

ANNEX 8-B

FINANCIAL SERVICES

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. Commitments under this Chapter are undertaken subject to the limitations and conditions set forth in these Introductory Notes and the Schedule below.
2. To clarify Australia's commitments with respect to Article 8.3 (Market Access), juridical persons supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form¹.
3. Australia's commitments with respect to cross-border supply (Mode 1) and consumption abroad (Mode 2) of financial services under this Agreement do not require Australia to permit those financial service suppliers to do business or solicit in its Area. Australia may define "doing business" and "solicitation" for the purposes of this obligation.
4. For greater certainty, further to paragraph 2(d) of the Explanatory Notes to this Annex, the **Description** element of each of Australia's entries in Section B – Part I is to be interpreted in accordance with the relevant cited sources of the non-conforming measures.
5. Without prejudice to other means of prudential regulation of cross-border supply in financial services, Australia may require the registration or authorisation of cross-border financial service suppliers of Hong Kong, China and of financial instruments.
6. For Australia, **collective investment scheme** means a "managed investment scheme" as defined under Section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of Subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:
 - (a) carries on a business of investment in securities, interests in land, or other investments; and
 - (b) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of Section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested.

¹ For example, partnerships are generally not acceptable juridical forms for authorised depository institutions in Australia. This Introductory Note is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of Hong Kong, China between branches or subsidiaries.

7. Australia reserves the right to maintain and to add to Section B – Part 1 of this Schedule any non-conforming measure at the regional level of government that existed at January 1, 2005, but was not listed in Section B – Part 1 of this Schedule at the date of entry into force of this Agreement against the following obligations of this Chapter:

- (a) Article 8.4 (National Treatment);
- (b) Article 8.5 (Most-Favoured-Nation Treatment); or
- (c) Article 8.7 (Senior Management and Boards of Directors).

8. Any existing non-conforming measure that is maintained and added to Section B – Part 1 of this Schedule pursuant to paragraph 7 shall include any amendment to that non-conforming measure since January 1, 2005, to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment.

Section A and Section B – Part I

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	<u>Section A</u>	<u>Section B – Part I</u>
HORIZONTAL COMMITMENTS		
		<p>Obligations Concerned: Senior Management and Boards of Directors (Article 8.7)</p> <p>Level of Government: Central</p> <p>Measures: <i>Corporations Act 2001 (Cth)</i> <i>Corporations Regulations 2001 (Cth)</i></p> <p>Description: At least one director of a private company must ordinarily be resident in Australia.</p> <p> At least two directors of a public company must ordinarily be resident in Australia.</p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
SECTOR-SPECIFIC COMMITMENTS		
<u>Insurance and Insurance-related Services</u>		
	<p>1) 2) Unbound, except none for:</p> <p>(a) insurance of risks relating to:</p> <p style="padding-left: 40px;">(i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and</p> <p style="padding-left: 40px;">(ii) goods in international transit;</p> <p>(b) reinsurance and retrocession;</p>	<p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Central</p> <p>Measures: <i>Life Insurance Act 1995 (Cth)</i></p> <p>Description: Approval of non-resident life insurers is restricted to subsidiaries incorporated under Australian law.</p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>(c) insurance intermediation, as referred to in subparagraph (c) of Annex 8-A, related to the services listed in subparagraph (a) and subparagraph (b) above; and</p> <p>(d) services auxiliary to insurance as referred to in subparagraph (d) of Annex 8-A.</p> <p>3) Approval of non-resident life insurers is restricted to subsidiaries incorporated under Australian law.</p> <p>Most State and Territory Governments maintain restrictions, by way of monopolies or licensing provisions and associated controls on premiums and other terms of policies, in the following areas of insurance:</p>	

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>Compulsory Third Party Motor Vehicle Accident: Victoria, Western Australia, Tasmania, the Northern Territory (monopolies), New South Wales, Queensland, South Australia, the Australian Capital Territory (licensing, premiums/policy terms).</p> <p>Workers Compensation: South Australia, Victoria, Queensland (monopoly), New South Wales, Western Australia, Tasmania, and the Northern Territory (licensing, premiums/policy terms).</p>	
<u>Banking and Other Financial Services (excluding insurance)</u>		
	<p>1) Unbound, except none for:</p> <p>(a) provision and transfer of financial information, and financial data processing and related software as</p>	<p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Central</p> <p>Measures: <i>Commonwealth Banks Act 1959 (Cth)</i></p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>referred to in subparagraph (o) of Annex 8-A;</p> <p>(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of Annex 8-A;</p> <p>(c) investment advice to a collective investment scheme located in the Area of Australia; and</p> <p>(d) portfolio management services to a collective investment scheme located in the Area of Australia, excluding:</p> <p style="padding-left: 20px;">(i) trustee services; and</p> <p style="padding-left: 20px;">(ii) custodial services and execution services that are not</p>	<p>Description: Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.</p> <p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Central</p> <p>Measures: <i>Banking Act 1959 (Cth)</i> <i>Payment Systems (Regulation) Act 1998 (Cth)</i></p> <p>Description: A foreign bank located overseas is able to offer its services to Australian enterprises, but is not allowed to raise deposit funds in Australia or undertake business within Australia unless it is an authorised bank (or establishes a money market corporation, subsidiary, etc.).</p> <p>Foreign banks located overseas may, however, raise funds in Australia through the issue of debt</p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>related to managing a collective investment scheme²,</p> <p>subject to the other limitations set out below.</p> <p>2) None</p> <p>1) 3) A foreign bank located overseas is able to offer its services to Australian enterprises, but is not allowed to raise deposit funds in Australia or undertake business within Australia unless it is an authorised bank (or establishes a money market corporation, subsidiary, etc.).</p> <p>Foreign banks located overseas may, however, raise funds in Australia through the issue of debt securities provided that those securities are offered or traded in</p>	<p>securities provided that those securities are offered or traded in parcels of not less than 500,000 Australian dollars and the securities and any information memoranda clearly state the issuing bank is not authorised under the <i>Banking Act 1959</i> (Cth) in Australia.</p> <p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Central</p> <p>Measures: <i>Banking Act 1959</i> (Cth) <i>Payment Systems (Regulation) Act 1998</i> (Cth)</p> <p>Description: A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than 250,000 Australian dollars.</p>

² Custodial services are included in subparagraph (c) only with respect to investments for which the primary market is outside of the Area of Australia.

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>parcels of not less than 500,000 Australian dollars and the securities and any information memoranda clearly state the issuing bank is not authorised under the <i>Banking Act 1959</i> (Cth) in Australia.</p> <p>1) 3) A number of State and Territory Governments operate central financing authorities through which the Government's wholly or partly-owned statutory authorities and business enterprises are obliged to borrow, and in some cases invest, their funds, or otherwise obtain certain financial services:</p> <p style="padding-left: 40px;">South Australia – South Australian Government Financing Authority, Local Government Finance Authority of South Australia</p> <p style="padding-left: 40px;">Tasmania – The Tasmanian Public Finance Corporation</p>	<p>A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.</p> <p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Regional</p> <p>Measures: <i>Credit (Administration) Act 1984</i> (WA) <i>Credit (Administration) Regulations 1985</i> (WA) <i>Debt Collectors Licensing Act 1964</i> (WA) <i>Debt Collectors Licensing Regulations 1964</i> (WA) <i>Finance Brokers Control Act 1975</i> (WA) <i>Finance Brokers Control (General) Regulations 2005</i> (WA)</p> <p>Description: Western Australia</p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>New South Wales – New South Wales Treasury Corporation</p> <p>Victoria – Treasury Corporation of Victoria</p> <p>Queensland – Queensland Treasury Corporation, Queensland Investment Corporation</p> <p>Northern Territory – Northern Territory Treasury Corporation</p> <p>Western Australia – Western Australia Treasury Corporation</p> <p>3) A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate</p>	<p>A natural person (whether alone or in partnership with other persons) or an incorporated body seeking to carry on a business of providing credit in Western Australia (including where the provision of the credit is connected with the carrying on of another business), must have a principal office in Australia and a principal place of business in Western Australia.</p> <p>Any person, including an incorporated body, seeking to exercise or carry on the business or any functions of a debt collector in Western Australia must have a principal place of business in the State.</p> <p>A natural person seeking to carry on business as a finance broker in Western Australia must ordinarily be resident in Western Australia. A finance broker must have a registered office in</p>

Modes of supply: 1) Mode 1 2) Mode 2 3) Mode 3

Section A and Section B – Part I		
Sector or subsector	Terms, limitations and conditions in relation to Article 8.3 (Market Access)	Existing non-conforming measures not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment) or Article 8.7 (Senior Management and Boards of Directors)
	Section A	Section B – Part I
	<p>institutions of less than 250,000 Australian dollars.</p> <p>A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.</p>	<p style="text-align: right;">Western Australia while carrying on business as a broker.</p> <p>Obligations Concerned: National Treatment (Article 8.4)</p> <p>Level of Government: Regional</p> <p>Measures: <i>Second-hand Dealers and Pawnbrokers Act 2003 (QLD)</i></p> <p>Description: Queensland</p> <p>A person operating as a second-hand dealer or as a pawnbroker must have a principal place of business in Queensland where a document can be serviced personally. A post office box does not suffice.</p>

Section B

Part II

AU-1.

Sector	Financial Services
Subsector	All
Obligations Concerned	National Treatment (Article 8.4) Senior Management and Boards of Directors (Article 8.7)
Description	Australia reserves the right to adopt or maintain any measure with respect to the guarantee by government of government-owned entities whose operations include the provision of financial services, including guarantees related to the privatisation of such entities.
Existing Measures	

AU-2.

Sector	Financial Services
Subsector	Insurance and insurance-related services
Obligations Concerned	National Treatment (Article 8.4)
Description	<p>Australia reserves the right to adopt or maintain any measure with respect to insurance and insurance-related services in relation to the supply of a financial service from the Area of Hong Kong, China into the Area of Australia (cross-border supply, Mode 1) and the supply of a financial service in the Area of Hong Kong, China to a person of Australia (consumption abroad, Mode 2) except for the following services:</p> <ul style="list-style-type: none">(a) insurance of risks relating to:<ul style="list-style-type: none">(i) maritime shipping, commercial aviation, and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and(ii) goods in international transit;(b) reinsurance and retrocession;(c) insurance intermediation, as referred to in subparagraph (c) of Annex 8-A, related to the services listed in subparagraph (a) and subparagraph (b) above; and(d) services auxiliary to insurance as referred to in subparagraph (d) of Annex 8-A.

Australia reserves the right to adopt or maintain any amendment to a measure with respect to the services listed in subparagraph (a), subparagraph (b), subparagraph (c) and subparagraph (d) above, in relation to cross-border supply (Mode 1) and consumption abroad (Mode 2), that does not increase the inconsistency of that measure with

the treatment provided for in Article 8.4 (National Treatment) as it existed on the date of entry into force of this Agreement.

Existing Measures

AU-3.

Sector	Financial Services
Subsector	Banking and other financial services (excluding insurance)
Obligations Concerned	National Treatment (Article 8.4)

Description Australia reserves the right to adopt or maintain any measure with respect to banking and other financial services (excluding insurance) in relation to the supply of a financial service from the Area of Hong Kong, China into the Area of Australia (cross-border supply, Mode 1) except for the following services:

- (a) provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of Annex 8-A and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of Annex 8-A;
- (b) investment advice to a collective investment scheme located in the Area of Australia; and
- (c) portfolio management services to a collective investment scheme located in the Area of Australia, excluding:
 - (i) trustee services; and
 - (ii) custodial services and execution services that are not related to managing a collective investment scheme³.

Australia reserves the right to adopt or maintain any amendment to a measure with respect to the financial services:

- (a) listed in subparagraph (a), subparagraph (b) and subparagraph (c) above in relation to the supply of a financial service from the Area of

³ Custodial services are included in paragraph (c) only with respect to investments for which the primary market is outside of the Area of Australia.

Hong Kong, China into the Area of Australia (cross-border supply, Mode 1); and

- (b) referred to in subparagraphs (e) through (p) of Annex 8-A in relation to the supply of a financial service in the Area of Hong Kong, China to a person of Australia (consumption abroad, Mode 2),

that does not increase the inconsistency of that measure with the treatment provided for in Article 8.4 (National Treatment) as it existed on the date of entry into force of this Agreement.

Existing Measures