supervisory, professional or managerial employees; are personally authorised to hire and fire or recommend hiring and firing or other personnel actions.

Specialised personnel are those highly qualified persons who are indispensable to the supply of the service because of their professional knowledge or possession of qualifications for a particular type of work or activity requiring specialised technical expertise; proprietary knowledge of the organisation's services, research equipment, techniques or management; and the non-availability of such specialised personnel in Chile.

Providers of services are admitted temporarily, for a period of two years which can be extended for two more years. Personnel admitted under these conditions will be subject to the provisions of the labour and social security legislation in force.

(iv) Nationality/residency requirements**GATS bindings**

- **Horizontal**

For all legal purposes, senior and specialised personnel must establish domicile or residence in Chile.

As regards services that fall under the heading "professional services" at least 85% of the staff employed by a supplier of services established in Chile must be Chilean; and as regards all other services listed in this Schedule, at least 85% of the staff employed by a supplier of services established in Chile must be Chilean, except in the case of enterprises with fewer than 15 employees.

Applied Measures

There are no citizenship requirements in Chile that prohibit employing foreign nationals.

2. OPERATION IN THE MARKET

(i) licensing/registration/notification

GATS bindings

- **FS Headnote**

Authorisation to supply financial services through a commercial presence will be given in so far as the applicant undertakes to ensure the proper functioning, integrity and stability of the market, fulfils the requirements of the law and serves the national interest.

Publicly offered securities may be traded by legal persons whose specific purpose is securities brokerage, either as members of a stock exchange (stockbrokers) or outside the exchange (securities agents), and these institutions must be registered with the Securities and Insurance Supervision Department (SVS); however, only stockbrokers may trade shares or derivatives (subscription options) on the stock exchange. Non-share securities may be traded by stockbrokers or securities agents registered with the SVS

- **Financial advisory services provided by securities intermediaries**

Prior enrolment in the Register of Stockbrokers and Securities Agents maintained by the SVS.

In order to trade on the stock exchange, intermediaries (brokers) must be constituted as corporations in Chile. They must acquire a share in their respective stock exchange and be accepted as members of this exchange.

- **Securities risk rating**

Must be enrolled in the Register of Risk Rating Agencies maintained by the SVS.

Applied measures

Rules governing foreign investment and the treatment of foreign companies are outlined in Decree Law 600, which guarantees national treatment in all sectors of the economy. Similarly, the same regulations apply to firms, both domestic and foreign owned, seeking to borrow from abroad.

Foreign firms are not allowed to list on Chile's stock market. Legislation currently under consideration would allow the creation of an off-shore market on which foreign firms could list. Once such legislation is passed, foreign firms in compliance with Chilean standards would be issued a global depository receipt (GDR) and permitted to list on the offshore market.

The country's regulatory framework is transparent, although the red tape encountered when entering the market is reported to be burdensome.

3. OTHER DOMESTIC MEASURES

(i) Restrictions on/other policies relevant to information and data flows

GATS bindings

No bindings for modes 1, 2; FS U'st not applied.

Applied measures

Securities legislation requires firms that go public to disclose detailed information, including financial statements, which helps to increase the transparency of the market.

(ii) Monopolies and exclusive providers

No entry for FS

(iii) Subsidies

No entries in the Schedule

(iv) Government procurement exemptions

Not specified in the Schedule

Applied measures

The Banco del Estado undertakes banking and financial operations for the government.

(v) Other

GATS bindings

Horizontal - Real estate acquisitions and the performance of other legal acts in frontier zones must comply with the provisions of the relevant legislation, which is unbound for the purposes of this Schedule. The frontier zone is defined as land situated within a distance of 10 km measured from the frontier and 5 km from the coast and Arica province.

Intellectual Property Protection

The Chilean copyright law does not protect computer software as a “literary work”, does not provide clear rental and importation rights, provides low penalties for infringement, has no provision for *ex parte* civil searches and is uncertain on other enforcement action, and places constraints on contractual rights. Enforcement is active and effective but piracy of computer software remains a significant problem.

CZECH REPUBLIC

The Czech Republic's GATS bindings date from the 1997 FS negotiations; with one set of commitments listed against the individual sub-items of "7.B. Banking and Other Financial Services". 7B(k) and (l) are included therein.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

- Commitments in this Chapter are based on the Understanding on Commitments in Financial Services ("the Understanding"). Market access commitments in respect of modes (1) and (2) apply only to the transactions indicated in paragraphs B.3 and B.4 of the market access section of the Understanding respectively.

- **Banking and Other FS**

- Limitations on modes 1 and 2 MA are listed for certain banking operations, the issuing of securities and asset management. No specific limitations are listed for 7B(k) or (l).

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Banking and Other FS**

Mode 3 bound as "none", except for (as may be relevant to FIS provision):

- Foreign banks require a license from the Czech National Bank in agreement with the Min. of Finance. Banking services may be provided only by Czech established banks or branches of foreign banks having a license granted by the Czech National Bank in agreement with the Ministry of Finance. The granting of the license is based on the consideration of criteria which are applied consistently with GATS. The purchase of shares of existing banks is subject to prior approval of the Czech National Bank.

- The establishment of securities dealers, stockbrokers, of the Stock Exchange or organisers of an over-the-counter market, investment companies and investment funds are subject to authorisation granting of which is related to qualifications, personal integrity, management and material requirements.

- **No specific limitations listed for 7B(k) or (l).**

(b) Restrictions on form of company

- **FS Headnote**

- As a general rule and in a non-discriminatory manner, financial institutions incorporated in the Czech Republic must adopt a legal form

- Banks may be established as joint stock companies only.

(iii) Entry and temporary stay of personnel**GATS bindings**

- **Horizontal**

- Unbound, other than for temporary entry, stay and work, without requiring compliance with economic needs test, of the following categories of natural persons supplying services:

- i) the temporary presence, as intracorporate transferees, of natural persons of the following categories, provided that the service supplier is a juridical person and that the persons concerned have been employed by it for at least one year immediately preceding such movement:

- a) essential senior executives working within a juridical person who primarily direct the management of the establishment of one of its departments and who receive only general supervision or direction principally from the board of directors or stockholders. Executive would not directly perform tasks related to the actual provisions of the services of the establishment,

- b) specialists working within a juridical persons who possess high or uncommon qualifications and knowledge essential to the establishment's service, research equipment techniques or management. In assessing such knowledge account will be taken not only of the knowledge specific to the establishment, but also of whether the specialist has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession,

- ii) the temporary presence of natural persons in the following categories:

- a) persons not residing in the territory of the Czech Republic who are representatives of a service provider and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreement to sell services for that service provider where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves,

- b) persons in senior positions as defined in i)a) above, within a juridical person, who are responsible for setting up in the Czech Republic of a commercial presence of a service provider when they are not engaged I making direct sales or supplying services and when the service supplier has its principal place of business in the territory of a Member other than the Czech Republic and has no representative office, branch or subsidiary in the Czech Republic.

2. OPERATION IN THE MARKET**(i) Licensing/registration/notifications****GATS bindings**

- **Banking and Other FS** (as may be relevant to FIS provision):

- Foreign exchange permit issued by the Czech National Bank or Ministry of Finance is required in case of Czech non-bank residents for a number of activities.

- Authorisation required for public trading of securities. The authorisation shall not be granted if public trading in securities is in conflict with the interests of investors, is inconsistent with the government financial policy or if it does not conform with the financial market requirements.

- Authorisation required for establishment/operation of securities dealers, stockbrokers, organisers of an over-the-counter market, investment companies and investment funds.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies and exclusive providers

- No entries for FS

(ii) Subsidies

- No reference in the Schedule

(iii) Government procurement

- **FS Headnote:**

▸ The purchase and acquisition of financial services by public entities of the Czech Republic are governed in this schedule by Article XIII of the General Agreement on Trade in Services

(iv) Other

- **Horizontal**

▸ Limitations on real estate acquisition by foreign natural and legal entities. Foreign entities may acquire real property through establishment of the Czech legal entities or participation in joint ventures. Acquisition of the land by foreign entities is subject to authorisation.

EUROPEAN COMMUNITIES

The European Communities and their Member States' commitments date from the 1997 FS negotiations; with commitments made for all sub-items of "7.B. Banking and Other Financial Services" without individual sub-item listings.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

- The Communities and their Member States undertake commitments on Financial Services in accordance with the provisions of the "Understanding on Commitments in Financial Services" (the Understanding), subject to the limitations on MA and NT in the "all sectors" section of the schedule and to those for specified sub-sectors. The market access commitments in respect of modes (1) and (2) apply only to the transactions indicated in paragraphs B.3 and B.4 of the market access section of the Understanding respectively.

- I(taly): Provision and transfer of financial information and financial data processing entailing trading or financial instruments may be prohibited where the protection of investors is likely to be seriously prejudiced. Only authorised banks and investment firms must comply with conduct of business rules in providing investment advice concerning financial instruments and advice to undertakings on capital structure, industrial strategy and related matters, and advice and service relating to mergers and acquisition of undertakings. Advisory activity should not include asset management.

- **Banking and other FS**

Limitations on mode 1 MA (as may be relevant for FIS provision)

B: Establishment in Belgium is required for the provision of investment advisory services.

I: Unbound for "promotori di servizi finanziari" (financial salesmen).

IRL: The provision of investment services or investment advice requires either (i) authorisation in Ireland, which normally requires that the entity be incorporated or be a partnership or a sole trader, in each case with a head/registered office in Ireland (authorisation may not be required in certain cases, e.g. where a third country service provider has no commercial presence in Ireland and the service is not provided to private individuals), or (ii) authorisation in another Member State in accordance with the EC Investment Services Directive.

- NT modes 1, 2: bound as "none".

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Horizontal measures** are listed for France, Spain and Portugal.
- **Banking and other FS**

‡ None apart from (as may be relevant to FIS provision) --

All Member States: The establishment of a specialised management company is required to perform the activities of management of unit trusts and investment companies (Articles 6 and 13 of UCITS Directive, 85/611/EEC).

GR: For the establishment and operations of branches a minimum amount of foreign exchange must be imported, converted into drachmas and kept in Greece as long as a foreign bank continues to operate in Greece: Up to four (4) branches this minimum is currently equal to half of the minimum amount of share capital required for a credit institution to be incorporated in Greece; For the operation of additional branches the minimum amount of capital must be equal to the minimum share capital required for a credit institution to be incorporated in Greece.

(b) Restrictions on form of company

- **FS Headnote**

‡ As a general rule and in a non-discriminatory manner, financial institutions incorporated in a Member State of the Community must adopt a specific legal form.

- **Banking and Other FS (as may be relevant to FIS provision)**

‡ D: Issues of securities denominated in Deutschmarks can be lead managed only by a credit institution, subsidiary or branch, established in Germany.

‡ S: A branch of a fund management company not incorporated in Sweden may not operate certain collective investment funds (*Allemansfonder*), where the investor enjoys certain tax benefits.

‡ I: Representative offices of foreign intermediaries cannot carry out activities aimed at providing investment services. Only firms having their registered office in the Community can act as depositories of the assets of investment funds (Articles 8.1 and 15.1 of the UCITS Directive, 85/611/EEC).

‡ DK: Financial institutions may engage in securities trading on the Copenhagen Stock Exchange only through subsidiaries incorporated in Denmark.

‡ E: Financial institutions may engage in securities trading in securities listed on an official stock exchange or in the government securities market only through securities firms incorporated in Spain.

‡ GR: Financial institutions may engage in the trading of securities listed on the Athens Stock Exchange only through stock exchange firms incorporated in Greece.

‡ I: In the case of collective investment schemes other than harmonised UCITS under the directive 85/611/EEC, the trustee/depository is required to be incorporated in Italy or in another Member State of the European Community, being established through a branch in Italy. Only banks, insurance companies, securities investment companies having their legal head office in the European Community may carry out activity of pension fund resources management.

‡ IRL: In the case of collective investment schemes constituted as unit trusts and variable capital companies (other than undertakings for collective investment in transferable securities, UCITS), the trustee/depository and management company is required to be incorporated in Ireland or in another Member State of the Community. In the case of an investment limited partnership, at least one general partner must be incorporated in Ireland.

- P: Broker-dealer services on the Lisbon Stock Exchange may be provided by broker and dealer companies incorporated in Portugal or by branches of investment firms authorised in another EC country and authorised in their home country to provide those services. Broker and dealer services in the Oporto Derivatives Exchange and in the OTC market may not be provided by branches of non-EC broker/dealer companies.
- UK: Inter-dealer brokers, which are a category of financial institutions dealing in Government debt, are required to be established in the European Economic Area and separately capitalised.
- S: Undertakings not incorporated in Sweden may establish a commercial presence only through a branch, and in case of banks, also through a representative office.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

- Unbound except for measures concerning the entry into and temporary stay² within a Member State, without requiring compliance with an economic needs test³, of the following categories of natural persons providing services:
 - i) the temporary presence, as intra-corporate transferee,⁴ of natural persons in the following categories, provided that the service supplier is a juridical person and that the persons concerned have been employed by it or have been partners in it (other than as majority shareholders), for at least the year immediately preceding such movement:
 - a) Persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:
 - directing the establishment or a department or sub-division of the establishment;
 - supervising and controlling the work of other supervisory, professional or managerial employees;
 - having the authority personally to hire and fire or recommend hiring, firing or other personnel actions
 - b) Persons working within a juridical person who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

² The duration of "temporary stay" is defined by the Member States and, where they exist, Community laws and regulations regarding entry, stay and work. The precise duration can vary according to the different categories of natural persons mentioned in this schedule.

³ All other requirements of Community and Member States' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements.

⁴ An "intra-corporate transferee" is defined as a natural person working within a juridical person, other than a non-profit making organization, established in the territory of an WTO Member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Community Member State: the juridical persons concerned must have their principal place of business in the territory of a WTO Member other than the Communities and their Member States and the transfer must be to an establishment (office, branch or subsidiary) of that juridical person effectively providing like services in the territory of a Member State to which the EEC Treaty applies. In Italy "intra-corporate transferee" as defined as a natural person working within a juridical person constituted as a SPA (joint stock company) or a SRL (capital stock company with limited responsibility).

ii) the temporary presence of natural persons in the following categories:

a) Persons not residing in the territory of a Member State to which the EC treaty apply, who are representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service provider, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.

b) Persons working in a senior position, as defined in i)a) above, within a juridical person, who are responsible for the setting up, in a Member State, of a commercial presence of a service provider of a Member when:

- the representatives are not engaged in making direct sale or supplying services; and
- the service provider has its principal place of business in the territory of a WTO Member other than the Communities and their Member States and has no other representative, office, branch or subsidiary in that Member State.
- EC directives on mutual recognition of diplomas do not apply to nationals of third countries. Recognition of the diplomas which are required in order to practice regulated professional services by non-Community nationals remains within the competence of each Member State, unless Community law provides otherwise. The right to practice a regulated professional service in one Member State does not grant the right to practice in another State.

(iv) Residency/nationality requirements

GATS bindings

• Banking and other FS:

▸ S: A founder of a banking company shall be a natural person resident in the European Economic Area or a foreign bank.

▸ FIN: At least one half of the founders, the members of the board of directors, the supervisory board and the delegates, the managing director, the holder of the procuration and the person entitled to sign in the name of the credit institution shall have their place of residence in the European Economic Area, unless the Ministry of Finance grants an exemption. At least one auditor shall have his place of residence in the European Economic Area.

▸ FIN: The broker (individual person) on derivative exchange shall have his place of residence in the European Economic Area. Exemption from this requirement may be granted under the conditions set by the Ministry of Finance.

▸ I: In providing the activity of door-to-door selling, intermediaries must utilise authorised financial salesmen resident within the territory of a Member State of the European Communities.

▸ F: Sociétés d'investissement à capital fixe: condition of nationality for the president of the Board of Directors, the Directors-General and no less than two thirds of the administrators, and also, when the securities firm has a Supervisory Board or Council, for the members of such board or its Director-General, and no less than two thirds of the members of the supervisory Council.

▸ GR: Credit institutions should name at least two persons who are responsible for the operations of the institution. Condition of residency applies to these persons.

▸ I: Condition of residence within the territory of a Member State of the European Communities for "promotori di servizi finanziari" (financial salesmen).

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications/other

GATS bindings

- **FS Headnote**

- Notwithstanding adoption of the FS U'st the market access and national treatment commitments in respect of mode (4) on financial services are those in the "all sectors" section of this schedule, except for Sweden in which case commitments are made in accordance with the Understanding

- Unlike foreign subsidiaries, branches established directly in a Member State by a non-Community financial institution are not, with certain limited exceptions, subject to prudential regulations harmonised at Community level which enable such subsidiaries to benefit from enhanced facilities to set up new establishments and to provide cross-border services throughout the Community. Therefore, such branches receive an authorisation to operate in the territory of a Member State under conditions equivalent to those applied to domestic financial institutions of that Member State, and may be required to satisfy a number of specific prudential requirements such as, in the case of banking and securities, separate capitalisation and other solvency requirements and reporting and publication of accounts requirements or, in the case of insurance, specific guarantee and deposit requirements, a separate capitalisation, and the localisation in the Member State concerned of the assets representing the technical reserves and at least one third of the solvency margin. Member States may apply the restrictions indicated in this schedule only with regard to the direct establishment from a third country of a commercial presence or to the provision of cross-border services from a third country; consequently, a Member State may not apply these restrictions, including those concerning establishment, to third-country subsidiaries established in other Member States of the Community, unless these restrictions can also be applied to companies or nationals of other Member States in conformity with Community law.

- **Banking and other FS**

- A: Only members of the Austrian Stock Exchange may engage in securities trading at the Stock Exchange.

- A: For trading in foreign exchange and foreign currency the authorisation of the Austrian National Bank is required.

- B: Any public bid to acquire Belgian securities made by or on behalf of a person, company or institution outside the jurisdiction of one of the Member States of the European Community shall be submitted to the authorisation of the Minister of Finance.

- I: Clearing and settlement of securities may be conducted only by the official clearing system. A company authorised by the Bank of Italy in agreement with Consob could be entrusted with the activity of clearing, up to the final settlement of securities.

- I: The public offer of securities (as provided for under Art. 18 of Law 216/74) other than shares, debt securities (including convertible debt securities) can only be made by Italian limited companies, foreign companies duly authorised, public bodies or companies belonging to local authorities whose assigned capital is not below Lit 2 billion.

- IRL: To become a member of a stock exchange in Ireland, an entity must either (I) be authorised in Ireland, which requires that it be incorporated or be a partnership, with a head/registered office in Ireland, or (II) be authorised in another Member State in accordance with the EC Investment Services Directive.

- P: The establishment of non-EC banks is subject to an authorisation issued, on a case-by-case basis, by the Minister of Finance. The establishment has to contribute to increase the national banking system's efficiency or has to produce significant effects on the internationalisation of the Portuguese economy.

3. OTHER DOMESTIC MEASURES

(i) Restrictions on information and data flows

Applied measures

An EU Directive on the protection of personal data is due to come into effect in October 1998. The directive allows for data transfer to third countries if they provide an adequate level of protection for the data under their own laws or through international obligations they have undertaken.

GATS bindings

(ii) Monopolies and exclusive providers

- **Banking and other FS**

- FIN: Payments from governmental entities (expenses) shall be transmitted through the Finnish Postal Giro System, which is maintained by the Postipankki Ltd. Exemption from this requirement may be granted on special reason by the Ministry of Finance.

(iii) Subsidies

- **Horizontal section**

- Eligibility for subsidies from the Communities or Member States may be limited to juridical persons established within the territory of a Member State or a particular geographical sub-division thereof. Unbound for subsidies for research and development. The supply of a service, or its subsidisation, within the public sector is not in breach of this commitment.

- To the extent that any subsidies are made available to natural persons, their availability may be limited to nationals of a Member State of the Communities.

(iv) Other

- **Horizontal Section**

- DK: Limitations on real estate purchase by non-resident physical and legal entities. Limitations on agricultural estate purchased by foreign physical and legal entities.

- GR: According to Law No. 1892/89 permission from the Minister of Defense is needed for a citizen to acquire land in areas near borders. According to administrative practices permission is easily granted for direct investment.

- D: Purchase of real estate by foreigners in the Länder Berlin, Schleswig-Holstein and Saarland may be subject to authorisation. After 1994 it is very likely that only Land Berlin will continue to require such authorisation.

- IRL: Prior written consent of the Land Commission is necessary for the acquisition of any interest in Irish land by domestic or foreign companies or foreign nationals. Where such land is for industrial use (other than agricultural industry), this requirement is waived subject to a certificate to this effect from the Minister for Enterprise and Employment. This law does not apply to land within the boundaries of cities and towns.

- I: Unbound for purchase of real estate.

HONG KONG, CHINA

Hong Kong, China's GATS bindings date from the 1997 FS negotiations. Under Banking and Other Financial services it has made individual sub-item commitments based on W/120; these include both 7.B.(k) and (l).

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote-**
 - No reference to the “Understanding on Commitments in Financial Services”
 - Mode 1/Mode 2: The commitments made with respect to mode 1 (cross-border supply) and mode 2 (consumption abroad) supply of financial services inscribed in this section of the Schedule do not signify a commitment to allow a service supplier from the territory of another Member to solicit business or to conduct marketing in the Hong Kong Special Administrative Region (HKSAR) of China.
- **7.B.(k) (Advisory and other auxiliary financial services on all the paragraphs listed in subparagraph 5 (a)(v) to (xv) of the Annex on Financial Services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy)**
 - For MA mode 1 bound as “none other than commodity trading and investment advisory services”.
 - For MA mode 2 bound as “none”.
 - For NT both modes 1, 2: unbound.
- **7.B.(l) (Provision and transfer of financial information, and financial data processing and related software by providers of other financial services)**
 - MA 1, 2: none
 - NT 1, 2: unbound

(ii) Establishment investment

(a) Investment/ownership restrictions

GATS bindings

- **Banking and Other FS**
- Market Access for mode 3 bound as “none” other than restrictions on legal form of commercial presence and on certain operations of foreign banks.
- **7.B.(k) (Advisory and other auxiliary financial services, etc.)-**
 - MA/NT mode 3 bound as “none”
- **7.B.(l) (Provision and transfer of financial information etc.)-**
 - MA/NT mode 3 bound as “none”.

Applied measures (as may be relevant to provision of FIS)

There are no restrictions on the flow of funds into or out of the HKSAR, nor are there any restrictions on foreign firms acquiring local firms. However, foreign-owned firms must apply for a license to enter the financial services market. License approval is subject to four criteria: foreign owned firms (1) have net assets of US\$16 billion, (2) be incorporated in a country that applies the Basle principles for bank supervision, (3) have approval from their home country to operate a branch in Hong Kong, China and (4) come from a country that offers reciprocal access to Hong Kong, China banks.

(b) Legal form of company

GATS bindings (as may be relevant to provision of FIS)

Commercial presence of banks must take the following forms:

(a) banks incorporated overseas may apply for a licence to operate a full licensed bank or a restricted licence bank subject to the following condition: Such banks may maintain (i) offices to which customers have access (physical or otherwise) for the purpose of banking business (or deposit-taking in the case of a restricted licence bank) and/or for the arranging or entering into of any other financial transactions in only one building (“office” includes ATM or similar terminal devices); and (ii) no more than two additional offices (other than an ATM or similar device) to which customers and others have access for the purpose of any other types of business in a separate building or buildings. Such additional offices may consist of not more than one regional office and one back office. This condition does not apply to banks incorporated outside HKSAR licensed before May 1978 in respect of full licensed banks and before April 1990 in respect of restricted licence banks.

(b) Limited companies incorporated by overseas banks in HKSAR may apply for a license to operate as a full licensed bank, restricted license bank or deposit-taking company in the form of a subsidiary with branching rights. In the case of application for full license, the institution must have been an authorised institution for at least 10 years and be closely associated and identified with HKSAR. Overseas banks may also acquire an existing locally incorporated bank with branching rights subject to consent of the Monetary Authority.

(c) Banks incorporated overseas may also set up representative offices in HKSAR but such offices are prohibited from taking deposits and undertaking banking business in general.

Regarding *trading on financial markets*, only corporations incorporated in HKSAR, or natural persons born in HKSAR or resident in HKSAR for 5 of the preceding 7 years, or partnerships composed of such persons, may become members of the Stock Exchange of Hong Kong Ltd. Only corporations incorporated in HK may become members of the Hong Kong Futures Exchange.

Applied measures (as may be relevant to provision of FIS)

- Foreign-owned commercial banks can enter the Hong Kong, China banking industry by establishing a branch or by acquiring ownership of a local bank.
- In 1994, authorities relaxed the one-branch limit for foreign banks, allowing them to open one additional office in a separate building from the location of their main branch; however, the additional office is to be used only for “back office” functions such as processing and settling transactions conducted in the main branch office. Fully licensed banks (commercial banks) are allowed to establish operations in Hong Kong, China only as a bank branch. Restricted-license banks (investment banks) are permitted to open branches or subsidiaries. Licenses for deposit-taking companies are extended only to locally incorporated subsidiaries.

- Foreign-owned securities firms are also free to establish branches or subsidiaries in Hong Kong, China subject to approval from the SFC and receipt of operating license.

(iii) Entry and temporary stay of personnel

GATS bindings

- Banking and Other FS; including 7.B.(k) and (l)
 - MA mode 4 is “unbound except as set out in the Attachment on “Presence of Natural Persons” to the Schedule”⁵
 - NT mode 4 is unbound

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications

GATS bindings

Those licensing requirements as listed in regulation of commercial presence.

Applied Measures (as may be relevant to provision of FIS)

- Subject to approval from the SFC, foreign-owned securities firms are free to establish branches or subsidiaries in Hong Kong, China; and may offer a wide range of services, from managing portfolios to selling foreign mutual funds to administering local pension plans. Foreign-owned financial services firms that do not deal in the securities market as their primary activity may engage in securities market transactions through an “exempt” license.
- Foreign firms are allowed to list on the Hong Kong, China stock exchange.

3. OTHER DOMESTIC MEASURES

GATS bindings

- (i) **Restrictions on information and data flows**
GATS bindings -- nothing specified.
- (ii) **Monopolies & exclusive providers**
 - No entries for FS.
- (iii) **Subsidies**
 - No entries in the Schedule.

⁵ Commitments on presence of natural persons are confined to business regulated under HKSAR banking, securities, insurance and related legislation.

HUNGARY

Hungary's GATS commitments date from 1997. For Banking and Other Financial Services, one set of commitments is made, without listing of individual sub-items.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

Hungary undertakes commitments on Financial Services in accordance with the provisions of the "Understanding on Commitments in Financial Services." The market access commitments in respect of modes (1) and (2) apply only to the transactions indicated in paragraphs B.3 (a) and (b) and B.4 (a) and (b) of the market access section of the Understanding respectively.

- **Banking and Other FS**

Modes 1 and 2, MA and NT are bound as "none."

(ii) Investment/ownership

GATS bindings

(a) Investment/ownership restrictions

- **All FS**

Direct or indirect ownership or voting rights in a credit institution of a single shareholder other than credit institution, insurance company or investment firm cannot exceed 15%.

- **Banking and Other FS**

Mode 3 MA bound as "none" except *Országos Takarékpénztar és Kereskedelmi Bank, Rt.*, where long-term state ownership will be kept at a minimum of 25%+1 vote.

Mode 3 MA and NT are both "unbound for the acquisition of state owned properties".

(b) Form of company

- **Horizontal**

Commercial presence should take the form of limited liability company, joint-stock company or representative office. Initial entry as branch is not permitted.

- **All FS**

Legislation permitting market access of branches is currently being prepared; details and conditions to apply are still being determined; it is intended to bind the effects of this legislation as soon as it has been adopted.

As a general rule and in a non-discriminatory manner, financial institutions incorporated in Hungary must adopt a specific legal form.

Insurance, banking, securities and collective investment management services should be performed by legally separate and independently capitalised suppliers of financial services.

(iii) Entry and temporary stay of personnel**GATS bindings**

- **Horizontal**

Unbound except for the entry and temporary stay of natural persons falling under one of the following categories:

(a) *Senior official* ["vezet tisztségvisel"]

A senior official being a natural person of another Member having the highest rank within the organisation of a juridical person constituted in Hungary with foreign participation and who primarily direct the management of that commercial presence

One senior official per business venture and for the duration of the business directed by that senior official⁶

(b) *Personalities of internationally recognised reputation*. Market access commitment relates to such personalities invited by higher educational institutions, scientific research institutes or public educational institutions for the duration of the invitation.

(c) *Intra-corporate transferees listed under i), ii) and iii)*

Intra-corporate transferees being natural persons of another Member who have been employed by a juridical person of another Member for a period of not less than one year without interruption and who seek entry and temporary stay in order to render services to a juridical person constituted in Hungary which is owned by the aforementioned juridical person.

(i) *Executives*: Executives being natural persons within a juridical person constituted in Hungary who primarily direct the management of the juridical person or establish goals and policies for the juridical person or a major component or function of the juridical person, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives of the juridical person of another Member who owns the aforementioned juridical person.

(ii) *Managers*: Managers being natural persons within a juridical person constituted in Hungary and owned by a juridical person of another Member who direct the organisation, or department or subdivision of the juridical person, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire and exercise discretionary authority over day-to-day operations at a senior level.

(iii) *Specialists*: Specialists being natural persons within a juridical person constituted in Hungary and owned by a juridical person of another Member who possess knowledge at an advanced level of expertise, possess proprietary knowledge of the juridical person's product, service, research, equipment, techniques or management, and who are essential to the operation of the juridical person constituted in Hungary.

(d) *Business visitors*: Business visitors being natural persons who are sales representatives of a service provider of another Member and are seeking temporary entry for the purposes of negotiating for the sale of services for that service provider, without those sales representatives being remunerated from within Hungary and without engaging in making direct sales to the general public or in supplying themselves services.

Entry and stay shall be for a period of no more than 90 days.

⁶ Numbering of sectors and sub-sectors is that of the Services Sectoral Classification List (MTN.GNS/W/120). However, if reference to another definition is also made, the specific commitment relates only to the services covered by that definition. Where an "ex" is attached to a CPC code, only part of the services defined under the relevant code of the UN Central Product Classification is covered.

(iv) Nationality/residency requirements

GATS bindings

The board of a financial institution should include at least two members, who are Hungarian citizens, residents in the meaning of the relevant foreign exchange regulations and have permanent residency in Hungary for at least one year.

2. OPERATION IN THE MARKET

(i) licensing/registration/notifications

- GATS bindings - nothing specified.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Restrictions on information and data flows

- FS U'st applied; modes 1, 2 bound as "none".
- FS Headnote -- the transfer of information containing personal data, bank secret, securities secret and/or business secret is not allowed.

(ii) Monopolies & exclusive providers

No entries for FS.

(iii) Subsidies

- **Horizontal**

NT mode 3 is unbound for subsidies.

ICELAND

Iceland's GATS bindings date from the 1997 FS negotiations; with commitments made for all sub-items of "7.B. Banking and Other Financial Services" without individual sub-item listings.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS-Headnote**
 - Iceland undertakes commitments on financial services in accordance with the "Understanding in Financial Services" (the Understanding) market access commitments with respect to modes 1 and 2 are bound in the Schedule to the extent of the obligations in paragraphs 3 and 4 of the Understanding.
- **Banking and Other FS**
 - MA modes 1, 2; bound as "none".

(ii) Establishment/investment

GATS bindings

- (a) Investment/ownership restrictions**
- **Horizontal**
 - All foreign investment and currency transfers must be reported to the Central Bank of Iceland
 - Investment by non-residents in services may not exceed 25% of the total investment of the relevant sector without special permission.
 - All foreign investment of a Foreign State or companies/organisations owned by a Foreign State requires a special concession of the Ministry of Commerce
 - **Restrictions on form of company**
 - Credit institutions and undertakings engaged in securities services established in a non-EEA State can establish a branch or a representative office, subject to authorisation by the Ministry of Commerce.
 - Credit institutions and undertakings engaged in securities services can only be established as companies with limited liability.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**
 - Unbound except the temporary entry of the following service providers as intra-corporate transferees, which Iceland shall permit without requiring compliance with labour market tests:

Executives: persons who primarily direct the management of the organisation covered by the agreement and establish its goals and generally have a wide decision-making authority. Executives would not necessarily perform tasks related to the actual provision of the service.

Managers: persons who direct the organisation covered by the agreement or its department and are in a senior level responsible of the service providing functions of the organisation by supervising and controlling and having also authority to hire and fire personnel or recommend such and other personnel actions.

Specialists: persons within the organisation who possess knowledge at an advanced level of expertise or otherwise essential or proprietary to the organisation's service, research equipment, techniques or management.

Service sellers: persons who as representatives of a service provider covered by the agreement are seeking temporary entry for purposes of negotiation for the sale of services or entering into agreements to sell services for that service provider, where this selling activity is not directed to the general public.

(iv) Residency/nationality requirements

GATS bindings

- **Horizontal**

- Total investment by a non-resident or the joint investment of financially related non-residents in enterprises in the above-mentioned sectors may not exceed 250 mill. ISK within a year unless a special concession is given.

- Managers and the majority of the members of the board of directors in all domestic enterprises must be domiciled in Iceland unless exempted from this requirement by the Ministry of Commerce

- At least one of the auditors of an Icelandic limited liability company must be a resident in Iceland or a competent resident CPA company

- **Banking and other FS (as may be relevant to FIS provision)**

- A founder of a credit institution shall be a natural or legal person resident in Iceland. The Minister of Commerce can grant exemptions from this requirement. Citizens and legal persons of other EEA Member States are exempted from the residency requirement

- Managers and board members of credit institutions and undertakings engaged in securities services and UCITS shall be resident in Iceland. Citizens of other EEA Member States are exempted from the residency requirement. The Minister of Commerce may grant citizens of non-EEA Member States the same exemptions.

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications

GATS bindings

- **Horizontal**

- All provision of services by natural persons, as self-employed or taking part in a business enterprise with unlimited liability, needs a concession, by the Ministry of Commerce, if the persons involved are non-residents

- Treatment accorded to subsidiaries of third-country companies formed in accordance with the law of an EEA Member State and having their registered office, central administration or principal place of business within an EEA Member State may not be extended to branches or agencies established in an EEA Member State by a third-country company

▸ Treatment less favourable may be accorded to subsidiaries of a third-country company formed in accordance with the law of an EEA Member State having only their registered office in the territory of an EEA Member State unless they show that they possess an effective and continuous link with the economy of one of the EEA Member States

- **Banking and other FS (as may be relevant to FIS provision)**

▸ Public issue of securities shall be conducted by securities undertakings or other parties authorised to provide such services.

▸ Service providers shall inform the Ministry of Commerce of investments made by non-residents in business enterprises in Iceland and the Central Bank of Iceland of investments made by non-residents in securities in Iceland.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Restrictions on information and data flows

- **Banking and other FS**

▸ Domestic financial institutions shall inform the Central Bank of Iceland of the balances of service providers' accounts held by non-residents

(ii) Monopolies & exclusive providers

▸ No entries for FS

(iii) Subsidies

- **Horizontal**

▸ Eligibility for subsidies may be limited to juridical persons established within the territory of Iceland. Subsidies related to research and development are unbound.

▸ Subsidies available only to natural persons may be limited to Icelandic citizens.

(iv) Other

- **Horizontal**

▸ Non-residents cannot conclude an agreement on real-estate lease without the permission of the Ministry of Justice if the lease is for a period exceeding three years and not for use in conducting its normal business activities

▸ Non-residents may only acquire real estate in conjunction to their business activities and can only obtain ordinary proprietary rights linked to the real estate

▸ Non-residents are thus excluded from obtaining full property rights of real estate if unusual rights are linked to it, such as exploitation rights as regards waterfalls, geothermal energy, etc.

▸ Contracts concerning ownership and long-term use of real-estate by non-residents are not valid until the Ministry of Justice has endorsed it in writing.

INDIA

India's GATS bindings date from the 1997 FS negotiations. For Banking and Other Financial Services, commitments are listed according to a classification loosely based on W/120; including separate sub-groups for banking services, securities services, stockbroking, and "financial consultancy services, i.e. financial advisory services provided by financial advisers, etc. to customers on financial matters, investment and portfolio research and advice, advice on acquisitions and on corporate strategy; Ex 5(a)(xvi)". No commitments are made for "provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services."

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

No reference to applying the "Understanding on Commitments in Financial Services".

- **Banking and Other FS**

For "Financial Consultancy Services", both Market Access and National Treatment for modes 1 and 2 are unbound.

This is also the case for banking services, securities services and stockbroking services.

(ii) Establishment/investment

GATS bindings (as may be relevant to provision of FIS)

- **Banking and Other FS**

For "Financial Consultancy Services":

Mode 3 market access -- allowed for foreign bank branches licensed to do banking business in India; and allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51%.

Mode 3 NT -- unbound except for entities established in accordance with the above MA limitations.

Foreign Bank entry (in light of the above)

Mode 3 Market Access limitations as follows:

Only through branch operations of a foreign bank licensed and supervised as a bank in its home country.

Grant of licence as permissible under existing laws. A limit of 12 licenses per year both for new entrants and existing banks. Licences for new foreign banks may be denied when the maximum share of assets in India both on and off balance sheet of foreign banks to total assets both on and off balance sheet of the banking system exceeds 15%. Foreign banks are subject to non-discriminatory resource allocation requirements.

Investments in other financial services companies by branches of foreign banks licensed to do banking business in India individually not to exceed 10% of owned funds or 30% of the invested company's capital whichever is lower.

Mode 3 NT requirement

Foreign banks are required to constitute Local Advisory Boards consisting inter alia of professionals having expertise in areas such as small-scale industry and exports. The Chairman and members of the L.A.B. must be resident Indian nationals except for the CEO who may be a foreign national. The appointment of the Chairman and members of the L.A.B. requires RBI approval.

Participation in issuing of Securities and provision of related services

Mode 3 market access -- allowed for foreign bank branches licensed to do business in India; and allowed for foreign financial services companies (including banks) through incorporation of foreign equity not exceeding 51%.

Mode 3 NT unbound except for entities established in accordance with the above MA limitations.

Stockbroking

Mode 3 Market Access -- (permitted) through establishment of locally incorporated joint venture company with foreign equity not exceeding 49%. The foreign equity participation will be limited to recognised foreign stockbroking companies.

Mode 3 NT unbound except for entities established in accordance with the above MA limitations.

Applied measures (as may be relevant to provision of FIS)

- All foreign investment in financial services must be approved by the Foreign Investment Promotion Board (FIPB) and the appropriate regulatory authority. The percent of foreign ownership sanctioned by the government varies from one type of financial service to another.
- Approval of foreign bank entry is based on reciprocity and India's estimated or perceived need for financial services.
- Foreign firms are allowed to enter the commercial banking market only by establishing a branch or representative office and they must receive a license to enter the market or open a new bank branch. Only eight new foreign branch licenses, for both new and established banks, are issued annually. Since 1993, 25 branch licenses have been approved for foreign firms.
- The share of a bank's total equity that can be held by a foreign investor depends on the amount of capital to be invested and whether the bank is a new or established entity. Foreign investors are allowed to acquire up to 20% of an established public-sector bank and up to 30% of a private domestic financial company. State-owned banks are allowed to raise capital on the market through public offers of shares, so long as the government maintains 51% ownership of the bank.
- If more than \$50 million is to be invested in establishing a new financial services firm, the project can be 100% foreign owned. For investments between \$5 million and \$50 million, foreign investors can own up to 75% of shares. Foreign investors are limited to 51% or less of equity in a financial services firm if the total investment is less than \$5 million.
- Although investment banking continues to be dominated by publicly-owned financial institutions, foreign investors have begun to develop a market presence in this area. In 1995, Goldman Sachs acquired 28% of the investment banking subsidiary of one of India's largest NBFIs, Kotak Magindra. The following year, Morgan Stanley was authorised to open a fully owned investment bank, and Bank of America was permitted to own 80% of an investment banking subsidiary. Other joint ventures have been approved in which foreign firms from France, the United States, and South Korea have acquired holdings in publicly and privately owned Indian investment banks.
- Private banks are prohibited from establishing a subsidiary or a mutual fund for at least 3 years after the bank's establishment.

- Permission from the RBI is required in order to establish a representative office or open a new branch of a non-bank financial services firm. Representative offices cannot earn income and all expenses are to be paid by remittances from abroad.
- In 1996, the government established a primary dealers system and authorised six agents to deal in government securities.
- Foreign institutional investors (FIIs) are allowed to acquire equity in publicly listed firms and government securities, but only non-resident Indians and approved FIIs are allowed to invest directly in Indian securities. However, FIIs must use registered brokers to invest in India's stock markets; and their holdings of issued capital in individual firms are limited to aggregate holdings by FIIs of 24% of issued capital and to 10% by any single FII.
- One hundred percent foreign ownership of non-bank financial subsidiaries engaged in securities activities is permitted, subject to authorisation from the RBI, SEBI, and the FIBP.
- Lack of transparency in financial market trading operations and weak clearance and settlement systems are also cited.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Unbound except for measures affecting the entry and temporary stay of natural persons who fall in any of the following categories:

(a) Business visitors

Persons who visit India for the purposes specified in (i) and (ii) below and who will not receive remuneration from within India:

(i) for business negotiations, or

(ii) for preparatory work for establishing a commercial presence in India.

Entry for persons in this category shall be for a period of not more than 90 days.

(b) Intra-corporate transferees

At the level of Managers, Executives and Specialists who have been in the employment of a juridical person of another Member for a period not less than one year prior to the date of application for entry into India and are being transferred to a branch or a representative office or a juridical person owned or controlled by the aforesaid juridical person.

Managers are:

Persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel and have the authority to appoint or remove the personnel and powers to exercise discretionary authority over day-to-day operations.

Executives are:

Persons who are in senior positions within a juridical person including a branch who primarily direct the management, have wide decision-making powers and are either members of the board of directors or receive directions from the board or the general body of shareholders.

Specialists are:

Persons who possess high qualifications and knowledge at an advanced level relevant to the organisation's activities or of the organisation's research, equipment, techniques or management and may include persons who are members of accredited professional bodies.

Entry for persons in the above categories shall be for a maximum period of five years.

(c) Professionals

Natural persons to be engaged by a juridical person in India as part of a services contract for rendering professional services for which he/she possess the necessary academic credentials and professional qualifications with three years experience in the field of physical sciences, engineering or other natural sciences.

Entry and stay in this category shall be for a maximum period of one year extendible with permission for a maximum of three months.

(iv) Nationality/residency requirements

GATS bindings

Not specified; apart from nationality requirement for members of Local Advisory Boards of foreign banks (see section 1(ii)(a) above.

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications

GATS bindings

- **Banking and Other FS**

Only the licensing of banks is stipulated.

Applied measures (as may be relevant to provision of FIS)

- All firms listed on a stock-exchange in India, including brokers, foreign exchange dealers, and foreign financial institutions must first be registered with SEBI.
- Foreign investors wishing to establish a commercial bank in India or to expand existing operations must first receive a license from the RBI to open a bank branch.
- Authorisation for foreign direct investment in the securities market must be procured from SEBI.
- Restrictive operating conditions for foreign banks (e.g. capital requirements determined by the amount of capital in foreign banks' local branches; RBI lending requirements).

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

None listed, other than that public sector enterprises must invest surplus funds in term deposits only with scheduled commercial banks incorporated in India.

(ii) Subsidies

No entries in the Schedule.

(iii) Government Procurement requirements/exemptions

- **Horizontal**

In case of collaboration with public sector enterprises or government undertakings as joint venture partners, preference in access will be given to foreign service suppliers/entities which offer the best terms for transfer of technology.

Intellectual Property Protection

India implemented a strengthened copyright law in May 1995 that is on par with international standards. Relevant improvements included protection for works transmitted by satellite, cable or other means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to penalties for piracy; however, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven. Enforcement problems include federal oversight of state operations, court backlogs, documentary and procedural requirements.

INDONESIA

Indonesia's GATS bindings date from the 1997 FS negotiations. For Banking and Other Financial Services it has used its own classification system loosely based on W/120 and the CPC. The only specific FIS category is "Investment Advisory Services limited only to investment advisory in capital market". Therefore, to provide a somewhat broader picture of the market access/operating regime for FIS providers, bindings and applied measures are shown also for other categories (foreign bank entry, securities, portfolio management, investment management).

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- No reference to the application of the FS Understanding.
 - "Investment Advisory Services limited only to investment advisory in capital markets"
- Mode 1 MA/NT is unbound; mode 2 MA/NT 2 is bound as "none".
- This is also the case for securities business (trading in listed shares and bonds), participation in issues of securities and provision of services related to such, portfolio management (all forms of collective investment management), and asset management (limited to investment fund management).
 - Commercial banking services sub-items are bound as "none" for modes 1 and 2, MA and NT.

(ii) Establishment/investment

(a) Investment/ownership restrictions (as may be relevant to provision of FIS)

GATS bindings

- **Horizontal**
Commercial presence of the foreign service provider(s) shall be in the form of joint venture and/or representative office unless mentioned otherwise.
Joint venture should meet the following requirements (i) should be in the form of Limited Liability Enterprise (Perseroan Terbatas/PT) (ii) not more than 49% of the capital share of the LLE/PT may be owned by foreign partner(s).
- **Non-Banking FS Headnote**
The share ownership of foreign services supplier is bound at the prevailing laws and regulations; the conditions of ownership and the percentage share of ownership as stipulated in the respective shareholder agreement establishing the existing individual joint venture in non banking financial services shall be respected; no transfer of ownership shall take place without the consent of all parties in the joint venture concerned.
Share of non-bank financial companies listed in the stock exchange may be 100% owned by foreign investors.

- **“Investment Advisory Services limited only to investment advisory in capital markets”**

Mode 3 MA -- through establishment of an investment management company.

Mode 3 NT -- as specified in the Headnote (see above).

- **Securities Business (trading)**

Mode 3 MA -- Through establishment of a securities broker/dealer.

Mode 3 NT -- as specified in the Headnote (see above).

- **Services related to participation in issue of securities**

Mode 3 MA -- Through establishment of a securities underwriter company.

Mode 3 NT -- as specified in the Headnote (see above).

- **Portfolio management**

Mode 3 MA -- Through establishment of an investment management company.

Mode 3 NT -- as specified in the Headnote (see above).

- **Asset management (of investment fund only)**

Mode 3 MA -- Through establishment of an investment management company.

Mode 3 NT -- as specified in the Headnote (see above).

- **Commercial Banking Services**

Banking Subsector Headnote

With the exception of the existing branches of foreign banks, foreign service provider shall be in the form of joint venture bank locally incorporated in Indonesia with the following requirements: (a) unbound for new license; (b) only bank institutions are permitted to establish joint venture banks.

The share ownership of foreign services supplier is bound at prevailing laws and regulation. The conditions of ownership and the percentage share of ownership as stipulated in the respective shareholder agreement establishing the existing individual joint venture bank shall be respected as the basis of ownership of the foreign service provider(s) and their Indonesian partner(s). No transfer of ownership shall take place without the consent of all parties in the joint venture bank concerned.

Acquisition of local existing banks is allowed through the purchase of up to 49% of the shares of locally incorporated bank listed in the stock exchange.

Specific commitments for Commercial Banking Services

Mode 3 MA -- Bound only 1 sub-branch and 1 auxiliary offices for foreign bank's branch office; and only 1 branch and 1 sub-branch for joint venture bank.

Mode 3 NT -- nationality requirements listed; see section 1.(iv) below.

(b) Restrictions on form of company

- **Horizontal**

Commercial Presence of the foreign service provider(s) may be in the form of joint venture and/or representative office, unless mentioned otherwise.

Joint venture should meet the following requirements:

i) should be in the form of Limited Liability Enterprise (Perseroan Terbatas/PT),

ii) not more than 49% of the capital share of the Limited Liability Enterprise (Perseroan Terbatas/PT), may be owned by foreign partner(s).

- **Banking and non-banking FS Headnotes**

As listed in section 1.(i)(a) above.

Applied measures**(a) Investment/ownership restrictions (as may be relevant to provision of FIS)**

- The government approved a bill in January 1998 that lifts numerical restrictions on branching of joint venture banks and sub-branching of foreign banks. The government is also scheduled to pass laws by mid-1998 that will remove restrictions on private ownership and eliminate equity limits on foreign ownership in banks. The government also recently removed geographical restrictions on foreign joint venture banks and has announced plans to remove all limits on foreign investment in listed banks. However, there are no plans for the government to issue new bank licenses; thus market access will be largely confined to those foreign firms that acquire rights in existing banks and that already have operations in Indonesia that can now establish more branches or sub-branches.
- Foreign security firms have been allowed to engage in securities activities since 1987, but only by establishing a joint venture with a domestic partner. Ownership by the foreign partner is limited to 80%. Securities firms may be 85% foreign owned if they are listed on the Jakarta Stock Exchange (Securities Industry Association 1997). Publicly listed securities firms can be 100% foreign owned when the 1997 WTO FS agreement comes into force.
- Foreign companies may not list on the JSE and SSA, but foreign investors have been allowed entry since 1989 through joint ventures.
- Until September 1997, foreigners could own only up to 49% of shares of any single issue.
- In 1994, the government decreed that 100% foreign ownership of equities would be permitted; however, these changes were not implemented until 1998. In contrast to the limit on foreign equity ownership, there are no limits on foreign ownership of debt instruments.

(b) Restrictions on form of company

- Until 1998, foreign and joint venture banks were only permitted to establish additional sub-branches in Jakarta and one branch in each of seven other cities. In a joint venture, the foreign bank's ownership was limited to 85%. Furthermore, the number of foreign employees has been restricted⁷, which suggests that the joint venture entry condition was not about ownership control but about transfer of business and banking know-how.

(iii) Entry and temporary stay of personnel**GATS bindings**

- **Horizontal**

Subject to Indonesian Labour and Immigration Laws and Regulations, only directors, managers and technical experts/advisors, unless mentioned otherwise, are allowed with a maximum stay of two years subject to one year extension.

Manager and technical experts (intra corporate transfer) are allowed based on an economic needs test.

Labour Laws and Regulations: Any expatriate employed by a joint-venture enterprise, representatives office, and/or other types of juridical person and/or an individual services provider must hold a valid working permit issued by the Ministry of Manpower.

Immigration Laws and Regulations: Any expatriate must meet immigration requirements and procedures to enter the territory of the Republic of Indonesia

⁷ This restriction applies to all foreign joint ventures and foreign firms, not only to banks.

- **Non-Banking FS Headnotes**

In addition to the Horizontal Measures, temporary entry will be granted to technical expert(s)/adviser(s) for no longer than 3 (three) months per person for any given year.

In relation to the presence of natural persons, only directors, managers, and experts/advisors can be assumed by expatriates with maximum stay of 3 years and can be extended.

Banking FS Headnote

With respect to the presence of natural persons no economic needs test will apply. A non Indonesian employed as manager or as technical expert shall have at least two Indonesian understudies during his/her term.

In addition to the Horizontal Measures, temporary entry will be granted to technical expert(s)/adviser(s) for no longer than 3 (three) months per person for any given year.

- **“Investment Advisory Services limited only to investment advisory in capital markets**

Mode 4 MA is “unbound except for directors”.

This is also the case for “Asset Management of investment fund only”.

Mode 4 MA for other Non-banking FS is unbound except as indicated in the horizontal section.

For commercial Banking FS, mode 4 MA is unbound except as indicated in the horizontal section and in the Banking FS Headnote.

2. OPERATION IN THE MARKET

GATS bindings

(i) licensing/registration/notifications

Not specified in schedule.

(ii) Other Requirements

- **Non-banking FS Headnote**

All joint venture companies shall provide training for their employees.

Limitation on national treatment in terms of difference in paid up capital requirement will be eliminated in the year 1998.

Applied measures (as may be relevant to provision of FIS)

- Joint venture and foreign banks are required to extend 50% of their credits to export-related activities.⁸ Joint venture companies that are majority owned by a foreign partner may not borrow from state-owned banks.
- Minimum paid-up capital requirements are now the same for joint-venture and domestic securities firms, and domestic securities firms are required to have a larger worth than joint ventures.
- Other barriers, such as the requirement that lending limits are based on local capital as opposed to global capital and restrictions on offering new financial products and services, continue to limit the growth of foreign banks in Indonesia. Moreover, it is not clear if, once foreign banks are afforded increased market access, they will be given national treatment allowing them to compete on an equal standing with domestic banks.

⁸ On the other hand, foreign and joint venture banks do not face a waiting period in order to engage in FOREX transactions.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) monopolies & exclusive providers

No entries for FS

(ii) subsidies

No entries in the Schedule

(iii) Other

- **Horizontal**

The Income Tax Law provides that non-resident taxpayers will be subject to withholding tax of 20% if they derive the following income from Indonesian source:

- a) interest
- b) royalties
- c) dividend
- d) fee from service performed in Indonesia

The Banking FS Headnote states that this does not apply in the banking sector.

- **Horizontal**

Land Acquisition: Undang-Undang Pokok Agraria (Land Law) No. 5 of 1960 stipulates that no foreigners (juridical and natural persons) are allowed to own land. However, a joint venture enterprise could hold the right for land use (Hak Guna Usaha) and building rights (Hak Guna Bangunan), and they may rent/lease land and property.

Any juridical and natural persons should meet professional qualification requirements.

Expatriate Charges: Any foreign natural persons supplying services are subject to charges levied by National, Provincial and Municipal Governments.

Intellectual Property Protection

During 1997 Indonesia was making progress in updating its copyright law and adhering to treaty standards; and with enforcement. Copyright law amendments included the establishment of exclusive rental rights for computer programs and the extension of terms of protection of computer programs to 50 years; the ratification of the Paris text of the Bern Convention and the WIPO copyright treaty. Copyright infringement and piracy of business software continues to be a problem; and some amendments to copyright laws are apparently not fully TRIPS consistent. Court enforcement, deterrence and remedies for piracy are regarded as arbitrary and insufficient. Restrictions on the importation, distribution and retailing of copyright material by other than 100% owned Indonesian companies are cited; and lack of sophisticated IP protection laws and regulations may be a disincentive to substantial foreign investment in high tech projects.

JAPAN

Japan's GATS bindings date from the 1997 FS negotiations; with commitments made for "7.B. Banking and Other Financial Services" without individual sub-item listings. Japan also made a number of "Additional Commitments."

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

(In addition to Part III of the GATS and the Annex on FS), Japan undertakes its specific commitments with respect to FS in accordance with the "Understanding on Commitments in Financial Services."

- **Banking and Other FS**

Modes 1 and 2 are unbound for market access except for obligations under paragraphs 3 and 4 of the Understanding respectively; and subject to conditions and qualifications set out (in the ensuing columns).

Mode 1 MA -- Commercial presence is required for discretionary investment management services.

Mode 2 MA -- "none" after April 1998.

Modes 1 and 2 NT -- "none".

(ii) Establishment/investment

GATS bindings (as may be relevant to provision of FIS)

- **FS Headnote**

For prudential reasons within the context of paragraph 2(a) of the Annex on Financial Services, Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence.

For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market on new financial services which shall be consistent with regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant Japanese law, and banks are not allowed to deal in those securities unless allowed in accordance with the said law.

- **Banking and Other FS**

Mode 3 NT -- none listed, other than that the deposit insurance system does not cover deposits taken by branches of foreign banks; and as indicated in "additional commitments".

- **Additional commitments**

Investment trust management services and discretionary investment management services may be supplied by one entity if that entity satisfies the relevant prudential provisions of Japanese Laws and the prudential standards set out by appropriate authorities.

Appropriate authorities permit the Pension Welfare Service Public Corporation to allow investment advisory companies to participate in the management of its fund assets through a variation on the

“Shiteitan” framework. At the time of the next comprehensive review of the Japanese pension system in 1999, this scheme would be reviewed. (“Shiteitan” is a designated money trust for separate investment management provided by trust banks. Under “Shiteitan”, beneficial owners do not specify individual objects of stocks, bonds or other financial instruments to be purchased. Trust banks are permitted to guarantee the principal of “Shiteitan” under domestic laws and regulations).

Appropriate authorities will fully utilise the existing mechanisms available to them to respond expeditiously to accommodate innovations in securities products, while ensuring the most appropriate supervision of markets from prudential viewpoints.

Applied measures

(a) Investment (as may be relevant to FIS provision)

Although many direct legal restrictions on FDI have been eliminated, bureaucratic obstacles remain, along with exclusionary business practices, high market entry costs, and discriminatory use of bureaucratic discretion.

Difficulty in acquiring existing Japanese firms -- as well as doubts about whether such firms, once acquired, can continue productive business relations with other Japanese companies -- make investment through mergers and acquisitions much more difficult in Japan than in other countries. As a result, few foreign companies have been able to perform M&A's in Japan, the major avenue for FDI (some 80%) in other OECD countries. Extensive cross-shareholding among allied companies and difficulties foreign firms encounter in hiring local employees also inhibit FDI.

(b) Banking and Other Financial Services (as may be relevant to FIS provision)

- A number of market-opening actions in the areas of asset management, corporate securities, and cross-border financial transactions were agreed in the 1995 bilateral US-Japan agreement on financial services; many of these were bound by Japan in the 1997 WTO FS negotiations.
- In late 1996 the Government announced a “Big Bang” package of financial deregulation and reform by 2001. Two major objectives of the Big Bang reforms are to create a flexible market environment and a profit-oriented management of banks, the latter of which will require modern techniques for managing and pricing risk efficiently.
- The package includes such steps as allowing mutual entry across financial sectors, tax changes, liberalisation of commissions and foreign exchange transactions, tightened disclosure rules, and further liberalisation of asset management regulations.

The Bank of Japan Law was revised in April 1997 to increase the BOJ's independence from the MOF; and the Foreign Exchange Control Act was redrafted to remove banks' traditional monopoly in, and reduce reporting requirements on, foreign exchange transactions.

Effective April 1998, licenses and prior notification for cross-border capital transactions and settlement of debts are no longer required, and the authorised foreign exchange bank and money-exchanger systems were abolished.

Further measures to phase out restrictions on the types of financial products traded and offered in Japan include:

Fixed brokerage commissions deregulated in 1999;

Banks allowed to trade stocks;

Banks allowed to sell mutual fund-type products and planned to be allowed to sell insurance policies from April 2001;

Securities firms allowed to offer bank-type accounts as of 1997 and to enter trust banking as of 1998;

A ban on financial holding companies was lifted in 1998; and a new Law on Sales of Financial Products, protecting the users of all kinds of financial services, has been enacted.

These changes do not include explicit measures to allow foreign firms more access, although there is an assumption that this would improve implicitly through greater competition.

- Further steps are needed to improve timely general publication of information on individual company by the companies themselves/ and or the stock exchanges.

(iii) Entry and temporary stay of personnel

GATS bindings

• Horizontal

Unbound except for measures concerning the entry and temporary stay of a natural person who falls in one of the following categories:

a) A natural person who has been employed by a juridical person of a Member other than Japan for a period of not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred, for a period not exceeding 5 years, to a branch office or a juridical person constituted or registered in Japan owned or controlled by the aforementioned juridical person of a Member other than Japan, provided that he will be engaged in one of the following activities:

(i) Activities to direct a branch office as its head;

(ii) Activities to direct a juridical person as its board member or auditor;

(iii) Activities to direct one or more departments or a juridical person;

(iv) Activities which require technology and/or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences; and

(v) Activities which require knowledge at an advanced level pertinent to jurisprudence, economics, business management, accounting or other humanities sciences.

(b) A natural person who has been employed by a juridical person of a Member other than Japan or has been a partner in it for a period not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred to Japan, for a period not exceeding 5 years and who will return to the aforementioned juridical person of a Member other than Japan upon the expiration of the said period, provided that he will be engaged in one of the following activities of professional services which may be engaged only as a natural person and not as an employee:

(i) Legal services supplied by a lawyer qualified as "Bengoshi" under Japanese law;

(ii) Consultancy on law of jurisdiction where the service supplier is a qualified lawyer;

(iii) Legal services supplied by a patent attorney qualified as "Benrishi" under Japanese law;

(iv) Legal services supplied by a maritime procedure agent qualified as "Kaijidairishi" under Japanese law;

(v) Accounting, auditing and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi" under Japanese law; and

(vi) Taxation services supplied by a tax accountant qualified as "Zeirishi" under Japanese law.

(c) A natural person who stays in Japan for a time period not exceeding 90 days without acquiring remuneration from within Japan and without engaging in making direct sales to the general public or in supplying services himself, for the purposes of participating in business contacts including negotiations for the sale of services and/or other similar activities including those to prepare for establishing commercial presence in Japan.

Activities which require technology or knowledge at an advanced level pertinent to natural or humanities sciences referred to in a) iv) and v) mean: activities in which the natural person may not be able to engage without the application of specialised technology or knowledge of natural or humanities sciences acquired by him, in principle, by completing college education (i.e. bachelor's degree) or higher education.

2. OPERATION IN THE MARKET

GATS bindings

(i) Licensing/registration/notification

Not specified.

Applied measures (as may be relevant to provision of FIS)

(ii) Other

Keirestu relationships and cross-shareholdings, lack of transparency/low standards in accounting and auditing, financial disclosure, supervisory enforcement, lengthy processing of applications for new products; and inadequate enforcement of competition policy.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries in the Schedule.

(ii) subsidies

- **Horizontal**

Modes 3 and 4 NT are unbound for research and development subsidies.

Intellectual Property Protection

End-use piracy of computer software programs is regarded as a significant problem in Japan, requiring stronger legal and procedural provisions to allow prosecutors of end-user pirates, including the establishment of a more effective system of applying for and receiving *ex parte* provisional relief on a timely basis.

KOREA

Korea's GATS bindings date from the 1997 FS negotiations. It has used its own classifications adapted from W/120 and the CPC for sub-items of 7.B. Banking and Other Financial Services; these include 3 sub-items that even together are less than 7.B.(k) -- Investment Advisory Businesses (partial CPC 81332), Credit Rating Businesses (partial CPC 81339), and Credit Information Businesses (partial CPC 81339). *No commitments* are made for 7.B.(l) Provision and transfer of financial information, (etc.).

So as to provide a somewhat broader picture of the access/operating environment regime for FIS, bound and applied measures are also included here for (Korea's categories) Banking Businesses, Securities Businesses and Securities Investment Trust Businesses.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

No reference to the 1997 "Understanding on Commitments in Financial Services"

- **All FS in the Schedule**

Market Access via Modes 1 & 2 (also 3): --

Korea undertakes a standstill commitment for limitations on market access, where specific commitments are undertaken, in FS listed in the schedule as of 31 August 1997.

Cross-border supply of financial services and supply through consumer movement may not be settled in Korean currency. After the establishment of a commercial presence, financial institutions may handle only transactions, denominated and settled in Korean currency, with residents. Approval is required for transactions denominated or settled in foreign currency or transactions with non-residents.

National treatment for Modes 1 & 2 (also 3): --

Korea undertakes a standstill commitment for limitations on national treatment, where specific commitments are undertaken, in FS listed in the schedule as of 31 August 1997.

- **Credit rating services**

MA/NT modes 1 and 2: unbound.

- **Credit information services**

MA/NT modes 1 and 2: unbound.

- **Investment advisory services**

MA/NT modes 1 and 2: unbound.

- **Banking Businesses, Securities Businesses and Securities Investment Trust Businesses.**

MA/NT modes 1 and 2: unbound.

(ii) Establishment/investment**(a) Investment/ownership restrictions****GATS bindings (as may be relevant to provision of FIS)**

- **Horizontal**

Mode 3 MA

The acquisition of outstanding stocks of existing domestic companies by natural persons or juridical persons of another member is restricted. However, foreign portfolio investment in Korean stocks is permitted only for the stocks listed on the Korean Stock Exchanges, and individual foreign investors can own up to 6% of each company's total stock, while aggregate foreign investments cannot exceed 23% (18% in the case of two public enterprises: Pohang Iron and Steel Company, Korea Electric Power Corporation) per each company.

The acquisition of outstanding bonds of existing domestic companies by natural persons or juridical persons of another Member is restricted except in the following cases:

- (i) Direct foreign investment is allowed in non-guaranteed Convertible Bonds issued by listed companies.
- (ii) The purchase of government and public bonds, with interest rates comparable to international interest rates, is allowed in the primary market.
- (iii) Foreign investors are allowed to make indirect bond investment through the purchase of beneficiary certificates offered exclusively to foreigners.
- (iv) Foreign investors are allowed to make indirect bond investment through country funds.
- (v) Foreign direct investment in medium and long-term non-guaranteed bonds issued by small and medium-sized companies are allowed.

The establishment of branches must be approved in accordance with the Foreign Exchange Management Act.

Mode 3 NT -- The amount of foreign direct investment must be at least 50 million Won.

Mode 3 Additional Commitments

Residents who have been treated as foreigners in the Securities Exchange Act are accorded national treatment in portfolio investment in Korean stocks.

- **All FS**

Subsectors in financial services are classified based on the unit of business establishment. A financial institution must be established for only one business defined in subsectors (1) through (14),⁹ and thus cannot engage in business activities in other sub-sectors.

Mode 3 MA

The management and operation of assets of a financial institution are restricted. A financial institution may not own non-business real estate.

Assets owned by branches must be kept within the territory of Korea. The capital of the head office is not recognised as the basis for determining the extent of funding and lending activities of branches.

Some new financial products, including derivatives, are subject to approval. With interest rate and foreign exchange liberalisation, such products will be more widely allowed, subject to relevant laws and regulations.

Mode 3 NT -- Korea undertakes a standstill commitment for limitations on national treatment, where specific commitments are undertaken, in FS listed in the schedule as of 31 August 1997.

⁹ (1) Banking Businesses, (2) Credit Card Businesses, (3) Financial Leasing Businesses, (4) Securities Businesses, (5) Securities Investment Trust Businesses, (6) Investment Advisory Businesses, (7) Credit Rating Businesses, (8) Credit Information Businesses, (9-14) sub-items of insurance services.

- **Banking Services Business**

Mode 3 MA

Horizontal limitations on banking services

Only branches of foreign banks which rank among the world's top 500 banks in terms of assets size, or representative offices, are permitted.

A person may own up to 4% of the stocks of a bank and 15% of the stocks of a provincial bank without the special authorisation of the relevant authorities. (The definition of a person is in accordance with the relevant provision of the Presidential Decree of the Bank Act.)

Foreign exchange position is regulated.

- **Securities Businesses (dealing, broking, underwriting, securities saving, credit granting services)**

Mode 3 MA

Only representative offices, branches, or joint ventures of foreign securities companies are permitted. Representative offices may be established by pre-notification.

In joint ventures, which must be established as a *Chusik Hoesa* (a joint stock corporation), foreign equity participation must be at least 40% but less than 50%.

If there are multiple foreign share-holders in the joint venture companies, at least one shareholder must hold more than 20% of the equity. International financial organisations may hold less than 5% of the equity.

Equity participation in an existing domestic securities company by foreign securities companies is limited to less than 50% in the aggregate.

Broking for foreigners is limited to securities allowed for foreigners as indicated for All Sectors (see above under Horizontal).

Ceilings and operating conditions are applied to the (securities saving and credit granting) services.

Mode 3 NT -- bound as "none".

- **Securities Investment Trust Services Business**

Mode 3 MA

Only representative offices, branches, and joint ventures whose foreign share is less than 50% of foreign securities investment trust companies are permitted. Representative offices may be established by pre-notification.

Branches should be preceded by a representative office by at least one year.

Equity participation in an existing domestic securities investment trust company by foreign securities investment trust companies is limited to less than 50% in the aggregate.

Equity participation by foreign securities investment trust companies in new or existing joint ventures with any of the ten largest domestic conglomerates is limited to 30% per foreign company.

Mode 3 NT -- bound as "none".

- **Investment Advisory Services Business**

Mode 3 MA

Only representative offices and branches of foreign investment advisory companies are permitted. Representative offices may be established by pre-notification.

Equity participation in an existing domestic investment advisory services company by foreign investment advisory companies is limited to less than 50% in the aggregate.

Mode 3 NT -- bound as "none".

- **Credit Rating Services Business**

Mode 3 MA -- Credit rating companies should be designated by the relevant authorities to assess the credit rating of companies which may wish to issue non-guaranteed corporate bonds and commercial papers.

Mode 3 NT -- bound as "none".

- **Credit Information Services Business**

Mode 3 MA -- Unbound except for equity participation of less than 50% in existing financial information companies.

Mode 3 NT -- bound as “none”.

Applied measures (mostly unbound liberalisation; as may be relevant to provision of FIS)

- Criteria for entry constituting economic means test have recently been removed.
- Under Korea’s 1996 OECD commitments, the following reforms were to be phased in:
 - Foreign banks and securities firms would be permitted to establish subsidiaries in Korea by 1998;
 - Aggregate foreign investment ceilings for foreign investors would be phased out by 2000;
 - Foreign investors would be allowed to establish and hold 100% ownership of any type of financial institution by December 1998;
 - By 1999, foreign investment consulting firms would be able to offer their services without establishing a commercial presence in Korea.
- Whilst Korea was pressed in the 1997 WTO FS negotiations to bind its OECD commitments to open its banking, securities and insurance industry to foreign competition, it did not do so. However, many of the remaining barriers to foreign participation in the South Korean financial services market were addressed in Korea’s letter of intent to the IMF, including the commitment to bind its OECD commitments in banking, securities, and insurance into the WTO financial services agreement.
- Since the end of December 1997, Korea has implemented plans to open the financial services sector to foreign competition at a pace that is, in some cases, quicker than the schedule outlined in Korea’s OECD commitment. New bills regarding supervision and regulation of the financial services sector were subsequently passed, as were bills regarding permissible domestic and foreign ownership of Korean firms. The new Government has also committed to refrain from interfering in bank lending and management decisions except with regard to prudential supervision.
- Foreign financial institutions will be allowed to participate in non-hostile mergers and acquisitions of domestic financial institutions. Foreign banks will be allowed to establish subsidiaries in March 1998. The new Government is seeking legislation to allow hostile mergers and acquisitions, including in the banking sector.
- The ceiling on aggregate foreign portfolio investment was scheduled, in Korea’s OECD accession commitments, to rise to 26% in 1998 and be phased out by the end of 2000. This was not bound in the WTO FS negotiations; and has been surpassed in the IMF letter of intent. By the end of December 1997 the ceiling on aggregate foreign equity ownership in Korea had been raised to 55%; and is scheduled to be eliminated by the end of 1998. The cap on individual equity ownership was also raised in December 1997, from 7% to 50%. In early 1998 Korea passed legislation that permits foreign investors to take over up to a third of a company’s outstanding shares.
- Under Korea’s OECD commitments, foreign securities firms were to be allowed to establish subsidiaries in Korea and hold majority ownership in a joint venture as of 1 December 1998. The timetable for foreign participation in the securities industry was subsequently expedited. The establishment of brokerage subsidiaries is allowed as of 31 March 1998. These reforms are only partly reflected in Korea’s WTO Financial Services bindings (wherein establishment of foreign securities subsidiaries is permitted; and -- subject to percent limits -- so is foreign equity participation in existing securities firms, investment trusts, and investment advisory services).
- The government has indicated that it intends to abolish the “policy lending requirements”(i.e. to SMEs) for domestic and foreign banks.
- It is not clear whether the separated list of financial businesses/products, in which existing and new services cannot be offered unless they are expressly permitted, will be liberalised.

- Likewise minimum capital requirements for establishing foreign branches, not only of banks but of securities businesses, advisory businesses, etc.

(b) Restrictions on form of company

GATS bindings

See section 1(ii)(a) above, both Horizontal (The establishment of branches must be approved in accordance with the Foreign Exchange Management Act) and specific requirements for individual services items of Banking and Other FS.

Applied measures

Foreign banks are now allowed to fully engage in the trust business, open multiple branches in South Korea, and aggregate total capital held in all branches in determining lending limits. Other barriers to entry, such as the requirement to establish a representative office prior to opening a bank branch, have recently been removed. Foreign banks, securities and brokerage firms are scheduled to be allowed to establish wholly owned subsidiaries in South Korea by 31 March 1998.¹⁰

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

Unbound except for measures affecting the entry and temporary stay of natural persons as defined below:

A. Natural persons who are employees of firms that supply services through 100% foreign ownership, joint venture companies or branches established in Korea and who have been in the employ of their firm for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:

(i) *Executives*: persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organisation.

(ii) *Senior Managers*: persons within an organisation who primarily direct the organisation or a department of the organisation; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. Senior managers do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service.

(iii) *Specialists*: persons within an organisation who possess knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research equipment, techniques, or management of the organisation.

¹⁰ Under Korea's 1996 OECD commitments, foreign banks from OECD countries were scheduled to be allowed to establish subsidiaries in Korea by December 1998. According to Korea's December 1997 letter of intent to the IMF, foreign banks and brokerage houses are now to be allowed to establish subsidiaries in Korea by 31 March 1998.

B. Natural persons meeting the criteria of category A(i) or A(ii) and who are responsible for the setting up, in Korea, of a commercial presence of a service supplier of a Member when the service supplier has no representative office, branch or subsidiary in Korea and the persons are not engaged in making direct sales or supplying services.

C. Natural persons not based in the territory of Korea and receiving no remuneration from a source located within Korea, who are engaged in activities or representing a service supplier for the purpose of negotiating for the sale of the services of that supplier when such sales are not directly made to the general public and the persons are not engaged in supplying the services.

Entry and stay of natural persons as defined in A is limited to a period not exceeding three years that may be extended if extension is deemed to be necessary.

Entry and stay of natural persons as defined in B and C is limited to a period of 90 days.

Natural persons whose entries and temporary stays are permitted shall observe the Immigration Law and the labour laws.

Korea's commitments regarding temporary movement of natural persons do not apply in the case of labour-management disputes.

(iv) Nationality/residency requirements

GATS bindings

Non-Banking FS

Mode 4 NT -- Top executive personnel of each establishment must reside in Korea.

Applied measures

Beginning 1 December 1998 foreigners will be permitted to serve as CEOs of joint venture banks and securities firms, and as board representatives as long as no more than one-third of the board members are foreign nationals.

2. OPERATION IN THE MARKET

GATS bindings (as may be relevant to provision of FIS)

(i) Licensing/registration/notifications

See section 1(ii)(a) above -- registration/licensing is implicit in the entry approval process for most FS but not specified clearly.

The designation of credit rating companies by relevant authorities to assess the credit rating of companies which may wish to issue non-guaranteed corporate bonds and commercial papers implies some form of operating licence for such purposes.

(ii) Other

- All FS

The management and operation of assets of a financial institution are restricted

Assets owned by branches must be kept within the territory of Korea. The capital of the head office is not recognised as the basis for determining the extent of funding and lending activities of branches

A financial institution must be established for only one business defined in subsectors (1) through (14), and thus cannot engage in business activities in other subsectors.

Applied measures (as may be relevant to provision of FIS)

As of February 1997, foreign investors are only required to notify the government of their intentions; actual applications had been eliminated. Under present law, a notification can only be rejected if it appears on an explicit “negative list”. Although the government has reduced the documentation required to invest, the notification process remains burdensome and can require submission of proprietary information.

Foreign investors are required to get a special identification card before they can purchase equity. Foreign investors are not permitted to trade on the main over-the-counter market (where 60% of all bonds are traded).

It is difficult for foreign investment funds to register in Korea, and once registered they are required to use one distributor of funds, whereas domestic investor and brokerage firms are permitted to use an unlimited number of distributors and market funds from foreign companies. There are complicated requirements for setting up the required foreign currency accounts. The biggest obstacle is the requirement that foreign investment management firms have assets under management equal to US\$18 billion in order to establish operations in Korea.

Foreign banks tend to focus on corporate financing, as opposed to retail banking, in part because they continue to have limited access to local currency. The introduction of new products also has been tightly controlled, making it expensive for foreign banks to exploit their comparative advantage in South Korea.

Lack of transparency continues to create obstacles. Many trade-related laws and regulations lack specificity. Implementation may be directed by internal guidance from relevant ministries; and in a discretionary and inconsistent fashion. Translations of laws and regulations are required to be provided by local lawyers, and foreign firms have restricted access to regulators and administrators, limiting their capacity to clarify *de fact* and *de jure* requirements.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries in the Schedule

(ii) Subsidies

• Horizontal

Eligibility for subsidies, including tax benefits, may be limited to companies which are established in Korea according to the pertinent laws.

Unbound for research and development subsidies.

Eligibility for subsidies, including tax benefits, may be limited to residents according to the pertinent laws.

(iii) Other (Land Acquisition)

- **Horizontal**

The acquisition of land is unbound except:

(i) That the acquisition of land by companies which are not deemed as foreign under the Alien Land Law is permitted, and

(ii) That the acquisition of land by companies which are deemed as foreign under the Alien Land Law and branches of foreign company is permitted, subject to approval or notification in accordance with the Alien Land Law, for the following legitimate business purposes:

- land used for supplying services during the course of normal business activities;
- land used for housing senior company personnel under pertinent laws; and
- land used for fulfilling land-holding requirements stipulated by pertinent laws.

The acquisition of land is unbound except that the leasehold right of land is permitted, subject to approval.

- **All FS --** A financial institution may not own non-business real estate.

Intellectual Property Protection

Pursuant to its TRIPS obligations, Korea passed IP legislation in December 1995 and implemented new copyright, computer software and customs laws in 1996. Enforcement against piracy of copyright material, including software, has improved significantly, and piracy by large corporate end-users has diminished.

MALAYSIA

Malaysia's GATS commitments date from the 1997 FS negotiations. It has used its own classification adapted from W/120 for sub-items included under 7.B Banking and Other Financial Services; this includes 2 sub-items related to 7.B.(k)

- Advisory, intermediation and other auxiliary financial services, including credit reference and analysis, investment advice on acquisitions, corporate restructuring and strategy, and
- Securities broking services comprising broking services, credit reference and analysis, investment portfolio management and advice, and market research.
- 7.B.(l) Provision and transfer of financial information (etc.) is *not* included.

So as to provide a broader picture of the access/operating environment for FIS, the main entry/operation requirements for other foreign financial institutions that may be FIS providers are also included hereunder.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings (as may be relevant to provision of FIS)

- **FS Headnote**

No reference to application of the "Understanding on FS."

"All FS section"-- Modes 1 and 2 for MA and NT are unbound* (i.e. due to lack of technical feasibility) except as otherwise specified in the schedule.

- **Banking Services -- mode 1 and/or 2 market access limitations (as may be relevant for FIS provision by banks)**

Electronic fund transfer system requires approval.

Broking services, involving Ringitt and financial instruments issued in Malaysia must be effected through authorised dealers and money and foreign exchange brokers incorporated in Malaysia.

(Market) dealing is limited to contracts traded on specified exchanges abroad.

Participation in issues of securities and services related to such issues requires authorisation.

Commercial presence is required for securities underwriting (mode 1) and authorisation (mode 2).

Commercial presence is required for cash or portfolio management, all forms of collective investment management, and custodial and depository services (mode 1).

Trades on any Malaysian commodities exchange must be conducted through companies incorporated in Malaysia which are member companies of the exchange.

- **Advisory, intermediation and other auxiliary financial services, including credit reference and analysis, investment advice on acquisitions, corporate restructuring and strategy**

Mode 1 MA

Provision of investment and portfolio advice requires commercial presence.

Services other than investment and portfolio advice to residents must be undertaken jointly with commercial banks or merchant banks in Malaysia.

Mode 1 NT -- bound as "none".

Mode 2 MA -- Services other than investment and portfolio advice to residents must be undertaken jointly with commercial banks or merchant banks in Malaysia.

Mode 2 NT -- bound as “none”.

- **Securities broking services comprising broking services, credit reference and analysis, investment portfolio management and advice, and market research**

Mode 1 MA

Trades on Malaysian stock exchanges must be transacted through companies incorporated in Malaysia which are member companies of the exchange.

Promotion in Malaysia of Malaysian stocks requires approval.

Provision of investment advisory services and credit reference services to residents requires commercial presence.

Mode 1 NT -- bound as “none”.

Mode 2 MA

Trades on Malaysian stock exchanges must be transacted through companies incorporated in Malaysia which are member companies of the exchange.

Mode 2 NT -- bound as “none”.

(ii) Establishment/investment

GATS bindings (as may be relevant to provision of FIS)

- **Horizontal**

The acquisition of assets or interests of Malaysian companies and businesses, mergers or take-overs requires approval and apply to the following:

- (a) the acquisition of the voting rights of a Malaysian corporation by any single foreign interest or associated group of 15% or more, or an aggregate foreign interest of 30% or more or exceeding RM5 million in value;
- (b) any proposed acquisition of any assets or interests by any means which will result in ownership or control passing to foreign interest; and
- (c) control of Malaysian corporations through any form of joint-venture agreement, management agreement, technical assistance agreement or other arrangements.

Approval is normally granted. However it may be denied in circumstances where the proposed investment conflicts with the interest of the State.

- **“All FS” section**

Entry of offshore FS companies is confined to Labuan; and limited to establishment of a branch registered or a subsidiary incorporated in Malaysia.

For commercial and merchant banks, the 13 wholly-foreign owned commercial banks are permitted to remain wholly-owned by their existing shareholders. Unbound for new licenses.

Entry is limited to equity participation by foreign banks in Malaysian-owned or controlled commercial and merchant banks; and aggregate foreign shareholding in a commercial bank shall not exceed 30%. Shareholding by a single person individually or jointly with related persons is limited to a maximum of 20%.

Acquisition of a foreign bank of an aggregate of 5% or more of shareholding in a Malaysian-owned or controlled commercial bank or merchant bank must meet the following criteria:

- (a) The foreign bank has the ability to facilitate trade and contribute to financial and economic development of Malaysia;
- (b) The country of the foreign bank has significant trade and investment interests in Malaysia;
- (c) The country of the foreign bank does not have a significant representation in the Malaysian banking industry.

A commercial bank is not allowed to acquire any share in another commercial bank but may acquire shares in one merchant bank. A merchant bank is not allowed to acquire any share in a commercial bank or another

merchant bank. Other persons are not permitted to acquire 5% or more of shareholding in a commercial bank or merchant bank if the person already holds 5% or more of shareholding in another licensed financial institution.

Introduction of new service products will be permitted subject to approval which will be based on prudential criteria.

Entry is also permitted through setting up of representative offices, which can only undertake research, exchange of information and liaison services.

(Note: Under various sub-items of banking services, additional limitations are specified for the specific activities of banks; these are not detailed herein).

- **Other FS**

Trading and dealing in securities and financial futures and derivatives products other than by designated financial institutions require establishment of a locally incorporated joint-venture company and aggregate foreign shareholding in such company shall not exceed 30%.

Only merchant banks are permitted to make submissions to the Securities Commission for new securities issues.

Participation in securities issues by non-banks requires establishment of a locally incorporated joint-venture company and aggregate foreign shareholding in such company shall not exceed 30%.

Unbound for appointment as principal (securities) dealers.

Entry as a non-bank for asset management, other than as a Foreign Fund Management Company (FFMC) is limited to establishment of a locally incorporated joint-venture company and aggregate foreign shareholding in such company shall not exceed 30%.

Provision of asset management by a commercial bank requires establishment of a separate entity and shareholding by a foreign-controlled commercial bank shall not exceed 30%.

Entry as an FFMC is limited to establishment of a company incorporated locally with more than 50% foreign shareholding therein and requires approval of the Securities Commission.

Entry of commodities futures trading firm is limited to (a) establishment of a locally incorporated joint-venture company and aggregate foreign shareholding in such company shall not exceed 30%; or (b) a representative office. Representative offices are permitted to undertake research, exchange of information and liaison services only. Total membership of the exchange will be based on economic needs.

- **Advisory, intermediation and other auxiliary financial services, including credit reference and analysis, investment advice on acquisitions, corporate restructuring and strategy**

Entry as a non-bank is limited to (a) establishment of a locally incorporated joint-venture company and aggregate foreign shareholding in such company shall not exceed 30%; or (b) a representative office.

Representative offices (including those of commercial banks, merchant banks and securities companies) are permitted to undertake research, exchange of information and liaison services only.

Representative offices of securities companies are not permitted to publish and circulate research work in Malaysia.

Offshore banks, offshore investment banks and offshore companies in Labuan can only provide services to non-resident companies.

- **Securities broking services comprising broking services, credit reference and analysis, investment portfolio management and advice, and market research**

Entry is limited to recognised foreign stock broking companies through: (a) Equity participation in an existing stockbroking company; or (b) Establishment of a locally incorporated joint-venture company with a Malaysian stockbroking company; and aggregate foreign shareholding in such company shall not exceed 30%. The aggregate foreign shareholding will be permitted to be increased to 49% with effect from 1 July 2000, subject to conditions.

A foreign stockbroking company is permitted to have shareholding in one stockbroking company only.

Entry by recognised foreign stockbroking companies is also permitted through a representative office.

Representative offices are permitted to undertake research, exchange of information and liaison services only. Representative offices are not permitted to publish and circulate research work in Malaysia. New licences subject to conditions, including geographical location, numerical quota and other conditions to be determined.

(b) Restrictions on form of company

Apart from requirements on locally incorporated joint venture, etc. listed above, the schedule does not specify legal form requirements.

Applied measures (as may be relevant to provision of FIS)

(a) Investment/ownership restrictions

When the WTO FS Agreement enters into force in early 1999, foreign firms will be allowed to have majority ownership of asset management companies, subject to prior authorisation from the government. Fund management companies may be 100% foreign-owned if they provide services only to foreigners; but are limited to 70% foreign-ownership if they provide services to both foreign and local investors. Malaysia has, however, noted that it intends to issue only 10 licenses for the establishment of foreign asset management subsidiaries and will require such firms to manage assets of at least \$100 million outside of the country in order to be eligible.

Foreigners may hold up to 49% of the equity in a stockbroking firm (currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms).

No new licenses are being granted to either local or foreign banks. Foreign banks cannot establish additional branches in Malaysia and must operate as locally-controlled subsidiaries. This restriction also applies to non-resident controlled companies (NRCCs) and, therefore, includes 100% foreign-owned subsidiaries.

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

Unbound except for measures affecting the entry and temporary stay of natural persons defined below:

1. Intra-corporate Transferees

(a) senior managers being persons within an organisation having proprietary information of the organisation and who exercise wide latitude in decision making relating to the establishment, control and operation of the organisation being directly responsible to the CEO and receive only general supervision or direction from the board of directors or partners of the organisation; and

(b) two specialists or experts per organisation being persons within the organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's new service products and technology, research equipment and techniques or management.

Additional specialists or experts may be allowed subject to market test and the training of Malaysians through an acceptable training programme in the relevant services sector or subsector:

Provided that such persons are employees of the foreign service supplier and have been in the employment of that foreign service supplier for a period of not less than one year immediately preceding the date of their application for a work permit and he is to serve in at least a similar capacity.

2. Others

(a) Specialists or experts being persons who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's products and services subject to market test and the employment of Malaysians as counterparts and/or training of Malaysians through acceptable training programmes in the relevant services sector or subsector;

(b) Professionals being persons who possess necessary academic credentials, professional qualifications, experience and/or expertise which have been duly recognised by the professional bodies in Malaysia and registered with those respective professional bodies; and

(c) Business visitors being persons not based within Malaysia, receiving no remuneration from a source located within Malaysia, who have been employed for at least one year by a foreign service supplier, whose entry and temporary stay is for the purposes of negotiating for the sale of services or entering into agreements to sell services for that service supplier and who will not engage in direct sales to the general public.

Entry and stay of natural persons defined in categories 1 (a) and (b) and 2 (a) and (b) shall not exceed a total of five years. For category 2 (c), the period of stay shall not exceed a total of 90 days.

- **Banking, securities and asset management services**

For commercial and merchant banks -- Unbound except for (a) temporary presence is offered only in respect of supply through mode 3; (b) for banks, 2 senior managers for each institution with an aggregate foreign shareholding exceeding 50%, and (c) 5 specialists or experts for each institution for areas relating to trade financing, corporate finance, treasury management and information technology.

For non-banks, unbound except 1 foreign national for a management post which is not the CEO post, for each establishment.

For representative offices of scheduled businesses, 2 foreign nationals subject to only 1 foreign national for the top 2 posts.

Entry shall be limited to a maximum of 5 years.

Unbound for mode 4 money and foreign exchange broking services.

For securities issuing services and underwriting, and for asset management services (bank and non-bank), unbound except as indicated in the horizontal section.

For commodities futures broking services, unbound except 1 foreign national for a management post per establishment, subject to market test.

- **Advisory, intermediation and other auxiliary financial services, including credit reference and analysis, investment and advice on acquisitions, corporate restructuring and strategy**

For banks, unbound except as indicated in the finance sector horizontal section.

For non-banks, unbound except as indicated in the all-sector horizontal section.

For representative offices, two foreign nationals subject to only one foreign national for the top two posts.

Entry shall be limited to a maximum period of five years.

- **Securities broking services comprising broking services, credit reference and analysis; investment portfolio and management advice and market research**

Unbound for a stockbroking company, except as indicated in the all-sector horizontal section.

For representative offices, two foreign nationals subject to only one foreign national for the top two posts.

Entry shall be limited to a maximum period of five years.

Applied Measures

- While foreign subsidiaries are limited to hiring small numbers of expatriate personnel, these restrictions are actually less stringent than those imposed on domestic banks. In the past year there has been some relaxation to allow for intracorporate exchanges and short-term assignments.

2. OPERATION IN THE MARKET

(i) Licensing/registration/notifications; (ii) Other operating restrictions

GATS bindings

Not clearly specified.

(ii) Other

Applied Measures (as may be relevant to provision of FIS)

The financial services sector continues to be segmented as internal liberalisation is incomplete and both domestic and foreign entry is restricted. No new bank branches or wholly owned subsidiaries are permitted; entry into most financial services is limited to acquiring shares of existing firms or establishing joint ventures. Foreign banks are not allowed to offer certain services (such as underwriting equity issues) and are restricted in the number of expatriate staff they may employ. The need for improvements in the transparency of decision-making and procedures and limits on anti-competitive practices are also cited.

In August 1998 the Government of Malaysia announced the intention to introduce a number of measures in the context of the Asian financial crisis; including reductions in the minimum capital requirements of banks, a ban on ringgitt transfers between external accounts, a currency peg system, an end to foreign trading in Malaysian stocks, and a rule requiring sellers of Malaysian stocks to hold the ringgitt proceeds for a year.

3. OTHER DOMESTIC MEASURES

(i) Restrictions on information and data flows

GATS bindings

Representative offices of securities and stockbroking companies are not permitted to publish and circulate research work in Malaysia.

Note that Malaysia has made no commitments on 7.B.(1) Provision and transfer of financial information, etc., and has not adopted the Understanding on FS, which contains relevant commitments and safeguards.

Applied measures

While foreign bank branches had been excluded from a law that precludes banks from sharing credit information with foreign parents, the law has now been extended to them.

(ii) Monopolies & exclusive providers

No entries in the Schedule

(iii) Subsidies

GATS bindings

- **Horizontal**

Incentives are limited to eligible Malaysian-owned corporations engaged in service sectors promoted by the Government.

(iv) Government procurement exemptions

GATS bindings

- **Horizontal**

Corporations in which the Government has an interest shall, in acquiring services, give first consideration to service suppliers in which the Government has an interest. This requirement does not prevent the acquisition of services from other service suppliers where their services are competitive in terms of price, quality and delivery.

(v) Other

GATS bindings

• **Horizontal**

Land, Property and Real Estate: Approval may be denied if the acquisition, disposal or dealing of land or any interest in land, property and real estate is undertaken for speculative or non-productive purpose or for purposes which may conflict with the interest of the State. Any measure and special preference granted to Bumiputera, Bumiputera status companies, trust companies and institutions set up to meet the objectives of the New Economic Policy (NEP) and the National Development Policy (NDP) shall be unbound.

• **All FS**

NT mode 3: Unbound for measures affecting financial services accorded, to any Bumiputera or to assist development of any Bumiputera financial institution to achieve objectives of the National Development Policy (NDP).

Intellectual Property Protection

Malaysia is a member of WIPO, and the Bern and Paris Conventions. It provides copyright protection to all works (including computer software) published in Bern Convention countries regardless of when the works were first published in Malaysia. Despite responsive legal and police investigation, piracy of computer software continues to increase; and there are lengthy litigation and court backlogs on the enforcement side.

MEXICO

Mexico's GATS bindings date from the 1997 FS negotiations. Under 7B. Banking and Other Financial Services, commitments are listed against individual sub-items; this includes 7B(k) "Advisory and other auxiliary financial services, including credit reporting and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy; but 7B(l) (Provision and transfer of financial information, etc.) is *not* included.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **Horizontal**
MA/NT modes 1, 2: unbound
- **FS Headnote**
No reference to the 1997 "Understanding on Commitments in Financial Services"
- **Banking and Other FS (all sub-items, including 7B(k))**
MA/NT modes 1, 2: unbound.

(ii) Establishment/investment

GATS bindings (as may be relevant to provision of FIS)

Investment/ownership restrictions

- **Horizontal**
Foreign investment in activities reserved for Mexican nationals must be through neutral shares, whose purchase must be quoted on the Mexican Stock Exchange.
- **Banking and Other FS Headnote**
Mexican financial intermediaries in which foreign investment is allowed include: multiple banking institutions (commercial banks), securities firms, securities specialists, limited-purpose financial institutions, financial factoring companies, financial leasing companies, general deposit warehouses, foreign exchange firms, investment companies, managing companies of investment companies, guarantee institutions (bonding companies) and pension fund management companies
In accordance with the applicable legislation, foreign investment is not permitted in credit unions, savings and loan companies, or development banking institutions.
- **Banking and Other FS**
Individual sub-items list various limitations on percentage of permitted foreign equity ownership (institutional and individual) and limitations on the type of entity which may provide the services (i.e. sub-items list which of the activities may be undertaken by multiple banking institutions, limited purpose financial institutions, investment companies, securities firms and specialists).

• **For 7B(k) the following limitations are listed --**

Credit information companies (Credit Bureaux) may carry out credit reporting activities. Foreign investors may hold up to 49% of the paid-up capital stock. Foreign investment by artificial persons exercising governmental functions is not allowed. The limit on individual holdings is 30% of the paid-up capital. Effective control of the enterprise by the Mexican shareholders is required.

Investment consultants may carry out activities such as investment and portfolio analysis, research and advice, advice on acquisitions and on corporate restructuring and strategy. Foreign investors may hold up to 49% of the capital stock. Foreign investment by artificial persons exercising governmental functions is not allowed. Effective control of the enterprise by Mexican shareholders is required.

Applied measures (as may be relevant to provision of FIS)

Investment/ownership restrictions

- Amendment of Law on Credit Institutions has increased the permissible foreign ownership for both NAFTA and non-NAFTA firms entering the financial services sector; with the limit on foreign ownership of financial groups by firms from non-NAFTA countries raised to 49% for commercial banks, stock exchange specialists, security firms, investment companies, and some other entities.
- Only subsidiaries of foreign financial institutions headquartered in a country with whom Mexico has an agreement on free trade in FS (i.e. NAFTA, G3 and OECD countries) are allowed to establish direct subsidiaries in Mexico. The right of firms from other countries to establish subsidiaries (but not branches) is to be phased in gradually by January 2000 with interim individual and aggregate limits on market share; after which temporary safeguard measures will remain until January 2007.

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

Unbound, except for measures affecting the entry and temporary stay of natural persons in the following categories: a) persons directly responsible for the sale of a service; and b) persons transferred within the same enterprise, provided they are executives, managers or specialists

For the purposes of this offer:

a) persons directly responsible for the sale of a service, means persons representing an enterprise that carries on an activity in a country party to the Agreement who is temporarily to enter Mexican territory (for up to 90 days) in order to sell or negotiate the sale of a service or conclude agreements for the sale of the said service on behalf of the enterprise they represent, provided this does not in any case constitute a direct sale to the general public

b) persons transferred within the same enterprise, means the employees of an enterprise who have been employed by that enterprise for at least a year proceeding the obtention of temporary entry into Mexican territory (one year with option of renewal) in order to continue providing their services in that enterprise or a subsidiary of that enterprise in accordance with national laws on the subject. This offer is confined to the categories of executives, managers and specialists.

Executives, are persons in an enterprise who primarily direct the management of the enterprise or establish its goals and policies or those of any of its main components or activities, exercise wide latitude in decision-making and receive only general supervision and instructions from higher level executives, the Board of Directors, or shareholders of the enterprise.

Managers, are persons in an enterprise who primarily direct the enterprise or its departments or divisions, supervise and control the work of other supervisory, professional or managerial staff, have the authority to hire, fire and take other personnel actions, and exercise discretionary authority over higher level day-to-day operations

Specialists, are persons within an enterprise who possess knowledge at an advanced level and proprietary knowledge of the enterprise's production, services, research equipment, techniques or management

(iv) Nationality/residency requirements

GATS bindings

• **Horizontal**

The following activities are reserved for Mexican nationals: ship captains, aircraft pilots, ship masters, ships engineers, ships mechanics, crews of ships and aircraft under the Mexican flag, airport managers, harbour pilots, customs brokers, train crews.

• **Banking and Other FS sub-items**

Not specified (NT for modes 1,2,4 are unbound; mode 3 bound as "none").

2. OPERATION IN THE MARKET

(i) Licensing/registration/notification

Not clearly specified in the schedule; though implicit in authorisation requirements.

(ii) Other

GATS bindings

• **Banking and Other FS Headnote**

Foreign financial institutions such as banks and securities firms may establish representative offices in the country with the prior authorisation of the SHCP; representative offices may not act as financial intermediaries, nor promote acceptance of funds by the firms they represent, but solely engage in placement.

• **Banking and Other FS sub-items**

Activities are limited to certain financial institutions/firms.

Applied measures (as may be relevant to provision of FIS)

- Financial services firms from NAFTA, OECD and G3 countries are permitted higher levels of foreign ownership than are firms from non-NAFTA, OECD and G3 countries; firms from NAFTA, OECD and G3 countries receive national treatment. Any non-NAFTA, OECD and G3 firm that provides financial services in one NAFTA, OECD and G3 country must receive the same treatment in other NAFTA, OECD and G3 countries as firms headquartered in a NAFTA, OECD and G3 country.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries for FS

(ii) Subsidies

• **Horizontal**

Unbound for research and development subsidies and incentives to small service enterprises owned by Mexican nationals.
Subsidies granted to natural persons may be limited to Mexican citizens.

Intellectual Property Protection

Mexico's 1996 copyright law substantially increased protection for computer programs and other copyrighted materials; introduced or increased criminal penalties for infringements and improved administrative procedures. However, copyright piracy remains a significant problem and criminal penalties are applied infrequently.

NORWAY

Norway's GATS bindings date from the 1997 FS negotiations; with commitments made for "7.B. Banking and Other Financial Services" without individual sub-item listings.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

Norway undertakes commitments on financial services in accordance with the "Understanding on Commitments in Financial Services" (the Understanding). The market access commitments in respect of modes (1) and (2) apply to the transactions indicated in paragraphs B.3 and B.4 of the market access section of the Understanding respectively.

- **Banking and other FS**

Modes 1 and 2 Market Access and National Treatment bound as "none".

(ii) Establishment/investment

(a) Investment/ownership restrictions

GATS bindings

Horizontal

Establishment -- General authorisation procedures for acquisition

- **Market access for mode 3 bound as "none";**
- **The following limitations to NT for mode 3 are listed.**

A concession can only be granted when it is not contrary to the public interest. An acquisition is normally judged on the impact it will have on future activity and employment in the company and the society as a whole. Legislation governing acquisitions has traditionally been liberally applied. It authorises the setting of conditions, in a large majority of the cases involving over 1/3 of foreign ownership - related to voting shares. Conditions are largely standardised. Two conditions are regarded as important and are stipulated in most cases: a majority of the board and its chairman must be Norwegian nationals and, the transactions between the Norwegian company and the foreign owner must be based on OECD's principle of arm's length prices.

Corporations registered in Norway, where more than 1/3 of the voting rights are controlled by non-nationals or foreign controlled companies, or where the chairman and the majority of the board members are non-nationals, are subject to concession when acquiring real estate or entering into certain lease contracts with regard to such objects.

Foreigners and foreign controlled companies in Norway need a concession for purchases of real property, whether building and/or land, without regard to the purpose for which the property will be used.

Leases of real property for a period of more than 10 years are subject to concession requirement. If the property is to be used for manufacturing purposes, a concession is required without regard to the lease period.

- **Also for modes 3 and 4 (NT)**

Foreign citizens residing in Norway who purchase or lease real property for housing, secondary residences and business activities without a concession, are subject to the condition that the real property is acquired for their own personal use.

- **Banking and Other FS**

Market Access mode 3

No single or co-ordinated group of investors may acquire or hold more than 10% of the share capital of commercial banks or financing undertakings, or more than 10% of the equity certificates of savings banks. The Ministry of Finance and Customs may in special circumstances make exemptions from these limitations on single investor ownership in such institutions.

National treatment mode 3 -- residency requirements as set out under 1(iii) below.

(b) Restrictions on legal form of company

GATS bindings

- **Banking and Other FS** (listed as Market Access mode 3 limitations)

Notwithstanding (the 10% limitations on acquisition), foreign banks and financing undertakings may establish partly or wholly owned subsidiaries in Norway. The other owners of such partly owned subsidiaries must be banks or financial institutions respectively.

Commercial banks, securities firms and management companies for collective investment funds incorporated in Norway must be organised as joint stock companies.

Branches in Norway of banks, securities firms and management companies for collective investment funds incorporated outside the European Economic Area cannot be account-operators in the Norwegian Securities Registry.

- **Horizontal limitations**

Market access Mode 3 bound as “none” for treatment of branches, and for formation of legal entity.

National treatment Mode 3 limitations are listed as :

Treatment accorded to subsidiaries of third country companies formed in accordance with the law of an EEA Member State and having their registered office, central administration or principal place of business within an EEA Member State may not be extended to branches or agencies established in an EEA Member State by a third-country company.

Treatment less favourable may be accorded to subsidiaries of third-country companies formed in accordance with the law of an EEA Member State having only their registered office in the territory of an EEA Member State unless they show that they possess an effective and continuous link with the economy of one of the EEA Member States.

The managing director in a joint stock company, at least half of the founders, of the members of the board of directors, of the corporate assembly and of the committee of representatives must be residents of Norway and have resided there for the last two years.

(iii) Nationality/residency requirements**GATS bindings**

- **Horizontal**

See 1(ii)(b) for horizontal limitations on NT for mode 3 in respect of commercial presence by non-EEA members.

- **Banking and Other FS -- listed as limitations to NT for mode 3**

In Norwegian commercial banks, financing undertakings, securities firms and management companies for collective investment funds, including subsidiaries of such foreign institutions, the manager, at least half the members of the board of directors and half the members of the corporate assembly must be permanent residents of Norway. This requirement does not apply to citizens of a state within the European Economic Area when residing in such state. The Ministry of Industry and Trade may grant exemptions from these rules. Until changes in Norwegian corporate legislation come into force (approved by Parliament 27 May 1997), the following limitations continue to apply: The residence requirement apply also to the committee of representatives. The members concerned must have resided in Norway for the last two years.

In savings banks and financing undertakings which are not organised as joint stock companies, the members of decision-making bodies must be citizens of states within the European Economic Area and permanently residing in such states. The Ministry of Finance and Customs may grant exemptions from these rules.

(iv) Entry and temporary stay of personnel**GATS bindings**

- **Horizontal**

Unbound, except for the temporary presence and without requiring compliance with an economic needs test of categories A and B below:

A. *Managers and executives*, specialists as intra-corporate transferees, provided that the service supplier is the corporation to which these are attached. Temporary entry, stay and work limited to a two year period.

Executives/managers - persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the establishment or a department or subdivision of the establishment;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority personally to hire and fire or recommend hiring, firing or other personnel actions.

Specialists - persons working within a juridical person who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of the knowledge specific to the establishment, but also whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership in an accredited profession.

B. *Business visitors*. Temporary entry, stay and work limited to a three month period

a) persons who are representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.

b) persons working in a senior position, as defined above, within a juridical person, who are responsible for the setting up in Norway of a commercial presence of a service supplier of a Party when:

- the representatives are not engaged in making direct sales or supplying services, and
- the service supplier has no other representative, branch or subsidiary in Norway.

2. OPERATION IN THE MARKET

GATS bindings

Banking and Other FS

None listed, other than as already set out in 1(ii)(a)-(b) above.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies and exclusive providers

- **Banking and Other FS**

Registration of securities, as stated in the act relating to the Norwegian Securities Registry regulating the book-entry registration system for paperless securities, is subject to a monopoly.

(ii) Subsidies

- Horizontal

MA/NT modes 1, 2: unbound

MA/NT modes 3 and 4 bound as "none"

NT mode 3 -- eligibility for subsidies may be limited to juridical persons established in Norway; and unbound for research and development subsidies

NT mode 4 -- subsidies available to natural persons may be limited to Norwegian citizens.

NEW ZEALAND

New Zealand's GATS bindings date from the 1997 FS negotiations. For 7.B. Banking and Other Financial Services, sub-items are listed individually with one set of commitments applied to all. 7B (k) and (l) are included therein (in reverse order to W/120).

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

New Zealand undertakes its specific commitments on Financial Services in accordance with the provisions of the "Understanding on Commitments in Financial Services" (the Understanding). Market access and national treatment commitments in Modes (1) and (2) are bound to the extent of the obligations in paragraphs B.3 and B.4 of the Understanding.

(ii) Establishment/investment

GATS bindings

- **Horizontal**

Under the Overseas Investment Regulations, 1985, issued under the Overseas Investment Act 1973, Overseas Investment Commission (OIC) approval is required for the following investments by an "overseas person":

- a) acquisition or control of 25% or more of the shares or voting power in a company where either the consideration of transfer or the value of the assets of the company exceeds \$NZ10 million;
- b) the establishment of new business in New Zealand where the total expenditure in setting up the business exceeds \$NZ10 million;
- c) the acquisition of the assets of the business where the total consideration paid or payable for the assets exceed \$NZ10 million;
- d) the issue or allotment of shares where the 25% threshold has already been exceeded or will be exceeded as a result of the issue and where the total consideration paid or payable exceeds \$NZ10 million.

OIC consent is required, regardless of the dollar value of the investment, for acquisition of rural land. Approval is also required under the Land Settlement Promotion and Land Acquisition Act for the purchase of some classes of land.

- **FS Headnote**

New Zealand undertakes its specific commitments on Financial Services in accordance with the provisions of the "Understanding on Commitments in Financial Services" (i.e. thereby binding a provision on right of establishment in FS).

- **Banking and Other FS**
MA/NT mode 3 bound as “none”.

(b) Legal form of company
Nothing specified.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Unbound except for measures concerning the entry and temporary stay of natural persons of another Member, employed by a service supplier of another Member that supplies services within New Zealand through a commercial presence, falling within the following categories;

A. Executives and senior managers, as intra-corporate transferees, for periods of initial stay up to a maximum of three years:

Executives and senior managers being natural persons who are senior employees of an organisation, who have been employed by that organisation for at least twelve months prior to their proposed transfer to New Zealand, and who are responsible for the entire or a substantial part of an organisation's operations in New Zealand, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business;

B. Specialist and/or senior personnel, as intra-corporate transferees, for periods of an initial stay up to a maximum of twelve months:

Specialist and/or senior personnel being natural persons being transferred to undertake a specific or specialist task at a senior level within the company; this may include, for example, short-term specialist development projects; or the establishment in New Zealand of a commercial presence of a service supplier with its head of operations in the territory of another Member and not having any other commercial presence in New Zealand;

C. Specialist personnel, subject to labour market tests, as intra-corporate transferees, for periods of stay up to a maximum of three years:

Specialist personnel being natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of an organisation's operations in New Zealand; skills are assessed in terms of the applicant's employment experience, qualifications, and suitability for the position;

D. Installers and servicers, as intra-corporate transferees, for periods not exceeding three months in any twelve month period:

Installers and servicers being natural persons who are installers and servicers of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment;

E. Service sellers, as business visitors, for a period or periods not exceeding in aggregate three months in any calendar year:

Service sellers being natural persons who are representatives of a service supplier of another Member, whether or not that service supplier has a commercial presence in New Zealand, and are seeking temporary entry to New Zealand for the Purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct Sales to the general public.

Unbound in cases of labour/management disputes.

2. OPERATION IN THE MARKET

Nothing specified in the Schedule.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries; assume bound as “none” via FS Understanding.

(ii) Subsidies

No entries.

(iii) Other Requirements

• FS Headnote

Mode 3 commitments are subject to the provisions of the Financial Reporting Act 1993 and the Companies Act 1993; these require overseas companies to prepare financial statements on an annual basis comprising a balance sheet, a profit and loss statement and (if required by an applicable financial reporting standard approved by the Accounting Standards Review Board) a statement of cash flows; the Acts also require such financial statements in relation to an overseas company’s New Zealand business. The Acts require the following companies to deliver annual audited financial statements to the Registrar of Companies for registration: (a) issuers (i.e. those which have raised investment from the public); (b) overseas companies; (c) subsidiaries of companies or bodies corporate incorporated outside New Zealand; (d) companies in which 25% or more of the shares are held or controlled by: (i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary; (ii) a company or body corporate incorporated outside New Zealand; or (iii) a person not ordinarily resident in New Zealand.

• Horizontal

Modes 1 and 2 Unbound for present and modes 3 and 4 for future measures at the central and sub-central levels according more favourable treatment to any Maori person or organisation in relation to the acquisition, establishment or operation of any commercial or industrial undertaking.

PHILIPPINES

The Philippines' GATS commitments date from the 1997 FS negotiations. Under Banking and Other Financial Services, commitments are listed separately for a number of categories; including Commercial Banking, Issuing of Securities and related services, Asset management, Securities dealership/brokerage, Investment houses, Financial advisory services (credit reference and analysis; investment and portfolio research and advice), Promotion and Provision of information by a representative office about the services or products offered by a foreign bank. However, a sub-item or category corresponding to 7B(l) Provision and transfer of financial information (etc.) is *not* included.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- No reference to the "Understanding on Commitments in Financial Services."
- **Banking and Other FS**

Mode 1 MA states that commercial presence is required for Commercial Banking (including securities issues and asset management), Investment houses, other securities issues and services, Securities dealership/brokerage, Promotion and Provision of information by a representative office about the services or products offered by a foreign bank.

Mode 1 MA bound as "none" for Financial advisory services (credit reference and analysis; investment and portfolio research and advice).

Mode 2 MA, NT modes 1, 2 bound as "none" for all of the above.

(ii) Establishment/investment

GATS bindings (as may be relevant to provision of FIS)

FS Headnote

The appropriate regulatory authority in the Philippines shall determine whether public interest and economic conditions justify authorisation for the establishment of commercial presence or expansion of existing operations in banking and other financial services in the Philippines. For foreign financial institutions with internationally recognised standing, such determination shall include a demonstrated capacity to contribute to the attainment of Philippine development objectives particularly in the promotion of trade, investments and appropriate technology transfer; and the country of incorporation has strategic trade and investment relations with the Philippines.

Banking and Other FS

- **Financial advisory services (i.e. credit reference and portfolio research and advice)**

Required to be organised as a commercial bank, or an investment house, or a non-bank financial intermediary.

For (provision by) commercial banks, all limitations mentioned under mode 3 for commercial banks shall apply; and for (provision by) investment houses, all limitations mentioned under mode 3 for investment houses shall apply (see below).

For non-bank financial intermediary, foreign equity participation is bound at 40%.

- **Commercial Banks**

Establishment of foreign bank branches bound for 10 new licenses for 1995-2000. Each foreign bank shall be allowed to establish a maximum of 6 branches with the first 3 at the location of its choice and the remaining 3 as designated by the Monetary Board. Capital ratio requirements and minimum amount of capital conversion to Philippine currency.

Foreign acquisition permitted for up to 51% of voting stock of existing domestic bank (grandfathering of existing foreign ownership above that); and for foreign investment in up to 51% of voting stock of a new locally incorporated banking subsidiary (grandfathering of existing foreign ownership above that).

Investment by foreign non-bank FS suppliers in a locally incorporated bank is limited to 30% of voting stock, or up to 40% upon approval by the president of the Philippines; and must not exceed 20% for an individual and 30% for a corporation.

- **Investment Houses**

Must be organised as stock corporation

Subject to foreign equity limitation of 51%.

Majority of members of Board of Directors shall be citizens of the Philippines.

An investment house is not allowed to engage in banking operations; and prior authorisation is required for performance of quasi-banking functions.

- **Securities dealership/brokerage; participation in issuing of securities etc.**

Required to be organised as an investment house or as a securities broker/dealer corporation or partnership. The other limitations on investment houses (as above) apply; while securities broker/dealer must be member of the stock exchange. Membership thereof is limited to 200.

MFN exemption for foreign equity participation in securities firms.

- **Promotion and provision of information by a representative office about the services or products offered by a foreign bank**

Mode 3 MA and NT bound as "none."

Applied measures (as may be relevant to provision of FIS)

- No new foreign bank licenses were granted in the Philippines until 1994, after which a five-year window was established, in which prohibitions on the expansion of the branch network were partially removed, so foreign banks operating on a full-service basis may add up to six new branches. They are also allowed to become universal banks and engage in securities underwriting for the local market. They may not, however, operate as investment banks or engage in the trust business.
- In 1994, limits on foreign ownership in new subsidiaries incorporated in the Philippines and in existing domestic banks was raised to 60%, although foreign participation in Philippine-owned universal banks remains limited to 30%. Foreign bank branch may now apply for universal bank license (and thus engage in investment house activities and activities permitted to investment houses, including advisory services).
- New banks are permitted to enter the Philippine market as either a branch or a subsidiary if they are among the top five banks (measured by assets) in their home countries or among the top 150 world-wide.
- Securities dealers cannot establish as a branch; they may establish as a representative office or wholly-owned subsidiary.

(iii) Entry and temporary stay of personnel

GATS bindings

• **Horizontal**

Non-resident aliens may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired.¹¹

• **Financial advisory services (i.e. credit reference and portfolio research and advice)**

Mode 4 NT A non-Filipino citizen employed as officer or assigned to do technical functions shall have two Filipino understudies (this also applies to commercial banks).

Mode 4 MA is unbound except as provided in horizontal section; as is mode 4 NT all other FS.

(iv) Residency/nationality requirements

GATS bindings

• **Horizontal**

In Activities Expressly Reserved by Law to Citizens of the Philippines (i.e. where foreign equity is limited to a minority share): All executive and managing officers must be citizens of the Philippines.

• **Banking and Other FS**

As already indicated in the Establishment section above.

2. OPERATION IN THE MARKET

GATS bindings

(i) Licensing/registration/notifications

Not specified.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries for FS

(ii) Subsidies

No entries in the Schedule

(iii) Other

• **Horizontal**

Acquisition of Land

All lands of the public domain are owned by the State.

Only citizens of the Philippines or corporations or associations at least 60% of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease.

¹¹ The Philippines shall undertake a review of this provision within two (2) years after the entry into force of the Agreement for the Philippines.

Foreign investors may lease only private-owned lands.

Access to Domestic Credit

A foreign firm, engaged in non-manufacturing activities availing itself of peso borrowings, shall observe, at the time of borrowing, the prescribed 50:50 debt-to-equity ratio.

Foreign firms covered are:

- a) partnerships, more than 40% of whose capital is owned by non-Filipino citizens; and
- b) corporations, more than 40% of whose total subscribed capital stock is owned by non-Filipino citizens.

This requirement does not apply to banks and non-bank financial intermediaries.

Intellectual Property Protection

A new intellectual property code (RA 8923) which took effect in January 1998 provides enhanced copyright (and trademark) protection and creates a new Intellectual Property Office with original jurisdiction to resolve certain disputes concerning licensing. The law also significantly increases penalties for infringement and counterfeiting. Computer software is included in the definition of protected material. However, the law also permits decompilation of software programs as “fair-use”, subject to certain restrictions, lacks clear provisions for *ex-parte* relief, does not provide a clear exclusive right for copyright owners over broadcast, rebroadcast, cable or satellite retransmission; and onerous restrictions affecting contracts to license software and other technology. Piracy of software is a serious problem. Regarding enforcement, insufficient resources and judicial backlogs are major problems

POLAND

Poland's GATS commitments date from the 1997 FS negotiations; with commitments grouped separately for "Banking Services"; "Other Financial Services" (which includes "advisory and other auxiliary services to financial services included into this schedule (CPC 8133** except 81333, 81339)", as well as participation in issues of securities and provision of services related thereto, trading of securities, and asset management services); and "Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services".

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- No reference to application of the "Understanding on Commitments in Financial Services"
- **Banking Services**
Modes 1 and 2 for both Market Access and National Treatment are "unbound".
- **Other Financial Services (incl. "Advisory and other auxiliary services to financial services included into this schedule")**
Modes 1 and 2 for both Market Access and National Treatment are "unbound".
- **Provision and transfer of financial information, and financial data processing and related software by suppliers of financial services**
Modes 1 and 2 Market Access limited by requirement to use the public telecommunications network, or the network of another authorised operator, in the cross-border provision and consumption abroad of these services. Modes 1 and 2 NT bound as "none".

(ii) Establishment/investment

(a) Investment/ownership restrictions

GATS bindings

- **Horizontal**
Unbound in relation to acquisition of state-owned property, i.e. the regulations governing the privatisation process
Authorisation of the establishment of a company with foreign equity is required in the case of:
- establishment of company, purchase or acquiring shares or stocks in an existing company; and
- extending of the activity of the company when the scope of activity embraces at least one of the following areas: [...] establishment of a joint-venture company with a foreign equity in which the Polish party is a state legal person and is contributing non-pecuniary assets as initial capital.
- **Banking Services**

Mode 3 MA -- Establishment of a bank only in a form of joint stock company. System of permits in relation to establishment of all banks based on prudential grounds. After 1 January 1999 or the date of entry into force of the Fifth Protocol, whichever is later, market access through licensed branches will be allowed.

Mode 3 NT -- "none".

- **Other FS (incl. "Advisory and other auxiliary services to financial services included into this schedule")**

Mode 3 MA -- Establishment, after obtaining a license, only in a form of joint stock company or a branch of foreign legal entity providing securities services.

Mode 3 NT -- "none".

- **Provision and transfer of financial information, and financial data processing and related software by suppliers of financial services**

Mode 3 MA -- none other than requirement to use the public telecommunications network, or the network of another authorised operator, in the cross-border provision and/or consumption of these services.

Modes 3 NT bound as "none".

(b) Restrictions on form of company

GATS bindings

- **Horizontal**

The establishment by foreign service suppliers may only take the form of limited liability company or joint stock company.

The same legal form is required in the case of joint-venture of Polish and foreign companies.

Unbound with respect to branches and representative offices.

- **Banking services**

Direct branching in banking will be permitted after 1 January 1999.

- **Other financial services (incl. Advisory and other auxiliary services to financial services included into this schedule)**

Establishment, after obtaining a license, only in a form of joint stock company or a branch of foreign legal entity providing securities services.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Unbound except for enabling foreign service suppliers acting in areas covered by this schedule and established in Poland to temporary employment of key personnel in conformity with the Polish law meaning managers or specialists, possessing high or uncommon qualifications or knowledge necessary for the functioning of the enterprise under the condition that such persons must have been employed by this enterprise at least one year. Work permits are issued exclusively for the definite period - up to one year, with a possibility of extension - to a given foreigner working at a specified employer. Market test requirement.

(iv) Residency/nationality requirements

GATS bindings

- **Banking Services**

Mode 3 MA -- Nationality requirement for some- at least one- of the bank executives.

2. OPERATION IN THE MARKET

GATS bindings

(i) Licensing/registration/notifications; (ii) other
Not specified.

Applied measures

Consent of the President of the National Bank required for opening of foreign bank branches; this may specify the proportion of the bank's foreign capital. Consolidated supervision and remaining special requirements regarding foreign branches may be dealt with as privatisation process proceeds. Further reform of the present legislation for the securities market is in preparation to bring it in line with all EU requirements.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Restrictions on information and data flows

- **Provision and transfer of financial information, and financial data processing and related software by suppliers of financial services**

Requirement to use the public telecommunication network, or the network of other authorised operator, in the case of cross-border provision and/or consumption of these services

(ii) Monopolies and exclusive providers

- **Provision and transfer of financial information, and financial data processing and related software by suppliers of financial services**

Requirement to use the public telecommunication network, or the network of other authorised operator, in the case of cross-border provision and/or consumption of these services.

(iii) Subsidies

- **Horizontal**

MA modes 1-4: unbound in relation to subsidies and other form of public assistance.

(iv) Other

- **Horizontal**

NT 1-4: Acquisition of real estate, direct and indirect, by foreigners and foreign legal persons requires permission.

SINGAPORE

Singapore's GATS commitments date from the 1997 FS negotiations. For Banking and Other Financial Services, separate commitments are made for individual sub-items; including both 7B.(k) Advisory and other auxiliary financial services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy) and 7B.(l) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

No reference to the "Understanding on Commitments in Financial Services."

- **Advisory and other auxiliary financial services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy**

Mode 1 MA -- commercial presence is required for provision and investment and portfolio research and advice to the public.

Mode 2 MA, and modes 1, 2 NT are bound as "none."

- **Provision and transfer of financial information, and financial data processing and related software by providers of other financial services**

Mode 1 MA -- Unbound except for the provision of financial information by providers such as Reuters and Bloomberg. The Singapore branches of foreign banks can transmit data to their head offices and sister branches for processing provided proper controls exist, the integrity and confidentiality of the data/information are safeguarded, and MAS is allowed on-site access to the data/information at the place where the data/information is processed.

Mode 1 NT -- "None" for the provision of financial information by providers such as Reuters and Bloomberg.

Mode 2 MA -- Only the provision of financial information by providers such as Reuters and Bloomberg is allowed. Mode 2 NT "none".

- **Banking and Other FS (apart from the above)**

Mode 1 MA unbound, NT "none"

Mode 2 MA and NT "none".

(ii) **Establishment/ investment**

GATS bindings

- **Advisory and other auxiliary financial services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy**

Mode 3 MA -- Investment advisers can establish as branches, subsidiaries or representative offices. Representative offices cannot conduct business or act as agents. Mode 3 NT “none”.

- **Provision and transfer of financial information, and financial data processing and related software by providers of other financial services**

Mode 3 MA -- The provision of financial information by providers, such as Reuters and Bloomberg, is allowed. The provision of financial data processing services to banks and merchant banks is subject to domestic laws on protection of confidentiality of information of customers of banks and merchant banks. Mode 3 NT “none”.

- **Banking and Other FS (apart from the above) as may be relevant to FIS/advisory provision**

Commercial Banks

No new full and restricted banks. New foreign banks may establish only as offshore bank branches or representative offices. Representative offices cannot conduct business or act as agents. A single/related group of foreign shareholders can only hold up to 5% of a local bank’s shares; the limit on aggregate foreign ownership of each domestic bank’s shares is 40%.

Merchant banks

Foreign banks and merchant banks may establish as merchant bank subsidiaries or merchant bank branches.

Financial market trading

Banks and merchant banks are required to set up as separate subsidiaries to trade financial futures for customers. Financial futures brokers can establish as branches or subsidiaries. Offer of derivative products subject to (specified prudential criteria).

Securities

Foreign stockbroking firms can establish only as non-members of the Stock Exchange of Singapore; non-members can apply to become Approved Foreign Brokers to trade directly in non-Singapore dollar denominated securities quoted on SES through terminals provided by SES to such AFBs. Representative offices cannot conduct business or act as agents. Unbound for new membership on SES and for foreign acquisition of new and existing equity interests in SES member companies.

Unbound for new international memberships. International members can deal in foreign securities with non-residents and with resident companies which are substantially or beneficially owned by non-residents (other limitations also listed).

Asset management companies, custodial depositories and trust services companies can establish as branches or subsidiaries.

(iii) Entry or temporary stay of services personnel**GATS bindings**

- **Horizontal**

Presence of natural persons unbound, except for intra-corporate transferees (see below)

Temporary movement of skilled personnel unbound except for the temporary movement of intra-corporate transferees at the level of managers, executives and specialists. Intra-corporate transferees refers to managers, executives and specialists, as defined below, who are employees of firms that provide services within Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:

- a) *Managers*: persons within an organisation who primarily direct the organisation, or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.
- b) *Executives*: persons within the organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organisation.
- c) *Specialists*: persons within an organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisation's service, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions).

Entry for these intra-corporate transferees is limited to a three-year period that may be extended for up to two additional years for a total term not to exceed five years.

(iv) Residency/nationality requirements

GATS bindings

• Horizontal

Commercial presence, right of establishment and movement of juridical persons are subject to compliance with the following provisions:

A foreigner who wishes to register a business firm must have a local manager who should be a Singapore citizen or a Singapore Permanent Resident or a Singapore Employment Pass holder. (However, a foreigner who is a Singapore Permanent Resident or a Singapore Employment Pass holder can register a business without appointing a local manager.)

- At least one director of the company must be locally resident

- All branches of foreign companies registered in Singapore must have at least 2 locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or Singapore Permanent Resident or Singapore Employment Pass holder.)

2. OPERATION IN THE MARKET

(i) Licensing/registration/notification

GATS bindings

Not specified except in connection with establishment.

3. OTHER DOMESTIC MEASURES

(i) Restrictions on information and data flows

GATS bindings

As specified for modes 1,2 (see above, section 1(1) cross-border supply).

Applied measures

Foreign banks and financial services companies are not permitted to operate ATM's beyond their full banking premises or to open additional branches. Being barred from the ATM network also hinders foreign banks' ability to compete in the equity market, since 95% of applications for Initial Public Offerings are made at an ATM. However, foreign banks are allowed to offer a computer and telephone banking service and can install electronic terminals at corporate clients' premises.

(ii) Monopolies & exclusive providers

No entries for FS.

(iii) Subsidies

No entries in the Schedule.

Intellectual Property Protection

Singapore has comprehensive copyright legislation, including fully TRIPS-consistent amendments (although it has availed itself of the developing country transition period for TRIPS). However, piracy of software and other materials is reportedly on the increase; the Government has formed task forces to act against piracy alongside its existing self-policing copyright protection system.

SWITZERLAND

Switzerland's GATS bindings date from the 1997 FS negotiations; with commitments made for all sub-items of "7.B. Banking and Other Financial Services" without individual sub-item listings.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

Commitments on banking, securities and insurance services are in accordance with the "Understanding on Commitments in Financial Services" (hereafter "Understanding") and subject to limitations and conditions as contained in Part I (horizontal commitments) and as listed below (i.e. in the FS schedule). It is understood that paragraph B.4 of the "Understanding" does not impose any obligation to allow non-resident financial services suppliers to solicit business.

- **Banking and Other FS (nothing specific listed for FIS of (k) and (l))**

Market Access

National Treatment for mode 2 bound as "none".

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions (nothing specific listed for FIS of (k) and (l))

- **Banking and Other FS**

Market Access limitation for mode 3

Commercial presence may be denied to financial service suppliers whose ultimate shareholders and/or beneficial owners are persons of a non-GATS Member; representative offices can neither conclude or deal business nor act as an agent.

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Market Access

Unbound, except for measures concerning the entry and temporary stay of natural persons (hereafter persons) falling within the following categories, as defined in paragraphs I and II below, and subject to the following limitations and conditions and to the limitations and conditions on national treatment set out under the national treatment column: Entry and stay of foreign service suppliers in Switzerland is subject to authorisation (requirement of residency permit and work permit). Authorisation is granted subject to

measures fixing overall numbers of work permits allocated. For essential personnel as defined in paragraph I below, the period of stay is limited to a period of three years, which may be extended to a maximum of four years. For other essential personnel as defined in paragraph II below, the period of stay is limited to three months within one year; if an authorisation for such a period of stay is renewed the following year, the applicant must stay abroad at least two months between the two consecutive periods of stay in Switzerland. Persons staying in or entering Switzerland with an open-ended or prolongable residence permit based on an employment contract not limited in time for Switzerland are not considered as persons residing in or entering Switzerland for the purpose of temporary stay or temporary employment in Switzerland.

I. Essential persons transferred to Switzerland within a specific business or company (intra-corporate transferees)

Are considered as essential those persons - defined in detail below - who are employees of a business or company (hereafter enterprise) providing services in Switzerland through a branch, subsidiary or affiliate established in Switzerland and who have been beforehand employees of their enterprise outside Switzerland for a period of not less than one year immediately preceding their application for admission:

(a) *Executives and senior managers*: persons who primarily direct the enterprise or one of its departments and who receive only general supervision or direction from high-level executives, the board of directors or the stockholders of the enterprise. Executives and senior managers would not directly perform tasks related to the actual provision of services of the enterprise.

(b) *Specialists*: highly qualified persons who, within an enterprise, are essential for the provision of a specific service by reason of their knowledge at an advanced level of expertise in the field of services, research equipment, techniques or management of the enterprise.

II. Other essential persons moving to Switzerland

(a) *Services sellers*: Persons employed or mandated by an enterprise and who stay temporarily in Switzerland in order to conclude the contract for the sale of a service on behalf of the enterprise which employs them or has mandated them. Services sellers may not sell services directly to the general public or supply services themselves.

(b) *Persons responsible for the setting up of a commercial presence*: Persons who are employees of an enterprise not having commercial presence in Switzerland and who have been beforehand employees of that enterprise outside Switzerland for a time period not less than one year immediately preceding their application for admission, and who fulfil the conditions of paragraph I(a) above, and who are entering Switzerland for the purpose of setting up a commercial presence of that enterprise in Switzerland. Persons responsible for the setting-up of a commercial presence may not engage in making direct sales to the general public or supply services themselves.

(c) *Persons who are employees of an enterprise outside Switzerland* not having commercial presence in Switzerland (other than enterprises providing services as defined by CPC872), which has concluded a services contract with an enterprise engaged in substantive business in Switzerland, and who have been beforehand employees of the enterprise outside Switzerland for a time period of not less than one year immediately preceding their application for admission, and who fulfil the conditions of paragraph I(b) above and who provide a service in Switzerland as a professional of a service sector as set out below on behalf of the enterprise outside Switzerland; as a further requirement five years of related experience is required. Per contract, temporary entry for a limited number of service suppliers will be granted for a single period of three months, the number of service suppliers depending on the size of the task to be performed under the contract. Individual services providers not employed by such enterprise outside Switzerland are considered as persons seeking access to the Swiss employment market. Services sectors:

- Engineering Services (CPC 8672)
- Consultancy Services related to the installation of computer hardware (CPC 841)
- Software Implementation Services (CPC 842)

National treatment

Unbound, except for measures concerning the categories of natural persons referred to in the market access column, subject to the following limitations and conditions: Working conditions prevailing in the branch and the place of activity provided by law and/or collective agreement (with respect to remuneration, working hours, etc.), measures limiting professional and geographical mobility within Switzerland, regulations related to statutory systems of social security and public retirement plans (with respect to qualifying period, residency requirement, etc.), and all other provisions of the legislation relating to immigration, entry, stay and work. The enterprise employing such persons shall cooperate, upon request, with the authorities in charge of the enforcement of these measures. Eligibility for subsidies, tax incentives and tax credits may be limited to persons domiciled in a particular geographical subdivision of Switzerland.

(iv) Residency/nationality requirements**GATS bindings**

- **Horizontal**

Limitations on National Treatment for Mode 3

The majority of the board of directors of a "joint stock company" (*société anonyme /Aktiengesellschaft or société en commandite par actions/Kommanditaktiengesellschaft*) must be Swiss citizens with domicile in Switzerland (except for holding companies). At least one manager of a "corporation with limited liability" (*société à responsabilité limitée/Gesellschaft mit beschränkter Haftung*) must have his domicile in Switzerland. The administrators of a "co-operative society" (*société coopérative /Genossenschaft*) must be composed of a majority of Swiss citizens with domicile in Switzerland. Joint stock companies are not prohibited to foresee in their articles of incorporation that shareholders can be denied registration in the shareholder register, *inter alia* in case federal law requires a certain composition of shareholders.

The establishment of a branch requires a representative (natural person) with domicile in Switzerland who is duly authorised by the company to fully represent it.

The establishment of a commercial presence by natural persons or in the form of an enterprise without juridical personality according to Swiss law (i.e. in a form other than "joint stock company", "co-operation with limited liability" or "co-operative society") is subject to the requirement of a permanent residency permit of the associate(s) by cantonal law.

2. OPERATION IN THE MARKET**GATS bindings****(i) Licensing/registration/notifications**

Commercial presence of foreign financial service suppliers is subject to specific requirements relating to the name of the firm and the regulations on financial institutions in the country of origin.

3. OTHER DOMESTIC MEASURES**GATS bindings****(i) Monopolies & exclusive providers**

No reservations with regard to FIS

(ii) Subsidies

- **Horizontal**

NT for modes 1 and 2 unbound for subsidies, tax incentives and tax credits

NT for mode 3 -- Eligibility for subsidies, tax incentives and tax credits may be limited to persons established in a particular geographical sub-division of Switzerland.

(iii) Other Measures/requirements - Acquisition of Land

- **Horizontal**

Mode 3 National Treatment

The acquisition of real estate by foreigners who are not permanently established in Switzerland and by enterprises with headquarters abroad and/or under foreign control is subject to authorisation. For the purpose of personal housing needs (except the acquisition of holiday residences), professional use and business activities, authorisation is granted upon verification of the purpose. Prohibited are purely financial investments, real estate business operations, acquisition, on a professional basis, of holiday apartments and facilities other than hotels (e.g. apartment houses, camps, sport areas) and acquisition of agricultural real estate.

- **Banking and Other FS**

Mode 1, Mode 3 National Treatment

Acquisition of real estate by foreigners is limited as indicated in Part I; however, foreign or foreign-controlled banks are granted authorisation to acquire property that serves as a security for mortgage loans in case of bankruptcy or liquidation on condition that the acquired sells the property within 2 years from date of acquisition; the issue of foreign collective investment funds is subject to stamp duty.

THAILAND

Thailand's GATS commitments date from the 1997 FS negotiations. For Banking and Other Financial Services, one set of commitments applies to the listed sub-items; these are loosely adapted from W/120 and include deposit and lending banking; financial market trading; asset management; advisory, intermediation and other auxiliary financial services; and provision and transfer of financial information, and financial data processing and related software.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **FS Headnote**

No reference to the "Understanding on Commitments in Financial Services"

- **Banking and Other FS commitments**

Modes 1 and 2 MA bound as "none" for financial advisory and financial data processing; Unbound for all other services.

Modes 1, 2 NT bound as "none".

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Banking and Other FS (as may be relevant to FIS/advisory provision)**

No limitations specific to foreign "financial advisory" services.

Representative offices of banks bound as "none" (MA and NT mode 3)

Foreign bank branches - MA Mode 3 is "none" for existing foreign bank branches under existing shareholding structure. New establishment is subject to licence approved by the Minister of Finance with the consent of the Cabinet. Existing foreign banks established prior to July 1995 will each be permitted to establish no more than 2 additional branches. NT mode 3 "none" except as per MA limitations.

Locally incorporated banks:

I). Market is access limited to the acquisition of shares of existing banks.

II). (i) Maximum foreign equity participation limited to 25% of paid-up registered capital. Combined shareholding of an individual and his/her related persons not to exceed 5% of bank's paid-up registered capital.

(ii) The Minister of Finance upon recommendation of the Bank of Thailand may relax the above-mentioned limits on maximum foreign equity participation and combined shareholding of an individual and his/her related persons, subject to the terms and conditions announced by the Minister of Finance, including the following: the relaxation is deemed necessary to improve the condition or business of the commercial bank; such equity

participation will be authorised for a period of up to 10 years, with foreign shareholders who enter in this period being grandfathered thereafter with respect to the absolute amount of their equity holding.

III). At least 3/4 of the directors must be of Thai nationality; this may be less on the recommendation of the Bank of Thailand to the Minister of Finance subject to terms stated in II(ii) above.

Securities companies (Securities brokerage, securities dealing, investment advisory service and securities underwriting):

I. None for representative offices.

II. Market access limited to share acquisition of existing companies only. Unbound for new licences.

III. Maximum foreign equity participation limited to 49% of paid-up registered capital.

IV. At least 1/2 of the directors of a locally incorporated securities firm must be Thai national.

Asset management companies:

I. None for representative offices.

II. Market access limited to share acquisition of existing companies.

III. During the first five years after the licence has been granted, maximum foreign equity participation is limited to 25% of paid-up registered capital (and at least 3/4 of the directors must be Thai national.

IV. After five years, maximum foreign equity participation is limited to 49% of paid-up registered capital and at least 1/2 of the directors must be Thai national.

(b) Restrictions on form of company

• Horizontal

Unless otherwise specified, commercial presence in sectors or subsectors in this schedule is permitted only through a limited liability company which is registered in Thailand and which meets the following conditions: a) Foreign equity participation must not exceed 49% of the registered capital; and b) The number of foreign shareholders must be less than half of the total number of shareholders of the company concerned.

• Banking and Other FS

As indicated above under Establishment/Ownership.

Applied measures

(a) Investment/ownership restriction (as may be relevant to provision of FIS)

- Thailand has removed equity limits on foreign ownership in banks and financial companies for 10 years, after which new investment will be restricted to 49% ownership. Under the terms of Thailand's 1997 IMF agreement and WTO financial services offer, the absolute amount of investments by foreign financial institutions that enter the market during the 10-year window will be permanently grandfathered.
- Since the 1997 financial crisis, the government has removed ceilings on foreign ownership of banks and finance companies to help recapitalize the financial system.

(iii) Entry and temporary stay of personnel

GATS bindings

• Horizontal

Unless otherwise specified, temporary movement of natural persons is unbound except in the following categories:

a) A natural person who stays in Thailand for not more than 90 days for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities;

b) A corporate transferee of the managerial or executive level or a specialist, provided that such person has been employed by the company concerned outside Thailand for a period of not less than one year immediately preceding the date of his or her application for admission and has satisfied the criteria for management needs¹² stipulated by the Department of Employment. Temporary entry is limited to a one year period and may be extended for a further two terms of not more than one year each.

- **Banking and Other FS**

Limitations on the number of foreign personnel per foreign bank office:

(a) two persons for banks operating as representative office;

(b) six persons for each full-licensed branch;

(c) four persons for each BIBF branch;

(d) two persons for each PIBF branch;

(e) eight persons for banks operating as full-licensed and BIBF branch;

For securities companies and asset and management companies: two persons for a representative office.

(iv) Residency/nationality requirements

GATS bindings

- **Banking and Other FS**

As specified for Establishment/Ownership (section 1(ii) above).

Applied measures

- Foreigners are not allowed to be brokers or sub brokers.

2. OPERATION IN THE MARKET

GATS bindings

(i) Licensing/registration/notification

Nothing specified except as implicitly indicated for Establishment/Ownership.

Applied measures (as may be relevant to provision of FIS)

(ii) Other

A main component of Thailand's 1997 IMF economic program includes measures to tighten prudential controls over and increase transparency in the financial sector. Financial institutions are required to strengthen loan classification guidelines and provisioning rules to align them with international standards by the year 2000. Plans for a deposit insurance scheme - to replace a blanket guarantee implemented after

¹² In considering managerial needs, the following facts shall be taken into consideration by the relevant authority, namely:
1. Size of fully paid-up capital 2. Employment creation 3. Extent of foreign investment 4. Export promotion 5. Transfer of technology 6. Special needs of the management.

the crisis - are to be introduced by 31 December 1998. Finally, the government has also agreed to clarify disclosure and auditing requirements by the end of 1998.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) Monopolies & exclusive providers

No entries for FS

(ii) Subsidies

No entries in the Schedule.

(iii) Other

• **Horizontal**

Regarding acquisition and usage of land according to the Land Code of Thailand, foreign nationals or domestic companies which are deemed foreigners are not allowed to purchase or own land in Thailand. However, they may lease land and own buildings. Foreigners are also allowed to own part of condominium units under the laws and regulations governing the ownership of condominiums.

Intellectual Property Protection

Thailand's new copyright law, which became effective in March 1995, brought it closer to international standards under the TRIPS Agreement and Paris Act of the Bern Convention; and increased fines and sentences for infringes. Enforcement has also improved and the incidence of piracy, including software is reported as falling. Nevertheless, certain provisions in the law are vague, particularly regarding decompilation and government use of software; acts constituting infringement of copyright for software are not clearly defined; judicial proceedings are slow and fines are light.

TURKEY

Turkey's GATS bindings date from the 1997 FS negotiations; and are made for individual sub-items. The section on "Other Financial Services" contains the sub-items 7.B.(o) "provision and transfer of financial information", and (p) advisory, intermediation and other auxiliary services".

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **Horizontal**

MA/NT for modes 1,2 bound as "none".

- **FS Headnote**

Turkey undertakes commitments on Financial Services in accordance with the provisions of the "Understanding on Commitments in Financial Services" (the Understanding). The market access commitments in respect of modes (1) and (2) apply only to the transactions indicated in paragraphs 3 and 4 of the market access section of the Understanding respectively.

- **FIS (Provision and transfer of financial information)**

MA/NT for modes 1,2 bound as "none".

- **FIS (Advisory, intermediation and other auxiliary services)**

MA/NT for modes 1,2 bound as "none".

(ii) Establishment/investment, incl. legal form of company

GATS bindings

- **Horizontal**

All investment to be made within the range of \$50,000 and \$150,000,000 by non residents (natural or juridical persons) through:

- the establishment of incorporated or limited liability companies;
- the purchase of shares including the portfolio investment registered under the Foreign Investment Encouragement Law No. 6224 (portfolio investment, according to the Article No. 15-F of the Decree No. 32 is subject to the registration within the framework of the Law No. 6224, if the investor desires to participate in the board of directors or general assembly of the company, as well as to interfere in the management of it in any other way);
- the opening of branches; and
- the creation of liaison offices,

will be authorised by the General Directorate of Foreign Capital provided that such activities are beneficial to the economic development of Turkey, are in the areas open to the Turkish private sector and do not entail a monopoly or special privilege. The capital must be brought in as foreign exchange.

Authorisation is required for the investments by established foreign-owned enterprises or joint ventures in a new line of business and for participation or take-over of existing enterprises. For the investments in the same line of business, proposals are generally approved as a matter of course.

- **For Banking**

Establishment, which must be in the form of a joint-stock company, and opening of the first branch of a foreign bank, requires authorisation from the Council of Ministers. Additional conditions may be required according to the prevailing circumstances. An operation license is required for collection of deposits or to execute banking operations. Additional branching is subject to meeting of criteria and ratios set by the Undersecretariat of the Treasury. Additional branching may be limited or prohibited if necessary.

- **For the securities market**

For the establishment of capital market institutions (defined in the Capital Market Law as securities intermediary institutions, investment corporations, mutual funds and other capital market institutions permitted to operate in the capital market such as clearing and custodial houses, rating and auditing institutions etc.) the permission of the Capital Market Board is required. If banks or insurance companies apply to the Board to form a mutual fund or to increase fund capital, the opinion of the Undersecretariat of the Treasury has to be obtained. Establishment of branches and agencies by securities intermediary institutions established in Turkey also requires the Board's permission. The permission of the Board is required for obtaining 5% or more of the capital of already established securities intermediary institutions by one shareholder (legal or natural persons).

Intermediary institutions, investment corporations, portfolio management companies and rating agencies can only be established in the form of a joint-stock company.

Establishment of branches and representative offices of foreign non-bank intermediary institutions is not permitted.

Additionally, operations of all capital market institutions and banks are subject to the permission of the Board (which) issues "Authorisation Certificates" for the activities to be carried out by each institution.

Rating agencies should have a know-how agreement with an international rating agency recognised by the Board. In case of partnership with an international rating agency recognised by the Board, the share of the international rating agency shall be not less than 25% of the capital of the domestic rating agency.

- **Other FS "o" and "p"**

Mode 3 MA and NT are bound as "none".

(iii) Entry and temporary stay of personnel

GATS bindings

- **Horizontal**

Unbound except for the entry and temporary stay of natural persons in the following categories:

A. Administrative and technical personnel

Work permits for the employment of the below defined administrative and technical personnel of a foreign service provider in the branch, subsidiary, affiliate or representative office are given by the relevant authorities in accordance with the Foreign Capital Legislation and the other Laws concerning the employment of foreigners. The work permits are valid up to 2 years and subject to renewal after that. In addition to the work permits, the Ministry of Interior gives residence permits for the same personnel for the periods of up to 2 years, which can be extended parallel to the work permit-renewals.

Managers-executives: Persons who primarily direct the organisation or one of its departments and who receive only general supervision or direction from higher-level executives, the board of directors or the stockholders of the organisation.

Specialist: Highly qualified persons who, within an organisation, are indispensable for the provision of a specific service by reason of their knowledge at an advanced level of expertise in the field of services, research equipment, techniques or management of the organisation.

B. Service sellers

It is not necessary to obtain work permits and residence permits for natural persons (service sellers as defined below) who stay in Turkey for not more than 30 days, for the purpose of participating in business meetings, business contracts including negotiations for the sale of services, entry into contract to sell services and visit of business establishments, or other similar activities.

Service sellers: Defined as persons employed or mandated by an organisation and who stay temporarily in another signatory country in order to conclude the sale of service on behalf of the organisation which employs them or has mandated them. Service sellers may not sell services directly to the general public.

(iv) Residency/nationality requirements

GATS bindings

• **Banking and Other FS**

MA mode 4 for (m) Asset management and portfolio management -- The majority of the members of the board of directors of an investment corporation must have Turkish nationality.

Mode 4 MA bound as “none” for all other sub-items, including (p) and (o).

2. OPERATION IN THE MARKET

Licensing requirements as set out under 1(ii)(a) above.

3. OTHER DOMESTIC MEASURES

GATS bindings

(i) monopolies & exclusive providers

No entries in the Schedule

(ii) subsidies

No reference in the Schedule

(iii) other

• **Horizontal**

Foreign firms are permitted to acquire real estate in Turkey pursuant to Foreign Investment legislation provided that the real estate to be acquired is related to the investor's permitted activities. However, foreign-controlled enterprises are prohibited from engaging in real estate trading.

UNITED STATES OF AMERICA

The USA's GATS bindings date from the 1997 FS negotiations. For "7.B. Banking and Other Financial Services", commitments listed apply to all sub-items thereof except as may be specifically provided therein.

1. MARKET ACCESS

(i) Cross-border supply

GATS bindings

- **Headnote to 7.B. Banking and Other FS**

Commitments in these subsectors are undertaken in accordance with the Understanding on Commitments in Financial Services (the "Understanding"), subject to the limitations and conditions set forth in these headnotes and the schedule.

The market access commitments in these subsectors in respect of modes (1) and (2), as described in paragraphs 2(a) and (b) of Article I of the Agreement, are limited to the services indicated in paragraphs B.3(c) and B.4(c) of the market access section of the Understanding, respectively; it is understood that paragraph B.4 of the Understanding does not require that non-resident financial service suppliers be permitted to solicit business, and no commitment to such solicitation is undertaken.

- **Specific commitments for Banking and Other FS**

Modes 1 and 2 bound as "none" for market access, apart from two limitations (Michigan limits banks in which corporate credit unions may place deposits; and there is a US-wide prohibition on futures and options trading for onions).

Modes 1 and 2 bound as "none" for national treatment.

(ii) Establishment/investment

GATS bindings

(a) Investment/ownership restrictions

- **Banking and Other FS**

There are no mode 3 market access limitations for FIS of 7B(k) or (l); or for investment banks, brokerage firms, etc.

(b) Restrictions on form of company

- **Headnote on Banking and Other FS**

Service suppliers choosing to supply a service through a juridical person constituted under the laws of the United States are subject to non-discriminatory limitations on juridical form; and the offer of new financial services or products is subject, on a non-discriminatory basis, to relevant institutional and juridical form requirements.

- **Banking and Other FS**

No additional limitations listed.

(iii) Entry and temporary stay of services personnel**GATS bindings**

- **Horizontal**

- Unbound, except for measures concerning temporary entry and stay of nationals of another member who fall into the categories listed below:

Services Salespersons: persons not based in the territory of the United States, who are engaged in activities related to representing a service supplier for the purpose of negotiating for the sale of the services of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service. Entry for persons named in this section is limited to a ninety-day period.

Intra-corporate Transferees: managers, executives and specialists, as defined below, who are employees of firms that provide services within the United States through a branch, subsidiary, or affiliate established in the United States and who have been in the prior employ of their firm outside the United States of a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:

a) *Managers:* persons within an organisation who primarily direct the organisation, or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.

b) *Executives:* persons within the organisation who primarily direct the management of the organisation, establish the goals and policies of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of a service or services of the organisation.

c) *Specialists:* persons within an organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions.)

Entry for persons named in this section is limited to a three-year period that may be extended for up to two additional years for a total term not to exceed five years.

Personnel Engaged in Establishment: A person who has been employed in the immediately preceding year by an entity described in Section II, receiving remuneration from that source, who occupies a managerial or executive position with that entity and is entering the territory of the United States for the purpose of establishing an entity described in Section II that will support employment of persons named in paragraphs a), b), and c) therein. The subject persons shall present proof of acquisition of physical premises for the entity that shall commence its business operations within one year of the date of entry of that person.

Fashion Models and Specialty Occupations: Up to 65 000 persons annually on a worldwide basis in occupations as set out in 8 USC. § 1101 (a) (15) (H) (i) (b), consisting of (i) fashion models who are of distinguished merit and ability; and (ii) persons engaged in a specialty occupation, requiring (a) theoretical and practical application of a body of highly specialised knowledge; and (b) attainment of a bachelor's or higher degree in the specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Persons seeking admission under (ii) above shall possess the following qualifications: (a) full licensure in a US state to practice in the occupation, if such licensure is required to practice in the occupation in that state; and (b) completion of the required degree, or experience in the specialty equivalent to the completion of the required degree and recognition of expertise in the specialty through

progressively responsible positions relating to the specialty. Entry for persons named in this section is limited to three years.

Specialty occupation aliens and their employers must be in compliance with all labour condition application requirements that are attested to by the established employer. These requirements are:

a) wages paid to the person are the greater of: 1) the actual wage paid by the employer to individuals in that place of employment with similar qualifications and experience, or 2) the prevailing wage for that occupational classification in the area of employment; b) conditions of work are such that they will not adversely affect working conditions for those similarly employed; c) there is no strike or lockout in the course of a labour/management dispute in progress at the place of employment affecting the subject occupation; labour/management dispute in progress at the place of employment; d) the employer has not laid off or otherwise displaced workers in the subject occupation in the previous six months and will not lay off or displace any US worker during the 90-day period following the filing of an application or the 90-day periods preceding and following the filing of any visa petition supported by the application; e) the employer has taken and is taking timely and significant steps to recruit and retain sufficient US workers in the specialty occupation; and f) notice is given at the time of application by the employer to employees or their representatives at the place of employment.

(iv) Residency/nationality requirements

GATS bindings

• **Banking and Other FS**

None specified, other than that all directors of a national bank must be US citizens unless a national bank is an affiliate or subsidiary of a foreign bank, in which case only a majority of the board need be US citizens; and boards of directors of depository financial institutions organised under various states laws are subject to US citizenship requirements.

2. OPERATION IN THE MARKET

GATS bindings

(i) Licensing/registration/notifications

• **Banking and Other FS**

Mode 3 NT limitations only -

Foreign Banks are required to register under the Investment Advisers Act of 1940 to engage in securities advisory and investment management services in the United States, while domestic banks are exempt from registration. The registration requirement involves record maintenance, inspections, submission of reports and payment of a fee.

State requirements for direct branches or agencies of foreign banks to register under securities broker-dealer or investment adviser measures, while bank subsidiaries of foreign banks are exempt from such registration to the same extent as domestic banks incorporated in the state (Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington. These limitations do not apply to Federally licensed branches or agencies.

(ii) Other operating restrictions

- **Banking and Other FS**

Mode 3 NT limitations only -

Commodities transactions by foreign bank branches and agencies but not by other depository financial institutions, are restricted in Arizona, California, Idaho, Indiana, Iowa, Mississippi, Missouri, Nebraska, New Hampshire, Washington.

Offers and sales of securities to foreign bank branches and agencies in some states are subject to regulation/disclosure requirements that do not apply if the transaction involves other financial institutions (Illinois, Indiana, Louisiana, Montana, Nebraska, New Jersey, North Dakota, Tennessee). Applies to branches and agencies of all foreign financial institutions.

3. OTHER DOMESTIC MEASURES**GATS bindings****(i) Monopolies & exclusive providers**

None listed.

(ii) Subsidies

- **Horizontal**

MA/NT modes 1, 2: unbound

NT modes 3/4

The Federal Overseas Private Investment Corporation (OPIC) insurance and loan guarantees are not available to certain aliens, foreign enterprises, and foreign-controlled enterprises established in the United States

Trade and Development Agency financing is limited to:

I. individuals 1) who are either US citizens or non-US citizens lawfully admitted for permanent residence in the United States and 2) whose principal places of business are in the United States, or

II. privately-owned commercial corporations or partnerships that are incorporated or legally organised under the laws of the United States and whose principal places of business are in the United States and (1) that are more than 50% beneficially owned by individuals who are US citizens or (2) that have been incorporated or legally organised in the United States for more than 3 years, have performed similar services in each of the prior 3 years, and employ US citizens in more than half of their permanent full-time positions in the United States and have the existing capability in the United States to perform the contract

Unbound for measures at the federal, state or local levels that accord rights or preferences to members of socially or economically disadvantaged groups in the United States, including:

Federal Small Business Administration - loans are restricted to US citizens or companies that are 100% owned by US citizens and whose directors are all US citizens

Maine: The Maine Veterans Small Business Loan Guarantee Program provides guarantees to eligible resident veterans for business loans from local lending institutions. A qualifying business is one that is independently owned and operated in Maine, and the applicant must be a war veteran. The Small Business Loan Guarantee Program in Maine provides guarantees of loans made by private lenders to eligible residents of Maine for business purposes.

Maryland: The Maryland Small Business Development Financing Authority makes direct loans to socially or economically disadvantaged business persons. Applicants must be US citizens and have a business that is 70% owned by socially or economically disadvantaged persons. Applicants for the Maryland Small Business Surety Bond Guarantee Program must be US citizens and, if entities, must have their principal places of business in Maryland.

Minnesota: Community Development Corporations are only eligible to receive grants if 60% of their directors are residents of the specific geographic community in Minnesota within which they will operate.
Oregon: Oregon law requires that the Economic Development Corporation (EDC) give preference in OBDF loans to businesses owned in whole or in part by dislocated timber workers.
Pennsylvania: Minority Business Development Authority provides long-term low interest loans to minority-owned businesses. Applicants must be Blacks, Aleuts, Eskimos, Hispanics or American Indians who are residents of Pennsylvania.

(iii) Other (Land Acquisition and Taxation)

GATS bindings

• **Horizontal**

Acquisition of land: MA “none” , some state limitations for NT

Taxation measures: At the federal level, with respect to direct taxes:

Differential tax treatment may be provided between trusts created or organised in the United States to provide employee benefits and trusts not created or organised in the United States and their respective beneficiaries. Such provisions affect the taxation of the income of the trust or the beneficiary, the availability of deductions to taxpayers for contributions to the trust, and tax administration requirements; these provisions include different rules for allowing deductions to, and determining the earnings of, foreign employee benefit plans.

An increase in the rate or a widening of the base of a federal income tax may be imposed on a national, resident or corporation of a foreign country where a national, resident or corporation of the United States is being subjected to discriminatory or extraterritorial taxes (as described in section 891 or section 896 of the Internal Revenue Code).

Taxation measures: At the federal level, with respect to taxes other than direct taxes:

An excise tax may be imposed in connection with transfers of any property by a citizen or resident of the United States, or by a domestic entity (corporations, partnership, estate or trust) to a foreign entity (corporation partnership, estate or trust).

An excise tax may be imposed on US source gross investment income of foreign organisations that are private foundations.