

# FREE TRADE AGREEMENT BETWEEN HONG KONG, CHINA AND THE REPUBLIC OF PERU

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong, China) and the Government of the Republic of Peru (Peru), hereinafter referred to as "the Parties", resolving to:

ESTABLISH a comprehensive agreement that promotes economic integration to liberalise trade and investment, bring economic growth and social benefits, create new opportunities for workers and businesses, contribute to raising living standards, benefit consumers and promote sustainable growth;

STRENGTHEN the bonds of friendship and cooperation between the Parties;

BUILD on their respective rights and obligations under the WTO Agreement, and other agreements negotiated thereunder to which the Parties are party, thereby contributing to the harmonious development and expansion of world trade;

FACILITATE trade and investment by reducing and eliminating barriers to trade and investment between the Parties and establishing a predictable legal and commercial framework for trade and investment through mutually advantageous rules;

RECOGNISE that micro, small and medium-sized enterprises contribute significantly to economic growth, employment and innovation, and that the growth and development of those enterprises improves their ability to benefit from the opportunities created by this Agreement;

FACILITATE trade between the Parties by promoting efficient, transparent and predictable customs procedures;

RECOGNISE their right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare and protect legitimate public welfare objectives; and

ESTABLISH this Agreement with the desire to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time;

HAVE AGREED as follows:

## Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

### Section A. Initial Provisions

#### **Article 1.1. Establishment of a Free Trade Area**

The Parties, consistent with Article XXIV of GATT 1994 and Article V of GATS, hereby establish a free trade area in accordance with the provisions of this Agreement.

#### **Article 1.2. Relation to other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under international agreements to which the Parties are party, including the WTO Agreement.
2. In the event of any inconsistency (1) between this Agreement and any other international agreement to which the Parties are party, the Parties shall immediately consult with a view to finding a mutually satisfactory solution.

(1) For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

## **Section B. General Definitions**

### **Article 1.3. General Definitions**

For the purposes of this Agreement, unless otherwise provided:

AD Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

Agreement means the Free Trade Agreement between Hong Kong, China and the Republic of Peru;

APEC means Asia-Pacific Economic Cooperation;

Area in respect of:

(a) Hong Kong, China means the Hong Kong Special Administrative Region as delineated by the Order of the State Council of the People's Republic of China No. 221 dated July 1, 1997; and

(b) Peru means the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (Constitución Política del Perú) and other relevant domestic law and international law;

customs administration means:

(a) for Hong Kong, China, the Customs and Excise Department of Hong Kong, China; and

(b) for Peru, the National Superintendence of Customs and Tax Administration (Superintendencia Nacional de Aduanas y de Administración Tributaria - SUNAT), or its successor;

customs duty means any duty or charge of any kind imposed in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(b) fee or other charge that is covered by Article VIII of GATT 1994; or

(c) anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the AD Agreement and the SCM Agreement;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

day means a calendar day;

enterprise means:

(a) any entity constituted or organised under applicable laws, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; or

(b) a branch of an enterprise;

existing means in effect on the date of entry into force of this Agreement;

GATS means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

good means any merchandise, product, article or material;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes as adopted and implemented by the Parties in their respective laws;

heading means the first four digits in the tariff classification number under the Harmonized System;

Joint Commission means the Joint Commission established under Article 17.1 (Establishment of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions);

measure includes any law, regulation, procedure, requirement or practice;

natural person of a Party means a natural person who under the law of the Party:

(a) for Hong Kong, China, is a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China; and

(b) for Peru, is a person who has the nationality of Peru by birth, naturalisation or option in accordance with the Political Constitution of Peru (Constitución Política del Perú) and other relevant domestic legislation, or a permanent resident;

originating means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures);

person means a natural person or an enterprise;

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;

SME means a small and medium-sized enterprise, including a micro-sized enterprise;

subheading means the first six digits in the tariff classification number under the Harmonized System;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement, as revised or amended from time to time by a revision or amendment that applies to the Parties and including any waiver of any provision thereof granted pursuant to the proper procedures as stated in the WTO Agreement;

WTO means the World Trade Organization; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on April 15, 1994.

## **Section C. Interpretations**

### **Article 1.4. Interpretations**

For the purposes of this Agreement, unless otherwise provided:

(a) for Hong Kong, China, any reference to an international agreement to which a Party is a party shall include an international agreement made applicable to Hong Kong, China, and any reference to the rights, obligations or undertakings of a Party under an international agreement shall include the rights, obligations or undertakings made applicable to Hong Kong, China under such an international agreement;

(b) for Hong Kong, China, if an expression is qualified by the term "national", such expression shall be interpreted as pertaining to Hong Kong, China; and

(c) if anything under this Agreement is to be done within a number of days:

(i) of a specified date or event, the specified date or the date on which the specified event occurs shall be included in calculating that number of days; or

(ii) after, from or before a specified date or event, the specified date or the date on which the specified event occurs shall not be included in calculating that number of days.

## **Chapter 2. TRADE IN GOODS**

### **Section A. Definitions and Scope**

#### **Article 2.1. Definitions**

For the purposes of this Chapter:

agricultural goods means those products referred to in Article 2 of the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;

duty-free means free of customs duty;

export subsidy means an export subsidy as defined in Article 1(e) of the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement, including any amendment of that Article;

import licensing means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs clearance purposes) to the relevant administrative body as a prior condition for importation into the Area of the importing Party; and

Import Licensing Agreement means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement.

## **Article 2.2. Scope of Application**

Unless otherwise provided in this Agreement, this Chapter shall apply to trade in goods between the Parties.

## **Section B. National Treatment**

### **Article 2.3. National Treatment**

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. Paragraph 1 shall not apply to the measures set out in Annex 2-A.

## **Section C. Elimination of Customs Duties**

### **Article 2.4. Elimination of Customs Duties**

1. Unless otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.

2. Unless otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party in accordance with its Schedule to Annex 2-B.

3. On request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-B.

4. An agreement between the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to their Schedules to Annex 2-B for such good. Such agreement shall be adopted by the Joint Commission pursuant to Article 17.2.2(d) of Chapter 17 (Administrative and Institutional Provisions).

5. For greater certainty, a Party may:

(a) raise a customs duty to the level set out in its Schedule to Annex 2-B, following a unilateral reduction for the respective year; or

(b) maintain or increase a customs duty as authorised by the Dispute Settlement Body of the WTO or in accordance with Chapter 18 (Dispute Settlement).

## **Section D. Special Regimes**

### **Article 2.5. Temporary Admission of Goods**

Each Party shall allow, as provided for in its laws and regulations, temporary admission of goods to be brought into its Area conditionally relieved, totally or partially, from payment of customs duty if such goods:

(a) are brought into its Area for a specific purpose;

(b) are intended for re-exportation within a specific period; and

(c) have not undergone any change except normal depreciation and wastage due to the use made of them.

## **Article 2.6. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials**

Each Party shall, in accordance with its laws and regulations, grant duty-free entry to commercial samples of negligible value, and to printed advertising materials (1), imported from the Area of the other Party, regardless of their origin, but may require that:

(a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the Area, of the other Party or a non-party; or

(b) printed advertising materials be imported in packets that each contains no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

(1) For greater certainty, printed advertising materials refer to materials essentially intended to advertise a good or service and are supplied free of charge.

## **Section E. Non-Tariff Measures**

### **Article 2.7. Import and Export Restrictions**

1. Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the Area of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. For greater certainty, the Parties understand that the rights and obligations incorporated by paragraph 1 prohibit a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings; or

(b) voluntary undertakings inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. Paragraph 1 and paragraph 2 shall not apply to the measures set out in Annex 2-A.

### **Article 2.8. Import Licensing**

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement. To this end, the Import Licensing Agreement is incorporated into and made part of this Agreement, mutatis mutandis.

2. Each Party shall, promptly after the date of entry into force of this Agreement, notify the other Party of its existing import licensing procedures. Thereafter, each Party shall notify the other Party of any new import licensing procedure and any modification to its existing import licensing procedures within 60 days of its publication. A notification provided in accordance with this Article shall include the information specified in Articles 5.2, 5.3 and 5.4 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with the obligations under this paragraph if it has notified a new licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing.

3. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on its official government website(s). The Party shall do so, whenever practicable, 21 days prior to the effective date of the requirement but in all events no later than such effective date.

### **Article 2.9. Administrative Fees and Formalities**

1. Each Party shall ensure that all fees and charges of whatever character imposed on or in connection with the importation or exportation of goods are consistent with Article VIII:1 of GATT 1994.

2. Neither Party shall require legalisation of commercial invoices, certificates of origin or other documentation requested by the customs administration, including related fees and charges, in connection with the importation of a good of the other Party.

3. Each Party shall make publicly available online the fees and charges it imposes in connection with importation or exportation.

## **Article 2.10. State Trading Enterprises**

The rights and obligations of the Parties with respect to state trading enterprises shall be governed by Article XVII of GATT 1994, its interpretative notes and the Understanding on the Interpretation of Article XVII of GATT 1994. To this end, Article XVII of GATT 1994, its interpretative notes and the Understanding on the Interpretation of Article XVII of GATT 1994 are incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 2.11. Agricultural Export Subsidies**

Neither Party shall introduce or maintain any export subsidy on any agricultural good destined for the Area of the other Party.

# **Chapter 3. RULES OF ORIGIN AND ORIGIN PROCEDURES**

## **Article 3.1. Definitions**

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

authorised body means any body authorised under the laws and regulations of a Party to issue a Certificate of Origin;

CIF means the value of the good imported, inclusive of the cost of insurance and freight up to the port or place of entry into the importing Party;

competent authority means:

(a) for Hong Kong, China, the Trade and Industry Department; and

(b) for Peru, the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR), or its successor;

FOB means the value of the good free on board, inclusive of the cost of transportation to the port or site of final shipment abroad, regardless of the means of transportation;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

generally accepted accounting principles means those principles recognised by consensus or with substantial authoritative support in a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application as well as detailed standards, practices and procedures;

identical goods means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

indirect material means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the good;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and moulds;

(e) spare parts and materials used in the maintenance of equipment and buildings;

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good;

non-originating good or non-originating material means a good or material that does not qualify as originating in accordance with this Chapter;

originating good or originating material means a good or material that qualifies as originating in accordance with this Chapter;

packing material and container for shipment means a good used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good; and

production means methods of obtaining a good including growing, cultivating, harvesting, picking, gathering, raising, breeding, hunting, trapping, fishing, capturing, aquaculture, mining, collecting, extracting, manufacturing, processing or assembling a good.

## **Article 3.2. Originating Goods**

Unless otherwise provided in this Chapter, a good is originating if it is:

(a) wholly obtained or produced entirely in the Area of one or both Parties, in accordance with Article 3.3;

(b) produced entirely in the Area of one or both Parties, exclusively from originating materials; or

(c) produced entirely in the Area of one or both Parties using non-originating materials, provided the good satisfies all applicable requirements of Annex 3-B,

and the good satisfies all other applicable requirements of this Chapter.

## **Article 3.3. Wholly Obtained or Produced Goods**

For the purposes of Article 3.2(a), a good is wholly obtained or produced entirely in the Area of one or both Parties if it is:

(a) a plant or plant good grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) through (e), extracted or taken from there;

(g) fish, shellfish, other goods of sea-fishing and other marine life taken from the sea, seabed or subsoil outside the Areas of the Parties, in accordance with international law, by a vessel that is registered or recorded with a Party and entitled to fly the flag of that Party;

(h) a good obtained or produced exclusively from goods referred to in subparagraph (g) on board a factory ship that is registered or recorded with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish, other goods of sea-fishing and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the Areas of the Parties, and beyond areas over which non-parties exercise jurisdiction, provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(j) waste or scrap derived from:

(i) production carried out there; or

(ii) used goods collected there,

provided that those goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.

### **Article 3.4. Regional Value Content**

1. A regional value content requirement specified in this Chapter is calculated as follows:

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

where:

RVC is the regional value content of a good, expressed as a percentage;

FOB is defined in Article 3.1; and

VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of a good.

2. The value of the non-originating materials shall be:

(a) the CIF value at the time of importation of the materials; or

(b) the earliest ascertained price paid or payable for the non-originating materials in the Area of the Party where the working or processing takes place. When the producer of a good acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the materials from the supplier's warehouse to the producer's location.

3. The values referred to in this Article shall be determined in accordance with the Customs Valuation Agreement.

### **Article 3.5. Accumulation**

1. Originating materials of a Party incorporated into a good in the Area of the other Party shall be considered as originating in the Area of that other Party.

2. The Parties shall meet at a time to be agreed by them to review this Article and any outcome of the review has to be agreed by the Parties.

### **Article 3.6. De Minimis**

1. A good that does not meet the change of tariff classification requirement in accordance with Annex 3-B shall be considered as originating if the value of all non-originating materials used in its production not meeting the change of tariff classification requirement does not exceed 10% of the total value of the good.

2. If the good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of all non-originating materials used in its production shall be considered for calculating the regional value content of the good.

3. For paragraph 1 and paragraph 2, the good shall satisfy all other applicable requirements of this Chapter.

### **Article 3.7. Minimal Operations or Processes**

1. Notwithstanding any provision in this Chapter, a good shall not be considered to have satisfied the requirements for an originating good merely by reason of going through one or more of the following operations:



- (a) operations to ensure the preservation of the good in good condition during transport and storage;
- (b) breaking-up or assembly of consignments;
- (c) packing, unpacking or repacking operations for retail sale purposes;
- (d) slaughter of animals;
- (e) simple assembly of parts of the good to constitute a complete good or disassembly of the good into parts;
- (f) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;
- (g) ironing, folding or pressing of textiles;
- (h) simple painting and polishing operations;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the mere making-up of sets of articles);
- (k) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (l) simple mixing of products, whether or not of different kinds; or
- (m) placing in bottles, cans, flasks, bags, cases or boxes.

2. Printing of marks, labels, logos and other like distinguishing signs shall not be considered as an insufficient working or processing operation if the printed marks, labels, logos and other like distinguishing signs are the goods to be exported under preferential tariff treatment.

3. "Simple" describes an activity which needs neither special skills nor special machines, apparatus or equipment especially produced or installed for carrying out the activity.

4. "Simple mixing" describes an activity which needs neither special skills nor special machines, apparatus or equipment especially produced or installed for carrying out the activity. However, "simple mixing" does not include chemical reaction.

### **Article 3.8. Fungible Goods or Materials**

In determining whether a good is an originating good, any fungible good or material shall be distinguished by:

- (a) physical segregation of each fungible good or material; or
- (b) use of any inventory management method recognised in the generally accepted accounting principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

### **Article 3.9. Accessories, Spare Parts, Tools or Instructional or other Information Materials**

1. In determining whether a good is an originating good in accordance with Article 3.2(a) or 3.2(b), or satisfies the applicable process or change of tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 4, shall be disregarded.
2. In determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 4, shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
3. A good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 4, have the originating status of the good with which they are delivered.
4. For the purposes of this Article, accessories, spare parts, tools or instructional or other information materials are covered when:
  - (a) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with but not invoiced separately from the good; and

(b) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for that good.

### **Article 3.10. Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change of tariff classification requirement set out in Annex 3-B or whether the good is an originating good in accordance with Article 3.2(a) or 3.2(b).

2. If a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

### **Article 3.11. Packing Materials and Containers for Shipment**

Packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

### **Article 3.12. Indirect Materials**

In order to determine whether a good is originating, the origin of the indirect materials shall not be taken into account.

### **Article 3.13. Sets of Goods**

Sets, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the sets are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15% of the total value of the set.

### **Article 3.14. Direct Transport**

1. In order for an originating good to maintain its originating status, the good shall be transported directly between the Areas of the Parties.

2. Notwithstanding paragraph 1, a good transported from the Area of the exporting Party to the Area of the importing Party through one or more non-parties in transit, with or without transshipment or temporary storage of up to three months in such non-parties, shall be considered as transported directly from the Area of the exporting Party to the Area of the importing Party, provided that:

(a) the good remains under customs control in those non-parties; and

(b) the good does not undergo any operation in those non-parties other than unloading, reloading, repacking, labelling required by the laws of the importing Party or any operation required to keep it in good condition or to transport it to the Area of the importing Party.

3. Compliance with paragraph 1 and paragraph 2 shall be evidenced by presenting to the customs administration of the importing Party, either with customs documents of the non-parties or with any other documents provided to the satisfaction of the customs administration of the importing Party.

4. For greater certainty, in cases of transit or transshipment without temporary storage, the importer shall submit, on request of the customs administration of the importing Party, transport documents covering the whole transporting route from the Area of the exporting Party to the Area of the importing Party, which demonstrate that the good was shipped from the Area of the exporting Party to the Area of the importing Party. In cases of storage in one or more non-parties, the importer shall additionally submit customs documents of the non-parties or supporting documents issued by other relevant agencies, in accordance with the laws and regulations of such non-parties.

## **Section B. Origin Procedures**

### **Article 3.15. Certificate of Origin**

1. In order for an originating good to qualify for preferential tariff treatment, the importer shall submit a Certificate of Origin issued in accordance with the format as set out in Annex 3-A.

2. The exporter of the good shall apply to the authorised body of the exporting Party for a Certificate of Origin, which shall be issued before or at the time of exportation.

3. Notwithstanding paragraph 2, a Certificate of Origin may, under exceptional circumstances, be issued retrospectively subsequent to the exportation of the good if:

(a) it was not issued at the time of exportation because of errors, involuntary omissions or any other circumstances; or it was issued and it contains errors that were detected before its submission to the customs administration of the importing Party; or

(b) it is demonstrated to the satisfaction of the authorised body of the exporting Party that a Certificate of Origin was issued but was not accepted at importation for technical reasons. The validity period of the Certificate of Origin issued retrospectively shall remain the same as that of the Certificate of Origin originally issued.

When the Certificate of Origin is issued retrospectively, it shall be indicated in the Remarks box of the Certificate of Origin the phrase "ISSUED RETROSPECTIVELY".

4. The Certificate of Origin shall be in English.

5. The exporter of the good applying for a Certificate of Origin shall provide the commercial invoice(s) and all other appropriate supporting documents to prove the originating status of the good concerned when required by the authorised body, and fulfil all other applicable requirements of this Chapter.

6. The Certificate of Origin referred to in paragraph 1 shall be valid for one year from its date of issuance.

7. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the authorised body which issued the Certificate of Origin for a certified true copy of the original, on the basis of the export documents in the possession of the exporter. The certified true copy issued in this manner shall bear in the Remarks box of the Certificate of Origin the phrase "CERTIFIED TRUE COPY". The certified true copy shall be valid during the validity period of the original Certificate of Origin.

### **Article 3.16. Exemption of Certificate of Origin**

1. Neither Party shall require a Certificate of Origin demonstrating that a good is originating if the customs value of the importation does not exceed US\$600 or an equivalent amount in the currency of the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purposes of evading compliance with the importing Party's laws and regulations for claiming preferential tariff treatment under this Agreement.

2. Paragraph 1 shall apply to goods that are covered under a single invoice and imported under a single import customs declaration.

### **Article 3.17. Authorised Body**

1. The competent authority of each Party shall inform the competent authority of the other Party of the name of each of its authorised bodies and shall provide impression specimens of the stamps used for the issuance of Certificates of Origin. Any change in the information so provided shall be communicated in advance to the competent authority of the other Party. A Certificate of Origin containing a name of an authorised body or a stamp not communicated in advance shall be rejected.

2. The authorised body shall carry out proper examination in accordance with its laws and regulations to ensure that the information covered by a Certificate of Origin, including the originating status of the goods concerned, is correct.

3. A Party shall provide the other Party with a website access to check information of the Certificates of Origin issued by its authorised bodies.

### **Article 3.18. Minor Errors or Slight Discrepancies**

If the origin of an imported good is not in doubt, minor transcription errors in a Certificate of Origin or slight discrepancies with other documentation related to the importation shall not cause the rejection of the Certificate of Origin if it does in fact correspond to the good. However, this does not prevent the importing Party from initiating a verification process in accordance with Article 3.23.

## **Article 3.19. Obligations Regarding Importations**

1. Unless otherwise provided in this Chapter, an importer claiming preferential tariff treatment shall:

(a) make a written statement in the import customs declaration, based on a valid Certificate of Origin, indicating that a good qualifies as an originating good;

(b) hold the Certificate of Origin at the time the statement referred to in subparagraph (a) is made;

(c) hold the documents which evidence that the requirements in Article 3.14 have been met, if applicable; and

(d) submit the valid Certificate of Origin as well as the documents indicated in subparagraph (c) to the customs administration of the importing Party, when required.

2. When an importer has reason to believe that a Certificate of Origin on which the statement referred to in paragraph 1(a) was based contains incorrect information, the importer shall correct the import customs declaration and pay any customs duty and, if applicable, penalties owed.

## **Article 3.20. Refund of Import Customs Duty**

1. If an originating good is imported into the Area of a Party without a Certificate of Origin under this Agreement, the importer may apply for a refund of any excess import customs duty paid, if applicable, within one year of the date on which the good was imported, on presentation of:

(a) a valid Certificate of Origin, which shall comply with Article 3.15; and

(b) other documentation related to the importation of the good as the customs administration of the importing Party may require,

provided that the importer, before the release of the good, had already provided a written declaration or record in the import customs declaration that the good was eligible for preferential tariff treatment.

2. No customs duty shall be refunded in the case where the importer failed to declare to the customs administration of the importing Party, before the release of the good, that the good was eligible for preferential tariff treatment under this Agreement, even though a valid Certificate of Origin was provided to the customs administration subsequently.

## **Article 3.21. Supporting Documents**

The documents used for the purposes of proving that a good covered by a Certificate of Origin is originating and fulfils all applicable requirements of this Chapter may include the following:

(a) direct evidence of the processes carried out by the exporter or producer to obtain the good, contained for example in the accounts or internal book-keeping of the exporter or producer;

(b) documents proving the originating status of the materials used, including the certificates of origin; and

(c) documents proving the working or processing of materials.

## **Article 3.22. Record Keeping of Certificate of Origin and Supporting Documents**

1. The exporter applying for a Certificate of Origin shall keep the documents referred to in Article 3.21 for at least three years from the date of issuance of the Certificate of Origin.

2. The competent authority or an authorised body of the exporting Party issuing a Certificate of Origin shall keep a copy of the Certificate of Origin for at least three years from its date of issuance.

3. The producer of a good that provides supporting documents to the exporter or to an authorised body for the purposes of issuance of a Certificate of Origin shall keep the records relating to the origin of the good for at least three years from the date of the delivery of such documents.

4. The importer claiming preferential tariff treatment for a good imported into the Area of a Party shall keep the records related to the importation, including a copy of the Certificate of Origin, for at least three years from the date of importation of the good.

## Article 3.23. Verification Process

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the importing Party may conduct a verification process by means of:

- (a) written requests for information from the importer;
- (b) written requests for information from the exporter or producer through the exporting Party;
- (c) requests that the exporting Party assist in verifying the origin of the good; or
- (d) on-site visits to the premises of the exporter or producer in the Area of the exporting Party, in company with the exporting Party in a manner to be jointly agreed by the Parties, to observe the facilities and the production process of the good.

2. For the purposes of paragraph 1(b), paragraph 1(c) and paragraph 1(d), all requests for information by the importing Party and information provided by the exporting Party shall be in English and communicated through the competent authority of each Party.

3. For the purposes of paragraph 1(a) and paragraph 1(b), if the importer, exporter or producer does not respond to the written request for information made by the importing Party within 90 days of its receipt, the importing Party may deny preferential tariff treatment for the relevant good.

4. For the purposes of paragraph 1(c), the importing Party shall provide the exporting Party with:

- (a) the reasons why such assistance for verification is requested;
- (b) the Certificate of Origin of the good, or a copy thereof; and
- (c) any information and documents as may be necessary for the purposes of such request.

The exporting Party shall provide the importing Party with a written statement in English, regarding the origin of the good under the verification process, including the following information:

- (a) description of the production process of the good;
- (b) description and tariff classification of originating and non-originating materials, indicating the producer of such materials; and
- (c) detailed explanation of how the good obtained the status of an originating good.

In the cases where the exporting Party does not provide the written statement within 150 days of the request or where the written statement does not contain sufficient information, the importing Party shall determine the origin of the good based on the best information available at that moment.

5. For the purposes of paragraph 1(d), the importing Party shall notify the exporting Party by writing, 30 days prior to the on-site visit, indicating the reasons for such request. In the case where the exporting Party does not give its written consent to such request within 30 days of the receipt of the notification, the importing Party may deny preferential tariff treatment for the relevant good.

6. The importing Party shall, within 300 days of the request made by the importing Party pursuant to paragraph 1, notify the exporting Party in writing of the results of the determination on the origin of the good, as well as the legal basis and findings of fact, based on which the determination is made.

7. If, at the time of importation, the customs administration of the importing Party has a reasonable doubt about the origin of a good covered under a Certificate of Origin, the good may be released upon a deposit or the payment of customs duty, pending the outcome of the verification process. The above deposit or duty paid shall be refunded once the outcome of the verification process confirms that the good qualifies as an originating good.

8. If the result of verifications of identical goods by the importing Party in accordance with this Article indicates a pattern of conduct by an importer, exporter or producer of false representations, statements or declarations pertaining to claims that the imported goods qualify as originating, the importing Party may deny preferential tariff treatment for any subsequent imports of identical goods that are imported, exported or produced by the same person, until it is demonstrated that the goods qualify as originating in accordance with this Chapter.

## **Article 3.24. Denial of Preferential Tariff Treatment**

1. Unless otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment if:

- (a) the Certificate of Origin does not meet the requirements of this Chapter;
- (b) compliance with Article 3.14 is not proven;
- (c) it is proven based on the results of the origin verification pursuant to Article 3.23 in the exporting Party that the documentary evidence of origin is not authentic or not accurate;
- (d) it is determined through a verification process pursuant to Article 3.23 that the good does not meet the requirements of this Chapter;
- (e) there is material evidence that shows the good does not qualify as an originating good in accordance with the applicable provisions of this Chapter; or
- (f) the importer does not comply with any requirements of this Chapter.

2. In the event that preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the importer the reasons for that decision.

## **Article 3.25. Electronic Origin Data Exchange**

1. The Parties shall exchange electronic origin data in a manner to be jointly determined by them.
2. The technical aspects of the electronic origin data exchange shall be agreed by the Parties.

## **Article 3.26. Penalties**

Penalties may be imposed in accordance with the laws and regulations of each Party for infringement of the provisions of this Chapter.

## **Article 3.27. Confidentiality**

Information provided by a Party to the other Party in accordance with this Chapter shall not be disclosed without the specific written permission of the Party providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

# **Chapter 4. CUSTOMS PROCEDURES AND TRADE FACILITATION**

## **Article 4.1. Definitions**

For the purposes of this Chapter:

customs laws means any laws and regulations of a Party administered, applied or enforced by the customs administration of the Party;

customs procedures means the treatment applied by the customs administration of each Party to goods and means of transport that are subject to customs control; and

means of transport means various types of vessels, vehicles and aircraft which enter or leave the Area of a Party carrying persons or goods.

## **Article 4.2. Objectives**

The objectives of this Chapter are to:

- (a) (a) simplify and harmonise customs procedures of the Parties;
- (b) (b) ensure predictability, consistency and transparency in the application of customs laws and other regulations related to importation, exportation and transit of goods;

- (c) (c) ensure the efficient and expeditious clearance and release of goods and movement of means of transport;
- (d) (d) facilitate trade between the Parties; and
- (e) (e) promote cooperation between the customs administrations of the Parties, within the scope of this Chapter.

### **Article 4.3. Scope**

This Chapter shall apply, subject to the Parties' respective laws and regulations and international obligations, to customs procedures and other procedures related to importation, exportation and transit of goods applied to goods traded between the Parties and to the movement of means of transport between the Parties.

### **Article 4.4. Affirmation of the WTO Agreement on Trade Facilitation**

The Parties affirm their rights and obligations with respect to each other under the Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement.

### **Article 4.5. Customs Valuation**

Each Party shall determine the customs value of goods traded with the other Party in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

### **Article 4.6. Tariff Classification**

Each Party shall apply the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, as amended, to goods traded between the Parties.

### **Article 4.7. Competent Authorities**

The competent authorities for coordinating the administration of this Chapter are:

- (a) for Hong Kong, China, the Trade and Industry Department; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR).

### **Article 4.8. Facilitation**

1. Each Party shall ensure that its customs procedures and practices and other procedures and practices related to importation, exportation and transit of goods are predictable, consistent and transparent and facilitate trade.
2. Each Party shall ensure that its customs procedures conform, where possible and subject to its laws and regulations, to international standards and recommended practices established by the World Customs Organization (WCO), including the principles of the International Convention on the Simplification and Harmonization of Customs Procedures, done at Kyoto on May 18, 1973, as amended, known as the Revised Kyoto Convention.
3. The customs administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate trade between the Parties.

### **Article 4.9. Advance Rulings**

1. Subject to its laws and regulations, each Party shall provide written advance rulings prior to the importation of goods into its Area in a reasonable and time-bound manner to a person described in subparagraph 2(a), who has submitted a written request containing all necessary information, concerning:

- (a) tariff classification;
- (b) whether a good qualifies as an originating good in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (c) such other matters as the Parties may agree.

2. Subject to its laws and regulations, each Party shall adopt or maintain procedures for issuing written advance rulings, which shall:

(a) provide that an exporter, importer or producer or a representative thereof, may apply for an advance ruling before the date of importation of the goods that are the subject of the application;

(b) include a detailed description of the information required to process a request for an advance ruling, which may include a sample of the good for which the applicant is seeking an advance ruling if requested;

(c) allow its customs administration, at any time during the course of evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;

(d) provide that, in issuing an advance ruling, the decision-maker shall take into account the facts and circumstances presented by the applicant; and

(e) provide that the advance ruling be issued in the official language of the issuing Party, to the applicant expeditiously on receipt of all necessary information within 90 days.

3. Notwithstanding paragraph 1, a Party may decline to issue an advance ruling by promptly notifying the applicant in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

4. Notwithstanding paragraph 1, a Party may reject a request for an advance ruling where the additional information requested in accordance with subparagraph 2(c) is not provided within a specified period.

5. Subject to its laws and regulations and paragraph 6, each Party shall provide that advance rulings take effect on the date they are issued, or on another date specified in the ruling, provided that the facts, or circumstances on which the ruling is based, remain unchanged. A Party may limit the validity of advance rulings to a period determined by its laws and regulations. The Party shall ensure the same treatment of all importations of identical goods subject to the advance ruling during the validity period regardless of the importer, exporter or producer involved, where the facts and circumstances are identical in all material respects.

6. A Party may modify or revoke an advance ruling:

(a) where there is a change in laws or regulations on which the ruling was based;

(b) where incorrect information was provided or information on which the ruling was based was withheld;

(c) where there is a change in a material fact on which the ruling was based;

(d) where there is a change in the circumstances on which the ruling was based; or

(e) where there is an error of fact or law.

7. Subject to its laws and regulations, where a Party revokes or modifies an advance ruling with retroactive effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

8. Subject to its laws and regulations, each Party shall ensure that the applicant has access to administrative review of advance rulings.

9. Each Party shall endeavour to make the information on advance rulings which it considers to be of significant interest to other traders, publicly available, including on the Internet, taking into account the need to protect confidential information.

## **Article 4.10. Application of Information Technology**

1. Each Party shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within the WCO.

2. Each customs administration is encouraged to:

(a) implement common standards and elements for import and export data in accordance with the WCO Data Model; and

(b) take into account, as appropriate, standards, recommendations, models and methods developed through the WCO.

3. The Parties shall use information technology to expedite procedures for risk management and targeting.

## **Article 4.11. Single Window**



1. To the extent possible and practicable, each Party shall develop or maintain a single window, and shall use information technology to support it.
2. To the extent possible and practicable, such single window shall allow traders to submit documentation or data requirements for importation, exportation or transit of goods through a single entry point to its relevant authorities or agencies. After the examination of the documentation or data by the relevant authorities or agencies, the results shall be notified to the applicants through the single window in a timely manner.

#### **Article 4.12. Use of International Standards**

The Parties are encouraged to use relevant international standards or parts thereof to expedite procedures related to importation, exportation or transit of goods.

#### **Article 4.13. Risk Management**

1. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures so as to facilitate the clearance and release of low-risk goods and allow resources to focus on high-risk goods.
2. The customs administration of each Party shall periodically review its customs procedures specified in paragraph 1.
3. Each Party shall apply risk management in a manner that does not create arbitrary or unjustifiable discrimination under the same conditions or a disguised restriction on international trade.

#### **Article 4.14. Publication and Enquiry Points**

1. Further to Article 16.2 (Publication) of Chapter 16 (Transparency and Anti- Corruption), each Party shall promptly publish procedures for importation, exportation and transit (including ports, airports and other entry-points procedures), the working hours of customs-related government agencies and required forms and documents.
2. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons of either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the customs administration of the other Party. Information concerning the procedures for making such enquiries shall be easily accessible by the public, including on the Internet.

#### **Article 4.15. Express Consignments**

Each customs administration shall adopt procedures to expedite the clearance of express consignments while maintaining appropriate control, including, under normal circumstances, after the submission of all necessary customs documents:

- (a) to provide for pre-arrival processing of information related to express consignments;
- (b) to permit the submission of a single document covering all goods contained in an express consignment, through electronic means if possible; and
- (c) to minimise, to the extent possible, the documentation required for the release of express consignments.

#### **Article 4.16. Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.
2. In accordance with paragraph 1, each Party shall adopt or maintain customs procedures that:
  - (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
  - (b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods; and
  - (c) allow the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a

determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

#### **Article 4.17. Border Agency Cooperation**

Each Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

#### **Article 4.18. Perishable Goods**

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods:

(a) under normal circumstances within the shortest possible time; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each Party shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Party shall, where practicable and consistent with its laws and regulations, on request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

#### **Article 4.19. Penalties**

1. For the purposes of this Article, the term "penalties" shall mean those imposed by a customs administration of a Party for a breach of its customs laws or procedural requirements.

2. Each Party shall ensure that penalties for a breach of a customs law or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

4. Each Party shall ensure that it maintains measures to avoid:

(a) conflicts of interest in the assessment and collection of penalties and duties; and

(b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.

5. Each Party shall ensure that when a penalty is imposed for a breach of customs laws or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

#### **Article 4.20. Review of Formalities and Documentation Requirements**

1. Each Party shall review its formalities and documentation requirements with a view to minimising the incidence and complexity of import, export and transit formalities and to decreasing and simplifying import, export and transit documentation requirements.

2. Based on the results of the review, each Party shall ensure, as appropriate, that such formalities and documentation requirements are adopted or applied in a manner that aims at reducing the time and cost of compliance for traders and operators.

#### **Article 4.21. Authorised Economic Operator**

Each customs administration shall provide trade facilitation measures related to import, export, or transit formalities and procedures, to authorised economic operators who meet specified criteria based on the SAFE Framework of Standards to Secure and Facilitate Global Trade of the WCO. Such criteria shall not, to the extent possible, restrict the participation of SMEs.

## **Article 4.22. Review and Appeal**

Each Party shall, in accordance with its laws and regulations, provide the importer, exporter or any other person affected by its administrative decisions on a customs matter access to:

(a) a level of administrative review of decisions by its customs administration, independent of the official or office responsible for the decision under review; and

(b) judicial review of the decisions subject to its laws and regulations.

## **Article 4.23. Customs Cooperation and Assistance**

1. Subject to their customs laws, the customs administrations of the Parties shall assist each other, in relation to:

(a) the implementation and operation of this Article;

(b) the investigation and prevention of customs offences, including duty evasion and smuggling;

(c) the application of best practices and risk management techniques;

(d) the simplification of procedures for clearing goods in a timely and efficient manner;

(e) the development of the specialised skills of customs officials; and

(f) such other issues as the customs administrations mutually determine.

2. Each customs administration shall endeavour to provide the customs administration of the other Party with timely notice of any significant modification of its customs laws or customs procedures that govern the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

3. On request, the customs administrations shall exchange information for the purpose of verifying an import or export declaration in those cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

4. The requesting customs administration shall hold all information or documents provided by the requested customs administration strictly in confidence.

5. The requested customs administration shall provide the information or respond in writing to a request pursuant to paragraph 3, through paper or electronic means, within 60 days of the date of receiving the request.

6. A written request, through paper or electronic means, for information related to customs declaration and its responses shall be in English.

7. Each customs administration shall designate a contact point for the purposes of this Article and provide details of such contact point to the customs administration of the other Party. Each customs administration shall notify the other promptly of any amendment to the details of its contact point.

## **Article 4.24. Consultation**

1. A Party may at any time request consultations with the other Party on any matter arising from the implementation or operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the date of receipt of the request, unless the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Trade in Goods Committee for consideration.

3. Each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

# Chapter 5. TECHNICAL BARRIERS TO TRADE

## Article 5.1. Definitions

1. For the purposes of this Chapter:

TBT Agreement means the Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement.

2. The definitions in Annex 1 to the TBT Agreement are incorporated into and made part of this Chapter, mutatis mutandis.

## Article 5.2. Objectives

The objectives of this Chapter are to:

(a) facilitate trade in goods between the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary technical barriers to trade;

(b) strengthen cooperation between the Parties in the work of international bodies related to standardisation and conformity assessments;

(c) strengthen information exchange in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(d) promote transparency and mutual understanding of the standards, technical regulations and conformity assessment procedures of each Party;

(e) encourage the reduction of transaction costs between the Parties; and

(f) facilitate implementation of the principles of the TBT Agreement.

## Article 5.3. Scope

1. This Chapter shall apply to all technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties. It shall exclude:

(a) sanitary or phytosanitary measures as defined in paragraph 1 of Annex A to the SPS Agreement, which are covered in Chapter 6 (Sanitary and Phytosanitary Measures); and

(b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt or apply, in accordance with its rights and obligations under the TBT Agreement, standards, technical regulations and conformity assessment procedures to the extent necessary to fulfil a legitimate objective.

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by regional and local governments and non-governmental bodies within its Area.

## Article 5.4. Affirmation of the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

## Article 5.5. International Standards, Guides and Recommendations

1. The Parties shall use international standards, guides and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 of and Annex 3 to the TBT Agreement, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards, guides and recommendations exist or their completion is imminent, except when they or their relevant parts are ineffective or inappropriate to fulfil the legitimate objectives.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 of and Annex 3 to the TBT Agreement exists, each Party shall base its determination on the principles set out in relevant decisions

and recommendations adopted by the WTO Committee on Technical Barriers to Trade.

## **Article 5.6. Equivalence of Technical Regulations**

1. In accordance with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. For this purpose, a Party seeking the other Party to accept its technical regulation as equivalent, shall provide, as appropriate:

(a) information on the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party;

(b) the circumstances which gave rise to the adoption of its technical regulation; and

(c) information on the similarity of the established mechanisms of conformity assessment.

3. A Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

## **Article 5.7. Conformity Assessment Procedures**

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of the other Party, even if those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall, subject to its policies, practices and available resources, facilitate the acceptance of the results of conformity assessment procedures conducted in the Area of the other Party. In this regard, a Party may choose a broad range of approaches, including, where applicable:

(a) recognition by a Party of the results of conformity assessments performed in the Area of the other Party;

(b) recognition of cooperative or voluntary arrangements between accreditation bodies in the Area of each Party;

(c) mutual recognition of conformity assessment procedures conducted by bodies located in the Area of the other Party;

(d) use of existing regional and international multilateral recognition agreements and arrangements;

(e) adoption of accreditation procedures for qualifying conformity assessment bodies located in the Area of the other Party;

(f) designation of conformity assessment bodies located in the Area of the other Party to perform conformity assessment; or

(g) acceptance of suppliers' declaration of conformity.

3. Each Party shall, on request of the other Party, exchange information with the other Party on its experience in the development and application of the approaches in paragraph 2 and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, on request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the Area of the other Party.

## **Article 5.8. Transparency**

1. A Party publishing a notice or filing a notification under Articles 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and

(b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

2. On request, a Party shall make available to the other Party the full text of technical regulations and conformity assessment procedures which are notified to the WTO, in available languages, within 15 working days after receiving the

written request. If the full text of the notified documents is provided in languages other than English, the Party shall endeavour to provide an English summary of such technical regulations and conformity assessment procedures, which includes the main requirements thereof.

3. A Party that makes a notification pursuant to Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement shall allow at least 60 days for the other Party to present comments on its proposed new or amended technical regulations or conformity assessment procedures except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall consider any reasonable request from the other Party for extending the comment period.

4. Each Party shall take into due consideration the comments of the other Party and endeavour to provide responses to these comments on request within a reasonable timeframe.

5. A Party shall, on request of the other Party, provide information regarding the objectives of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall endeavour to publish proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations and that it considers may have a significant effect on trade of the other Party according to the procedures established under Articles 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement, as appropriate.

7. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement, the term "reasonable interval" shall normally mean a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives being pursued.

8. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

## **Article 5.9. Technical Cooperation**

1. With a view to enhancing the mutual understanding of each other's standards and conformance systems and facilitating bilateral trade, the Parties shall explore opportunities for future cooperation in the following areas:

(a) communication and exchange of information between each other's competent authorities in respect of technical regulations, standards, conformity assessment procedures, metrology and good regulatory practice;

(b) encouraging, where possible, cooperation between conformity assessment bodies in the Areas of the Parties;

(c) enhancing cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;

(d) enhancing cooperation on mutually agreed regulatory issues consistent with this Chapter; and

(e) other areas as agreed upon by the Parties.

2. On request of a Party which has an interest in developing a technical regulation similar to the technical regulation of the other Party, the other Party shall, to the extent practicable, provide relevant information, including studies or documents, except for confidential information, which it had relied on in the development of that technical regulation.

## **Article 5.10. Information Exchange**

Unless otherwise provided in this Chapter, if a Party requests any information or explanation pursuant to the provisions of this Chapter, the other Party shall provide such information or explanation in print or electronically within a reasonable timeframe as agreed by the Parties. A Party shall endeavour to respond to each such request within 60 days.

## **Article 5.11. Consultations**

1. On request of a Party for consultations on any matter arising under this Chapter, the Parties shall enter into consultations.

2. The consultations under this Article shall commence within 30 days of a Party receiving a request for consultations, unless the Parties otherwise agree. Such consultations may be conducted in person, via teleconference, videoconference or any other means as agreed by the Parties.

3. When a Party requests consultations under this Article, the Parties shall make every attempt to obtain a mutually satisfactory solution within 60 days.

## **Article 5.12. Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade (TBT Committee), comprising representatives of each Party.

2. The functions of the TBT Committee include:

(a) monitoring the implementation and administration of this Chapter;

(b) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations, or conformity assessment procedures by the other Party;

(c) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;

(d) exchanging information, where appropriate, on developments in non- governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations, and conformity assessment procedures;

(e) on request of a Party, consulting on any matter arising under this Chapter in accordance with Article 5.11;

(f) reviewing this Chapter in light of any development in relation to the TBT Agreement and developing recommendations to the Joint Commission for amendments to this Chapter in light of those developments;

(g) taking any other step the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade in goods between them;

(h) as it considers appropriate, reporting to the Joint Commission on the implementation of this Chapter; and

(i) establishing, if necessary to achieve the objectives of this Chapter, issues or sectors-specific ad hoc working groups.

3. The TBT Committee may meet at such time as may be agreed by the Parties. The TBT Committee may meet in person, via teleconference, videoconference or any other means as agreed by the Parties.

## **Article 5.13. Contact Points**

1. Each Party shall provide the contact details of its designated contact point, which shall, for that Party, be responsible for coordinating the implementation of this Chapter.

2. Each Party shall promptly notify the other Party of any change of its contact point or any amendment to the details of the relevant officials.

# **Chapter 6. SANITARY AND PHYTOSANITARY MEASURES**

## **Article 6.1. Definitions**

The definitions in Annex A to the SPS Agreement are incorporated into and made part of this Chapter, mutatis mutandis.

## **Article 6.2. Objectives**

The objectives of this Chapter are to:

(a) facilitate trade between the Parties while protecting human, animal or plant life or health in their Areas;

(b) promote transparency in and understanding of the application of sanitary or phytosanitary measures (SPS measures) of each Party;

(c) strengthen cooperation between the Parties in the field of SPS measures to facilitate trade and access to their respective markets; and

(d) facilitate implementation of the principles of the SPS Agreement.

### **Article 6.3. Scope**

This Chapter shall apply to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

### **Article 6.4. Affirmation of the SPS Agreement**

1. The Parties affirm their rights and obligations with respect to each other under the SPS Agreement.
2. Nothing in this Chapter shall affect the rights and obligations that each Party has under the SPS Agreement.

### **Article 6.5. Transparency**

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended SPS measures is made available in accordance with the notification obligations under the SPS Agreement.
2. On request, a Party shall make available to the other Party the full text of SPS measures which are notified to the WTO, in available languages, within 15 working days of receiving the written request.
3. A Party that makes a notification pursuant to Article 7 of and Annex B to the SPS Agreement shall normally allow at least 60 days for the other Party to present comments on its proposed new or amended SPS measures except where risks to human, animal or plant life or health arising or threatening to arise warrant urgent actions.
4. Each Party shall endeavour to take into consideration the comments of the other Party and provide responses to these comments on request within a reasonable timeframe.

### **Article 6.6. Equivalence**

A Party may make determinations of equivalence in accordance with the SPS Agreement, in particular Article 4 thereof, relevant decisions and recommendations on equivalence adopted by the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international standards, guidelines and recommendations.

### **Article 6.7. Science and Risk Analysis**

1. The Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.
2. Each Party shall ensure that its SPS measures either conform to the relevant international standards, guidelines or recommendations or, if its SPS measures do not conform to international standards, guidelines or recommendations, that they are based on scientific evidence, while recognising the Parties' rights and obligations under Article 5 of the SPS Agreement.
3. If the importing Party requires a risk analysis to evaluate a request from the exporting Party to authorise importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Party, the importing Party shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Party.
4. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

### **Article 6.8. Adaptation to Regional Conditions**

A Party may make determinations in relation to regionalisation, pest-free areas, areas of low pest prevalence, zoning and compartmentalisation in accordance with the SPS Agreement, in particular Article 6 thereof, relevant decisions and recommendations adopted by the WTO Committee on Sanitary and Phytosanitary Measures, and relevant international standards, guidelines and recommendations.

### **Article 6.9. Cooperation**

1. The Parties shall cooperate to facilitate the implementation of this Chapter.



2. The Parties may explore opportunities for further cooperation, collaboration and information exchange on sanitary or phytosanitary matters of mutual interest consistent with this Chapter, including in relevant international standard-setting bodies, or through regional or multilateral work programmes.

3. The Parties shall endeavour to collaborate on the use of electronic certification and other technologies, where applicable, to facilitate trade.

### **Article 6.10. Consultations**

1. On request of a Party for consultations on any matter arising under this Chapter, the Parties shall enter into consultations.

2. The consultations under this Article shall commence within 30 days of a Party receiving a request for consultations, unless the Parties otherwise agree. Such consultations may be conducted in person, via teleconference, videoconference or any other means as agreed by the Parties.

### **Article 6.11. Committee on SPS Measures**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on SPS Measures (SPS Committee), composed of government representatives of each Party responsible for sanitary or phytosanitary matters.

2. The functions of the SPS Committee include:

(a) providing a forum to improve the Parties' understanding of sanitary or phytosanitary issues that relate to the implementation of the SPS Agreement and this Chapter;

(b) providing a forum to enhance mutual understanding of SPS measures of each Party and the regulatory processes that relate to those measures;

(c) exchanging information on the implementation of this Chapter;

(d) determining the appropriate means to undertake specific tasks related to the functions of the SPS Committee; and

(e) serving as a forum for either Party to share information on and discuss a sanitary and phytosanitary issue that has arisen between the Parties as deemed appropriate by the Parties.

3. The SPS Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

4. The SPS Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter may meet at such time as may be agreed by the Parties. The SPS Committee may meet in person, via teleconference, videoconference or any other means as agreed by the Parties.

### **Article 6.12. Contact Points**

1. Each Party shall designate a contact point, which shall, for that Party, be responsible for coordinating the implementation of this Chapter.

2. Each Party shall provide the other Party with the name and contact details of its designated contact point, including telephone and email.

3. Each Party shall promptly notify the other Party of any change of its contact point or any amendment to the details of the relevant officials.

## **Chapter 7. TRADE REMEDIES**

### **Section A. Anti-dumping and Countervailing Duties**

#### **Article 7.1. Anti-dumping**

1. Each Party maintains its rights and obligations under Article VI of GATT 1994 and the AD Agreement.

2. This Agreement does not confer any additional rights or obligations on either Party with regard to actions taken pursuant

to Article VI of GATT 1994 and the AD Agreement.

3. Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Article.

## **Article 7.2. Subsidies and Countervailing Measures**

1. Each Party maintains its rights and obligations under Articles VI and XVI of GATT 1994 and the SCM Agreement.

2. Unless otherwise provided in paragraph 3, this Agreement does not confer any additional rights or obligations on either Party with regard to actions taken pursuant to Articles VI and XVI of GATT 1994 and the SCM Agreement.

3. When a Party receives a properly documented application and before initiating an investigation under the SCM Agreement, the Party shall notify in writing the other Party and allow for a 20-day period for consultations with a view to finding a mutually acceptable solution.

4. Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Article, except for the period for consultations established in paragraph 3.

## **Section B. Safeguard Measures**

### **Article 7.3. Definitions**

For the purposes of this Section:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the Area of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

Safeguards Agreement means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;

serious injury means a significant overall impairment in the position of a domestic industry;

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff reduction or elimination for the good occurs over a longer period, in which case the transition period shall be the period of the staged tariff reduction or elimination for that good set out in Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods); and

transitional safeguard measure means a measure described in Article 7.5.2.

### **Article 7.4. Global Safeguard Measures**

1. Each Party maintains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.

2. Unless otherwise provided in paragraph 3 and paragraph 4, this Agreement does not confer any additional rights or obligations on either Party with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

3. A Party taking any measure pursuant to Article XIX of GATT 1994 and the Safeguards Agreement shall exclude imports of an originating good from the other Party if such imports do not in and of themselves cause or threaten to cause serious injury.

4. Each Party shall promptly notify the other Party in writing, including through electronic means, of the initiation of any global safeguard investigation and the reasons for initiation. The Party shall make such notification no later than seven days after such initiation.

### **Article 7.5. Imposition of a Transitional Safeguard Measure**

1. A Party may, subject to the provisions of this Section, apply a transitional safeguard measure set out in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty in accordance with this Agreement, an originating good from the other Party is being imported into the Area of the Party in such increased

quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good.

2. If the conditions in paragraph 1 are met, the Party may, to the minimum extent necessary to prevent or remedy serious injury and to facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or

(b) increase the rate of customs duty on the good to a level not exceeding the lesser of:

(i) the most-favoured-nation applied rate of customs duty in effect at the time the measure is applied; or

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement.

3. Neither Party shall apply or maintain tariff rate quotas nor quantitative restrictions as transitional safeguard measures.

4. Neither Party shall apply a transitional safeguard measure against an originating good from the other Party where the exporting Party's share of imports of the originating good in the importing Party does not exceed three per cent.

## **Article 7.6. Investigation Procedures and Transparency Requirements**

A Party shall apply a transitional safeguard measure only following an investigation by the competent authorities of the Party in accordance with Articles 3 and 4.2 of the Safeguards Agreement. To this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 7.7. Standards for a Transitional Safeguard Measure**

1. A Party shall apply a transitional safeguard measure only for such period as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

2. A Party shall apply a transitional safeguard measure for a period not exceeding two years. In very exceptional circumstances, the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 7.6, that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting. The total period of application of a transitional safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years.

3. Neither Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

4. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party applying the measure shall progressively liberalise it at regular intervals during the period of application.

5. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

6. Neither Party shall apply a transitional safeguard measure more than once on the same good.

## **Article 7.8. Notification and Consultation**

1. A Party shall immediately notify the other Party, in writing, including through electronic means, if it:

(a) initiates a transitional safeguard investigation under this Chapter;

(b) makes a finding of serious injury or threat thereof caused by increased imports, in accordance with Article 7.5; and

(c) takes a decision to apply or extend a transitional safeguard measure.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities that is required under Article 7.6.

3. When a Party makes a notification pursuant to paragraph 1(c), that Party shall include in that notification:

(a) evidence of serious injury or threat thereof caused by increased imports of an originating good from the other Party as a

result of the reduction or elimination of a customs duty in accordance with this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedule of tariff commitments in Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods) is based;

(c) a precise description of the transitional safeguard measure;

(d) the date of introduction of the transitional safeguard measure, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of the Party whose good is subject to a proceeding for the application or extension of a transitional safeguard measure under this Chapter, the other Party shall, no later than 30 days after the date of receipt of a notification referred to in paragraph 1, enter into consultations with the requesting Party to review the notification or any public notice or report that the competent investigating authority issued in connection with that proceeding, with a view to finding a mutually acceptable solution.

## **Article 7.9. Compensation**

1. A Party applying or extending a transitional safeguard measure shall, in consultation with the other Party, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, a Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions of customs duties with respect to the same sector or other sectors. If the Party considers that it is not practicable or effective to suspend the application of concessions of customs duties, it may suspend the application of concessions or other obligations under any part of this Agreement to the trade of the other Party.

3. The Party against whose good the transitional safeguard measure is applied shall notify the other Party in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 shall terminate on the date of the termination of the transitional safeguard measure.

## **Article 7.10. Relation to other Safeguard Measures**

Neither Party shall apply or maintain the following measures under this Chapter, with respect to the same good, at the same time:

(a) a transitional safeguard measure;

(b) a measure taken under Article 7.4.

# **Chapter 8. TRADE IN SERVICES**

## **Article 8.1. Definitions**

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

commercial presence means any type of business or professional establishment, including through:

(a) the constitution, acquisition or maintenance of an enterprise; or

(b) the creation or maintenance of a branch or a representative office, within the Area of a Party for the purpose of

supplying a service; computer reservation system services means services provided by computerised

systems that contain information about air carriers' schedules, availability, fares and fare

rules, through which reservations can be made or tickets may be issued; enterprise of a Party means an enterprise which is either:

(a) constituted or organised under the laws of that Party, or a branch located in the Area of that Party and carrying out business activities there; (1) or

(1) For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

(b) in the case of the supply of a service through commercial presence in the Area of the other Party, owned or controlled by:

(i) natural persons of that Party; or

(ii) enterprises of that Party identified under subparagraph (a);

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments or authorities; or

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service;

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; and

trade in services means the supply of a service:

(a) from the Area of a Party into the Area of the other Party (Cross-border supply: Mode 1);

(b) in the Area of a Party to a person of the other Party (Consumption abroad: Mode 2);

(c) by a service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); or

(d) by a natural person of a Party in the Area of the other Party (Presence of natural persons: Mode 4).

## **Article 8.2. Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party. Such measures include measures affecting:

- (a) the production, distribution, marketing, sale or delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in the Party's Area of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. This Chapter shall not apply to:

- (a) financial services as defined in Article 9.1 (Definitions) of Chapter 9 (Financial Services);
- (b) government procurement;
- (c) services supplied in the exercise of governmental authority in a Party's Area; or
- (d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt of such subsidies or grants.

3. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its Area, and does not confer any right on that natural person with respect to that access or employment.

4. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

- (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;
- (b) selling and marketing of air transport services;
- (c) computer reservation system services;
- (d) specialty air services;
- (e) airport operation services; and
- (f) ground handling services.

5. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

6. If the Parties have substantially equivalent obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement to which the Parties are party, they may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

7. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

## **Article 8.3. National Treatment (2)**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.
2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

(2) For greater certainty, whether treatment is accorded in "like circumstances" under Articles 8.3 or 8.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

## **Article 8.4. Most-Favoured-Nation Treatment**

Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of a non-party.

## **Article 8.5. Market Access**

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire Area, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (3) or

(iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(3) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

## **Article 8.6. Local Presence**

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for supply of a service under Mode 1, Mode 2 or Mode 4.(4)

(4) For greater certainty, Article 8.6 shall not apply to the supply of a service through commercial presence (Mode 3).

## **Article 8.7. Non-Conforming Measures**

1. Articles 8.3, 8.4, 8.5 and 8.6 shall not apply to:

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

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.3, 8.4, 8.5 or 8.6.

2. Articles 8.3, 8.4, 8.5 and 8.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of the other Party, as referred to in paragraph 1(a)(ii), creates a material impediment to trade in services in relation to the former Party, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate. (5)

(5) For greater certainty, a Party may request consultations with the other Party regarding non-conforming measures applied by the central level of government, as referred to in paragraph 1(a)(i).

## **Article 8.8. Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations<sup>6</sup> applied by that Party.

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required;

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws and regulations in place of original documents;

(g) reach and administer their decisions in an independent manner and ensure that the procedures are impartial;

(h) avoid requiring an applicant to approach more than one competent authority for each application for authorisation; and

(i) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service. (7)

6. Each Party shall make publicly available the information necessary for service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

(a) fees;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;

(e) opportunities for public involvement, such as through hearings or comments;

(f) indicative timeframes for processing of an application;



(g) the requirements and procedures; and

(h) technical standards.

7. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

1. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.
2. Paragraphs 1 through 8 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Articles 8.3 or 8.5 by reason of an entry in a

Party's Schedule to Annex I, or to measures that are not subject to the obligations under Articles 8.3 or 8.5 by reason of an entry in a Party's Schedule to Annex II.

10. If the results of the negotiations related to Article VI:4 of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

(6) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

(7) For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

## **Article 8.9. Recognition**

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the Area of the other Party or in the territory of a non-party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-party concerned, or may be accorded autonomously.
2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, nothing in Article 8.4 shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the Area of the other Party.
3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's Area should be recognised.
4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between the Parties or between a Party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.
5. As set out in Annex 8-A, the Parties shall endeavour to facilitate trade in professional services.

## **Article 8.10. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-party, and the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.
2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-party or by persons of the denying Party that has no substantial business activities in the Area of the other Party.

## **Article 8.11. Transparency**

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its laws and regulations that relate to the subject matter of this Chapter. (8)
2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 16.2.2 (Publication) of Chapter 16 (Transparency and Anti-Corruption) with respect to laws and regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.
3. To the extent possible, each Party shall allow reasonable time between publication of final laws and regulations and the date when they enter into effect.

(8) The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

## **Article 8.12. Payments and Transfers**

1. Each Party shall permit all transfers and payments that relate to the trade in services to be made freely and without delay into and out of its Area.
2. Each Party shall permit transfers and payments that relate to the trade in services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.
3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws and regulations (9) that relate to:
  - (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities, futures, options or derivatives;
  - (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

(9) For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws and regulations relating to its social security, public retirement or compulsory savings programmes.

## **Article 8.13. Contact Points**

1. Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party.
2. Each Party shall notify the other Party of any amendments to the details of its contact points.

## **Annex 8-A. PROFESSIONAL SERVICES**

### General Provisions

1. Each Party shall encourage its relevant bodies to establish or maintain dialogues with the relevant bodies of the other Party with the aim of facilitating the supply of professional services between the Parties through greater recognition of education or experience obtained in the Area of the other Party. This includes encouraging relevant professional bodies to engage in cooperation with a view to formalising recognition of licensing, registration and professional standards.
2. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.
3. Each Party may encourage its relevant bodies, if feasible, to consider taking steps to implement a temporary or project specific licensing or registration regime based on a foreign service supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign service supplier from gaining a local licence once that service supplier satisfies the applicable local licensing requirements.

## Engineering and Architectural Services

4. Further to paragraph 2, the Parties recognise the efforts in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

5. Each Party shall encourage its relevant bodies to consider improving and expanding existing mutual recognition arrangements with the relevant bodies of the other Party to minimise or streamline the recognition requirements for engineering and architectural services, with a view to facilitating trade between the Parties in these services sectors.

## Future Work on Professional Services

6. The Parties shall meet within two years after the date of entry into force of this Agreement, under the auspices of the Joint Commission, to facilitate the fulfilment of the objectives of this Annex and determine the future direction of possible work between the Parties. Further meetings shall occur at a time agreed by the Parties.

7. The Parties shall liaise, as appropriate, to support their relevant professional and regulatory bodies in pursuing the activities outlined in this Annex. Such support could include providing relevant points of contact, facilitating meetings and providing information regarding each Party's regulation of professional services within its Area.

8. The Joint Commission shall consider any recommendations for initiatives to facilitate trade in professional services and make decisions with respect to those recommendations within a reasonable period of time. Based on the Joint Commission's decisions, each Party shall encourage its respective competent authorities, where appropriate, to implement the agreed recommendations within an agreed time.

## **Annex I. SCHEDULE OF HONG KONG, CHINA (Existing Non-Conforming Measures for Trade in Services) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

### EXPLANATORY NOTES

1. This Schedule sets out, pursuant to Article 8.7.1 (Non-Conforming Measures) of Chapter 8 (Trade in Services), the existing measures of Hong Kong, China that are not subject to some or all of the following obligations:

- (a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services);
- (b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services);
- (c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services); or
- (d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services).

2. Each Schedule entry sets out the following elements:

- (a) Sector refers to the sector for which the entry is made;
- (b) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to:
  - (i) the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);
  - (ii) the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991); or
  - (iii) the Maritime Model Schedule appended as Appendix 2 to the WTO document JOB/SERV/137 of March 7, 2013, where appropriate;
- (c) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.1(a) (Non-Conforming Measures) of Chapter 8 (Trade in Services), do not apply to the listed measure(s) pursuant to paragraph 5;
- (d) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:
  - (i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out the non-conforming measure for which the entry is made.

3. For the purposes of this Annex:

(a) "Mode 1" means the supply of a service from the Area of a Party into the Area of the other Party;

(b) "Mode 2" means the supply of a service in the Area of a Party to a person of the other Party;

(c) "Mode 3" means the supply of a service by a service supplier of a Party, through commercial presence in the Area of the other Party;

(d) "Mode 4" means the supply of a service by a natural person of a Party in the Area of the other Party; and

(e) "Trade in Services" means the supply of a service as defined in subparagraph (a), subparagraph (b), subparagraph (c) and subparagraph (d).

4. A measure that is only inconsistent with Article 8.6 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 8.3 (National Treatment) of Chapter 8 (Trade in Services).

5. In accordance with Article 8.7.1 (Non-Conforming Measures) of Chapter 8 (Trade in Services), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures set out in the Description element of that entry.

6. Where an inconsistency arises in relation to the interpretation of an entry, the Description element of the entry shall prevail to the extent of the inconsistency.

I-HKC-1 (Services)

Sector: BUSINESS SERVICES Professional Services

Industry Classification: CPC 862 Accounting, auditing services and bookkeeping

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Measures: Section 20AAL of the Accounting and Financial Reporting Council Ordinance (Cap.588)

Description: Provision of statutory auditing services is limited to corporate practices and natural persons licensed as certified public accountants (practising), either as sole proprietors or in partnership.

A practising certificate shall not be issued to an applicant unless the person is a certified public accountant ordinarily resident in Hong Kong, China, possesses local experience and knowledge of local law and practice, has complied with the specified continuing professional development requirements, is not bankrupt or has not entered into a voluntary arrangement with the applicant's creditors, is not subject to a disciplinary order/sanction, intends to practise as a certified public accountant (practising) and satisfies the fit and proper requirement.

I-HKC-2 (Services)

Sector: BUSINESS SERVICES Professional Services

Industry Classification: CPC 8671 Architectural services

Obligations: Concerned National Treatment (Article 8.3) Local Presence (Article 8.6)

Measures: Section 13 of (Cap. 408) the Architects Registration Ordinance

Description: To be registered as a Registered Architect, a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

I-HKC-3 (Services)

Sector BUSINESS SERVICES Professional Services

Industry Classification: CPC 8672 Engineering services CPC 8673 Integrated engineering services

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Measures: Section 12 of (Cap. 409) the Engineers Registration Ordinance

Description: To be registered as a Registered Professional Engineer, a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

I-HKC-4 (Services)

Sector: BUSINESS SERVICES Professional Services

Industry Classification: CPC 8674 Urban planning and landscape architectural services

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Measures: Section 12 of (Cap. 418) the Planners Registration Ordinance Section 12 of the Landscape Ordinance (Cap. 516) Architects Registration

Description: To be registered as a Registered Professional Planner, a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

To be registered as a Registered Landscape Architect, a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

I-HKC-5 (Services)

Sector: BUSINESS SERVICES Rental/Leasing Services without Operators

TRANSPORT SERVICES Maritime Transport Services

Industry Classification:

CPC 83103 Rental/Leasing Services without Operators Relating to ships

CPC 7211 Passenger transportation

CPC 7212 Freight transportation

CPC 7213 Rental of vessels with crew

Obligations Concerned: National Treatment (Article 8.3)

Measures: Section 23B of the Inland Revenue Ordinance (Cap. 112)

Description: Income derived from international operation of ships registered in the Hong Kong Shipping Register is exempted from Hong Kong, China's profit tax.

I-HKC-6 (Services)

Sector: BUSINESS SERVICES

Other Business Services

Industry Classification: CPC 882 Services incidental to fishing

Obligations Concerned: National Treatment (Article 8.3)

Measures: Fisheries Protection Ordinance (Cap. 171) Section 12 of the Merchant Ordinance (Cap. 548) Shipping (Local Vessel)

Description: Under the Fisheries Protection Ordinance (Cap. 171), only certificated local fishing vessels which possess a valid operating licence under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) can be registered for engaging in fishing activities within the waters of Hong Kong, China.

Under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), fishing vessels must be certificated. To be certificated as a Local Vessel Class III "fishing vessel" plying within the waters of Hong Kong, China, the owner of a local vessel shall be:

(a) an individual who holds a valid Hong Kong Identity Card and who is ordinarily resident in Hong Kong, China; or

(b) a company or registered non-Hong Kong company as defined by Section 2(1) of the Companies Ordinance (Cap. 622).

I-HKC-7 (Services)

Sector: BUSINESS SERVICES Other Business Services

Industry Classification: CPC 883+5115 Services incidental to mining

Obligations Concerned: National Treatment (Article 8.3)

Measures: Section 7(1) of the Mining Ordinance (Cap. 285)

Description: When not resident in Hong Kong, China every holder of a prospecting or mining licence and every lessee of a mining lease shall at all times have a duly authorised attorney, approved by the Director of Lands, resident in Hong Kong, China, with full power to represent the holder or lessee in all matters relating to his or her licence or lease.

I-HKC-8 (Services)

Sector: BUSINESS SERVICES Other Business Services

TRANSPORT SERVICES Services auxiliary to all modes of transport

Industry Classification: CPC 884+885 Services incidental to manufacturing except for 88442 CPC 742 Storage and warehouse services

Obligations Concerned: National Treatment (Article 8.3)

Measures: Sections 7 and 8A Ordinance (Cap. 109) of the Dutiable Commodities

Regulation 22 of the Dutiable Commodities Regulations (Cap. 109A)

Description: To apply for a licence for the manufacture or storage of dutiable commodities under the Dutiable Commodities Ordinance (Cap. 109), the applicant has to appoint a responsible person to be held responsible for the running and management of the premises concerned. The responsible person has to be a Hong Kong resident holding a valid Hong Kong Identity Card.

I-HKC-9 (Services)

Sector: BUSINESS SERVICES Other Business Services

Industry Classification: CPC 8847 Manufacture of rubber and plastics products, on a fee or contract basis

CPC 885 Services incidental to the manufacture of metal products, machinery and equipment

Obligations: Concerned National Treatment (Article 8.3)

Measures: Sections 5(1), 5(2)(c)(v) and 30 of the Prevention of Copyright Piracy Ordinance (Cap. 544)

Description: To apply for a licence for the manufacture of optical discs or stampers under the Prevention of Copyright Piracy Ordinance (Cap. 544), the applicant has to be a Hong Kong resident holding a valid Hong Kong Identity Card.

I-HKC-10 (Services)

Sector: BUSINESS SERVICES Other Business Services

Industry Classification: CPC 87302-87305 Security services

Obligations Concerned: Market Access (Article 8.5)

Measures: Section 11 of the Security and Guarding Services Ordinance (Cap. 460)

Description: A service supplier may only provide security services in the form of a company incorporated in Hong Kong, China under the Companies Ordinance (Cap. 622).

I-HKC-11 (Services)

Sector: BUSINESS SERVICES Other Business Services

Industry Classification: CPC 8675 Related scientific and technical consulting services

Obligations Concerned: National Treatment (Articles 8.3) Local Presence (Article 8.6)

Measures: Section 12 of the Land Survey Ordinance (Cap. 473)

Section 12 of the Surveyors Registration Ordinance (Cap. 417)

Description: Certain statutory land boundary survey services are required to be carried out by Authorised Land Surveyors registered under the Land Survey Ordinance (Cap. 473). To be qualified for registration as an Authorised Land Surveyor, a person has to attain one year local land boundary survey experience in Hong Kong, China.

To be registered as a Registered Professional Surveyor under the Surveyors Registration Ordinance (Cap. 417), a person has to have one year's relevant experience in Hong Kong, China before the date of his or her application for registration; and to be ordinarily resident in Hong Kong, China.

I-HKC-12 (Services)

Sector: CONSTRUCTION AND RELATED ENGINEERING SERVICES (2)

General construction work for civil engineering

Installation and assembly work

Building completion and finishing work

Industry Classification: CPC 513 General construction work for civil engineering

CPC 514+516 Installation and assembly work

CPC 517 Building completion and finishing work

Obligations: Concerned National Treatment (Article 8.3) Local Presence (Article 8.6)

Measures: Sections 2, 4, 8B, 30D and 30E of the Buildings Ordinance (Cap. 123)

Part 2 of the Building (Administration) Regulations (Cap. 123A)

Part 4 of the Building (Minor Works) Regulation (Cap. 123N)

Section 13 of the Architects Registration Ordinance (Cap. 408)

Section 12 of the Engineers Registration Ordinance (Cap. 409)

Section 12 of the Surveyors Registration Ordinance (Cap. 417)

Part 1 of the Buildings Ordinance (Cap. 123)

Schedules 9 and 16 of the Lifts and Escalators Ordinance (Cap. 618)

Description:

(a) Non-exempted construction and building works shall be carried out by statutory building agents, including Authorized Persons (AP), Registered Structural Engineers (RSE), Registered Geotechnical Engineers (RGE), Registered Contractors (RC) and Technically Competent Persons (TCP); and that:

(i) to register as an AP, a person shall be a Registered Architect (RA), Registered Professional Engineer (RPE) in the relevant disciplines or Registered Professional Surveyor (RPS) and have one year's relevant professional experience in Hong Kong, China;

(ii) to register as an RSE or RGE, a person shall be a RPE in the relevant disciplines and have one year's relevant professional experience in Hong Kong, China;

(iii) to register as a RA or RPE in the relevant disciplines or RPS, a person shall be ordinarily resident in Hong Kong, China;

(iv) to register as a RC, which can be a corporation and include Registered General Building Contractors (RGBCs), Registered Specialist Contractors and Registered Minor Works Contractors (RMWCs), the key personnel of the applicant shall possess adequate working experience, some of which has to be gained in Hong Kong, China; and

(v) to be qualified as a TCP, a person shall possess site experience in Hong Kong, China;

(b) Prescribed inspection of buildings shall be carried out by Registered Inspectors (RIs), while prescribed repair to buildings shall be carried out by RGBCs or RMWCs registered for carrying out minor works items that are relevant to the repair works; and that:

(i) to register as an RI, a person shall be an AP, RSE, RA, RPE in the relevant disciplines or RPS in the relevant divisions and shall possess adequate relevant working experience, some of which has to be gained in Hong Kong, China;

(c) Prescribed inspection of windows shall be carried out by Qualified Persons (QPs), while prescribed repair to windows shall be carried out by RGBCs or RMWCs registered for carrying out minor works items that are relevant to windows; and that:

(i) to be qualified as a QP, a person shall be an AP, RSE, RI, authorized signatory of RGBC or RMWC registered for carrying out minor works items that are relevant to windows; and

(d) Lift works shall be carried out by Registered Lift Engineers (RLE), while escalator works shall be carried out by Registered Escalator Engineers (REE); and that:

(i) to register as a RLE or REE, a person shall be a RPE in relevant disciplines and possessing adequate relevant working experience.

(2) For railway construction and project implementation services, refer to II-HKC-21 in Annex II Schedule of Hong Kong, China (Reservations for Trade in Services).

#### I-HKC-13 (Services)

Sector: EDUCATIONAL SERVICES

Primary education services

Secondary education services

Industry Classification: CPC 921 Primary education services

CPC 922 Secondary education services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5)

Measures: Education Ordinance (Cap. 279)

Description With respect to Mode 3,

(a) schools registered under the Education Ordinance (Cap. 279), whether private or public, are required to be managed by managers. Section 30(1)(a) of the Education Ordinance (Cap. 279) provides that the Permanent Secretary for Education may refuse to register an applicant as manager of a school if it appears to him or her that the applicant is not resident in Hong Kong, China for at least nine months in each year; and

(b) an operator of international schools (3) which offers non-local curriculum is subject to the administrative requirements which include proving the established demand for such non-local curriculum in the community.

(3) International schools are schools which follow a non-local curriculum and whose students do not sit local examinations. It generally refers to those schools offering full non-local curricula designed primarily for non-Chinese speaking students and foreign nationals.

#### I-HKC-14 (Services)

Sector EDUCATIONAL SERVICES

Higher education services

Adult education

Industry Classification: CPC 923 Higher education services

CPC 924 Adult education



Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Measures: Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493)

Description: (4)

With respect to Mode 1, a person who operates non-local courses which are regulated courses is subject to, inter alia, the following: an application for registration of a regulated course requires, inter alia, the undertaking of a person who states that he or she undertakes to perform, in relation to the course, the functions imposed on a designated person by the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493). Such person shall be ordinarily resident in Hong Kong, China and the holder of a Hong Kong Identity Card.

A regulated course conducted in collaboration with a local institution of higher education specified under Schedule 1 to the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) can be exempted from registration subject to requirements stipulated in Section 8 of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493).

(4) For these purposes: (a) the term "non-local courses" means courses purporting to lead to the award of a non-local qualification; and (b) the term "regulated course" bears the meaning given to it in the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493).

## **Annex I. SCHEDULE OF PERU (Existing Non-Conforming Measures for Trade in Services and Establishment) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

### EXPLANATORY NOTES

1. This Schedule sets out, pursuant to Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services) or Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions);

(b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services);

(c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services); or

(e) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

2. Each Schedule entry sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) To identify the different sectors and sub-sectors in this list, the CPC prov, 1991 is used, which stands for the Central Product Classification according to the definition of the United Nations Statistics Office, Statistical Reports, Series M, No. 77, CPC prov, 1991;

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.1.(a) (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.1(a) (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the listed measure(s);

(e) Level of Government indicates the level of government maintaining the listed measures;

(f) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) Description provides a general non-binding description of the measure for which the entry is made.

3. Articles 8.3 (National Treatment) and 8.6 (Local Presence) of Chapter 8 (Trade in Services) are separate disciplines and a measure that is only inconsistent with Article 8.6 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 8.3 (National Treatment) of Chapter 8 (Trade in Services).

4. In accordance with Article 8.7.1 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.1 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the Measures element of that entry.

I-PERU-1

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 12.4)

Level of Government: Central

Measures: Political Constitution of Peru (Constitución Política del Perú) (1993), Article 71

Legislative Decree N° 757, "El Peruano" Official Gazette of November 13, 1991, Framework Law for Private Investment Growth (Ley Marco para el Crecimiento de la Inversión Privada), Article 13

Description: Establishment

No foreign national, enterprise constituted under foreign law or enterprise constituted under Peruvian law, and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own, directly or indirectly, by any title, land or water (including mines, forest or energy sources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in conformity with law in cases of expressly declared public necessity.

For each case of acquisition or possession within the referred area, the investor shall hand in the correspondent request to the relevant Ministry, in accordance with laws in force. For example, authorisations of this kind have been given in the mining sector.

I-PERU-2

Sector: Services Related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Supreme Decree N° 012-2001-PE, "El Peruano" Official Gazette of March 14, 2001, Regulation of the Fisheries Law (Reglamento de la Ley General de Pesca), Articles 67, 68, 69 and 70

Description: Trade in Services

Before commencing operations, ship owners of foreign-flagged fishing vessels must present an unconditional, irrevocable letter of guarantee with automatic execution and joint liability, which will be valid for no more than 30 calendar days after the expiry of the fishing permit, issued for the benefit and to the satisfaction of the Ministry of Production by a financial, banking or insurance institution recognised by the Superintendency of Banking, Insurance and Private Administrators of Pension Funds (Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones (AFP)). Such letter shall be issued in an amount equal to 25 per cent of the amount that must be paid for fishing rights.

A ship owner of a foreign-flagged fishing vessel that is not of large scale (in accordance with the regulation mentioned above) and that operates in Peruvian jurisdictional waters must have a Satellite Tracking System in its vessel, except for ship owners operating in highly migratory fisheries who are excepted from this obligation by a Ministerial Resolution.

Foreign-flagged fishing vessels with a fishing permit must have on board a scientific technical observer appointed by the Sea Institute of Peru (Instituto del Mar del Perú (IMARPE)). The ship owner must provide accommodation on board for that representative and a daily stipend, which must be deposited in a special account to be administered by IMARPE.

Ship owners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30 per cent Peruvian crew, subject to its applicable domestic legislation.

I-PERU-3

Sector: Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Article 24

Description: Establishment and Trade in Services

Only Peruvian nationals or juridical persons organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer broadcasting services.

No foreign national may hold an authorisation or a licence directly or through a sole proprietorship.

I-PERU-4

Sector: Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Level of Government: Central

Measures Law N° 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Eighth Complementary and Final Provision

Description: Establishment and Trade in Services

At least 30 per cent, on average, of the total weekly programs by free-to-air broadcasters must be produced in Peru and broadcasted between the hours of 05:00 and 24:00.

I-PERU-5

Sector: Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4)

Level of Government: Central

Measures: Supreme Decree N° 005-2005-MTC, "El Peruano" Official Gazette of February 15, 2005, Regulation of the Radio and Television Law (Reglamento de la Ley de Radio y Televisión), Article 20

Description: Establishment and Trade in Services

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a juridical person, that juridical person may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin, except in a case of public necessity authorised by the Council of Ministers.

This restriction does not apply to juridical persons with foreign equity which have two or more current authorisations, as long as they are of the same frequency band.

I-PERU-6

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4)

Level of Government: Central

Measures: Legislative Decree N° 689, "El Peruano" Official Gazette of November 5, 1991, Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros), Articles 1, 3, 4, 5 (modified by Law N° 26196) and 6

Description: Trade in Services

All employers in Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring employees.

Foreign natural persons who are service suppliers and who are employed by a service-supplying enterprise may supply services in Peru under a written and time-limited employment contract, which may not exceed three years. The contract may be subsequently extended for like periods of time. Service-supplying enterprises must show proof of the company's commitment to train national personnel in the same occupation.

Foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise, and their pay may not exceed 30 per cent of the total payroll for wages and salaries. These percentages will not apply in the following cases:

- (a) when the foreign national supplying the service is the spouse, parent, child or sibling of a Peruvian national;
- (b) when personnel work for a foreign enterprise supplying international land, air and water transport services under a foreign flag and registration;
- (c) when foreign personnel work in a multinational bank or an enterprise that supplies multinational services, subject to the laws governing specific cases;
- (d) for a foreign investor, provided that its investment permanently maintains in Peru at least five tax units (Unidad Impositiva Tributaria -UIT) (2) during the life of its contract;
- (e) for artists, athletes or other service suppliers engaged in public performances in Peruvian territory, for a maximum of three months a year;
- (f) when a foreign national has an immigrant visa;
- (g) for a foreign national whose country of origin has a labour reciprocity or dual nationality agreement with Peru; and
- (h) when foreign personnel supply services in Peru under a bilateral or multilateral agreement concluded by the Peruvian Government. Employers may request waivers for the percentages related to the number of foreign employees and their share of the company's payroll in cases involving:
  - (a) specialised professional or technical personnel;
  - (b) directors or management personnel for a new business activity or reconverted business activity;
  - (c) teachers hired for post-secondary education, for foreign private elementary and high schools, for language teaching in local private schools, or for specialised language centres;
  - (d) personnel working for public or private enterprises with contractual agreements with public organisations, institutions or enterprises; and
  - (e) in any other case determined by Supreme Decree pursuant to specialisation, qualification or experience criteria.

(2) The UIT is an amount used as a reference in taxation rules in order to maintain in constant values the tax basis, deductions, affectation limits and other aspects of the tax that the legislator considers convenient.

I-PERU-7

Sector: Professional Services

Sub-Sector: Legal services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4)

Level of Government: Central

Measures: Legislative Decree N° 1049, "El Peruano" Official Gazette of June 26, 2008, Notaries Law (Ley del Notariado), Article 10

Description: Establishment and Trade in Services

Only a Peruvian national by birth may supply notary services.

I-PERU-8

Sector: Professional Services

Sub-Sector: Architectural services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4)

Level of Government: Central

Measures:

Law N° 14085, "El Peruano" Official Gazette of June 30, 1962, Law establishing the Peruvian Association of Architects (Ley de Creación del Colegio de Arquitectos del Perú)

Law N° 16053, "El Peruano" Official Gazette of February 14, 1966, Professional Practice Law, authorising the Peruvian Associations of Architects and Engineers to supervise Engineering and Architecture professionals of the Nation (Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Perú para supervisar a los profesionales de Ingeniería y Arquitectura de la República), Article 1

National Architects Council Agreement (Acuerdo del Consejo Nacional de Arquitectos), approved in Session N° 04-2009 of December 15, 2009

Description : Establishment and Trade in Services

To practice as an architect in Peru, an individual must join the Peruvian Association of Architects (Colegio de Arquitectos del Perú). The enrolment fees are different for Peruvians and foreigners, and subject to review by the Peruvian Association of Architects (Colegio de Arquitectos del Perú).

Also, to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

I-PERU-9

Sector: Professional Services

Sub-Sector: Auditing services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Rules of the Association of Public Accountants of Lima (Reglamento Interno del Colegio de Contadores Públicos de Lima), Articles 145 and 146

Description: Establishment and Trade in Services

Auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima).

I-PERU-10

Sector: Security Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 003-2011-IN, "El Peruano" Official Gazette of March 31, 2011, Regulation of Private Security Services (Reglamento de Servicios de Seguridad Privada), Articles 12, 18, 22, 36, 40, 41, 46, 47 and 48

Description: Establishment and Trade in Services

The supply of personal and heritage security services by natural persons is reserved to Peruvian nationals.

Only juridical persons constituted in Peru may apply for an authorisation to supply security services. It must prove its constitution in Peru by a copy of the registration form of the constitution for the enterprise.

I-PERU-11

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: National artistic audio-visual production services

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 23 and 25

Description: Trade in Services

Any domestic artistic audio-visual production must be comprised of at least 80 per cent Peruvian national artists.

Any domestic artistic live performances must be comprised of at least 80 per cent Peruvian national artists.

In any domestic artistic audio-visual production and any domestic artistic live performance, Peruvian national artists shall receive no less than 60 per cent the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

I-PERU-12

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Circus services

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Article 26

Description: Trade in Services

A foreign circus may stay in Peru with its original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

I-PERU-13

Sector: Commercial Advertising Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del

Artista, Intérprete y Ejecutante), Articles 25 and 27.2

Description: Trade in Services

Commercial advertising produced in Peru must have at least 80 per cent Peruvian national artists.

In any commercial advertising produced in Peru, Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

I-PERU-14

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Bullfighting

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Article 28

Description: Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting fair. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

I-PERU-15

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 25 and 45

Description: Establishment and Trade in Services

Free to air radio and television broadcast companies must dedicate at least 10 per cent of their daily programming to folklore and national music and to series or programs produced in Peru on Peruvian history, literature, culture or current issues with artists hired in the following percentages:

(a) a minimum of 80 per cent Peruvian national artists;

(b) Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists; and

(c) the same percentages established in the preceding subparagraphs shall govern the work of technical personnel involved in artistic activities.

I-PERU-16

Sector: Customs Warehouses Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 08-95-EF, "El Peruano" Official Gazette of February 5, 1995, Approve the Regulation

of Customs Warehouses (Aprueban el Reglamento de Almacenes Aduaneros), Article 7

Description: Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorisation to operate a customs warehouse.

I-PERU-17

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Supreme Decree N° 020-2007-MTC, "El Peruano" Official Gazette of July 04, 2007, Consolidated Text of the General Rules of the Telecommunications Law (Texto Único Ordenado del Reglamento General de la Ley de Telecomunicaciones), Article 258

Description: Trade in Services

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in Peru with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

I-PERU-18

Sector: Transportation

Sub-Sector: Air Transportation and Specialty Air Services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 27261, "El Peruano" Official Gazette of May 10, 2000, Civil Aviation Law (Ley de Aeronáutica Civil), Articles 75 (modified by Legislative Decree N° 999, April 19, 2008) and 79

Peruvian Aviation Regulation N° 61 (Regulación Aeronáutica del Perú – RAP N° 61), "El Peruano" Official Gazette of December 14, 2013

Supreme Decree N° 050-2001-MTC, "El Peruano" Official Gazette of December 26, 2001, Regulation of the Civil Aviation Law (Reglamento de la Ley de Aeronáutica Civil), Articles 159, 160 and VI Complementary Provision

Description: Establishment and Trade in Services

1. National Commercial Aviation (3) is reserved to a Peruvian natural or juridical person.

2. For the purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements:

3 For greater certainty, National Commercial Aviation includes Specialty Air Services.

(a) it is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru;

(b) at least half plus one of the directors, managers and persons who control and manage the enterprise are Peruvian nationals, have permanent domicile or are resident in Peru; and

(c) at least 51 per cent of the capital stock must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru (this limitation shall not apply to the enterprises constituted under Law N° 24882, which may maintain the ownership percentages set in such law). Six months after the date of authorisation of the enterprise to provide commercial air transportation services, foreign nationals may own up to 70 per cent of the capital stock of the enterprise.

3. In those operations conducted by national commercial aviation operators (explotadores nacionales), personnel performing aeronautical functions on board must be Peruvian nationals or foreign residents with a Peruvian licence.



4. In order to perform activities as a pilot of a Peruvian juridical person, the foreign pilot must prove, at least, two years of residence in Peru. This requirement is not applicable to the foreign resident who has the immigration category of "spouse" of a Peruvian national.

5. Notwithstanding the preceding paragraphs, the General Directorate of Civil Aviation (Dirección General de Aeronáutica Civil) may, for technical reasons, authorise foreign personnel without a Peruvian licence to perform these functions for a period not to exceed six months from the date on which the authorisation was granted, extendable due to ascertained non-existence of such skilled personnel.

(3) For greater certainty, National Commercial Aviation includes Specialty Air Services.

I-PERU-19

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Level of Government: Central

Measures:

Law N° 28583, "El Peruano" Official Gazette of July 22, 2005, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6

Law N° 29475, Law that modifies Law N° 28583, "El Peruano" Official Gazette of December 17, 2009, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), Article 13.6 and Tenth Transitory and Final Provision

Law N° 30580, Law that modifies Law N° 29475, Law of the Reactivation and Promotion of the National Merchant Marine, for Promoting Cabotage in Foreign Trade Operations (Ley de Reactivación y Promoción de la Marina Mercante Nacional, para Promover el Cabotaje en las Operaciones de Comercio Exterior), Articles 1 and 2

Supreme Decree N° 028 DE/MGP, "El Peruano" Official Gazette of May 25, 2001, Regulation of the Law N° 26620 (Reglamento de la Ley N° 26620), Article I-010106, paragraph a)

Supreme Decree N° 015-2014-DE, "El Peruano" Official Gazette of November 28, 2014. Supreme Decree that approves the Legislative Decree N° 1147, that regulates the strengthening of the Armed Forces in the faculties of the National Maritime Authority-General Directorate of Captaincies and Coast Guard, Article 517

Description: Establishment and Trade in Services

A "national ship owner" or "national ship enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide services in water transportation in national traffic or cabotage<sup>4</sup> or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel, and that has obtained the relevant Operating Permit from the General Aquatic Transport Directorate (Dirección de Transporte Acuático).

At least 51 per cent of the subscribed and paid-in capital stock must be owned by Peruvian citizens.

The Chair of the Board of Directors, the majority of the directors, and the General Manager must be Peruvian nationals and residents in Peru.

The captain and crew of Peruvian-flagged vessels must be entirely Peruvian nationals authorised by the General Directorate of Captaincy and Coastguards (Dirección General de Capitanías y Guardacostas). In exceptional cases and after ascertaining that there is no Peruvian qualified personnel with experience in that type of vessel available, foreign nationals may be hired to a maximum of 15 per cent of the total crew, and for a limited period of time. The latter exception does not include the captain of the vessel.

Only a Peruvian national may be a licensed harbour pilot.

Cabotage is exclusively reserved to Peruvian-flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

- (a) the transport of hydrocarbons in national waters is reserved up to 25 per cent for ships of the Peruvian Navy; and
- (b) foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under a financial leasing or bareboat charter with purchase obligation. This period may be renewed up to one year.

The national ship owner or national ship enterprise who signs a contract for the construction or repair of a vessel with a national shipyard may lease a foreign flag vessel for a period equivalent to the period of construction or reparation. That period may not exceed five years.

(4) For greater certainty, water transportation includes transportation by lakes and rivers.

I-PERU-20

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures:

Supreme Decree N° 056-2000-MTC, "El Peruano" Official Gazette of December 31, 2000, Provides that aquatic transportation services and related services conducted in bays and port areas must be provided by authorised natural and juridical persons, with vessels and artifacts of national flag (Disponen que servicios de transporte marítimo y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional), Article 1

Ministerial Resolution N° 259-2003-MTC/02, "El Peruano" Official Gazette of April 4, 2003, Approve Regulation of Aquatic Transportation services and related services rendered in bay traffic and port areas (Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Áreas Portuarias), Articles 5 and 7

Description: Establishment and Trade in Services

Water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorised with Peruvian flag vessels and equipment, including:

- (a) fuel replenishment services;
- (b) mooring and unmooring services;
- (c) diving services;
- (d) victualing services;
- (e) dredging services;
- (f) harbour pilotage services;
- (g) waste collection services;
- (h) tug boat services; and
- (i) transport of persons.

I-PERU-21

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 006-2011-MTC, "El Peruano" Official Gazette of February 4, 2011, Supreme Decree that approves the Regulation of Tourist Water Transportation (Decreto Supremo que aprueba el Reglamento de Transporte Turístico Acuático), Article 1

Description: Trade in Services

The tourist water transport service will be provided by natural or juridical persons, domiciled and constituted in Peru. At the regional and national level, the tourist water transport service is reserved to be provided exclusively with owned or chartered Peruvian flagged ships or in the form of financial lease or a bareboat charter, with purchase option mandatory.

I-PERU-22

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 27866, "El Peruano" Official Gazette of November 16, 2002, Port Labour Law (Ley del Trabajo Portuario), Articles 3 and 7

Description: Trade in Services

Only Peruvian citizens may register in the Registry of Port Workers.

I-PERU-23

Sector: Transportation

Sub-Sector: Land transportation of passengers

Obligations Concerned: Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 017-2009-MTC, "El Peruano" Official Gazette of April 22, 2009, National Regulation of Transport Management (Reglamento Nacional de Administración de Transportes), Article 33, modified by Supreme Decree N° 006-2010-MTC of 22 January 2010

Description: Trade in Services

To supply land transport services, it is necessary to have adequate physical infrastructure, which includes, when appropriate: offices; bus terminals for persons or goods; route stations; bus stops; all other infrastructure used as a place for loading, unloading and storage of goods; maintenance workshops; and any other infrastructure necessary for the supply of the service.

I-PERU-24

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Agreement on International Land Transport (Acuerdo sobre Transporte Internacional Terrestre - ATIT), signed between the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay, signed in Montevideo on January 1, 1990

Description: Trade in Services

Foreign vehicles allowed by Peru, in conformity with the ATIT (5), which carry out international transportation by road, are not able to supply local transport (cabotage) in the Peruvian territory.

(5) The ATIT applies to international land transport between signatory countries (the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay) for the purposes of land transportation between two signatory countries as well as transit to a third country.

I-PERU-25

Sector: Research and Development Services

Sub-Sector: Archaeological services

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Supreme Decree N° 003-2014-MC, "El Peruano" Official Gazette of October 3, 2014, Regulation of Archaeological Interventions (Reglamento de Intervenciones Arqueológicas), Article 30

Description: Trade in Services

Archaeological research programmes and projects headed by a foreign archaeologist, who does not reside in Peru, must have a Peruvian director.

Both directors shall be registered in the National Registry of Archaeologists and shall assume the same responsibilities in the formulation and the integral execution of the project (field and office work), and in the elaboration of the final report.

I-PERU-26

Sector: Services related to Energy Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 26221, "El Peruano" Official Gazette of August 19, 1993, General Law of Hydrocarbons (Ley General de Hidrocarburos), Article 15

Description: Trade in Services

In order to enter into an exploration contract in Peru, foreign natural persons must register in the Public Registry and provide a power of attorney to a Peruvian national resident in the capital of the Republic of Peru.

Foreign enterprises must establish a branch or constitute a society under the General Law of Corporations (Ley General de Sociedades), be domiciled in the capital of the Republic of Peru, and appoint a Peruvian national as an executive agent.

## **Annex II. SCHEDULE OF HONG KONG, CHINA (Reservations for Trade in Services) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

### EXPLANATORY NOTES

1. This Schedule sets out, pursuant to Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services), the specific sectors, sub-sectors or activities for which Hong Kong, China may maintain existing, or adopt new or more restrictive, measures that do not conform with the following obligations:

(a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services);

(b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services);

(c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services); or

(d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services).

2. Each Schedule entry sets out the following elements:

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

(b) Industry Classification, where referenced, refers to the activity covered by the entry, according to:

(i) the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(ii) the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991); or

(iii) the Maritime Model Schedule appended as Appendix 2 to the WTO document JOB/SERV/137 of March 7, 2013,

where appropriate;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services), do not apply to the sectors, sub-sectors or activities covered by the entry; and

(d) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies.

3. For the purposes of this Annex:

(a) "Mode 1" means the supply of a service from the Area of a Party into the Area of the other Party;

(b) "Mode 2" means the supply of a service in the Area of a Party to a person of the other Party;

(c) "Mode 3" means the supply of a service by a service supplier of a Party, through commercial presence in the Area of the other Party;

(d) "Mode 4" means the supply of a service by a natural person of a Party in the Area of the other Party; and

(e) "Trade in Services" means the supply of a service as defined in subparagraph (a), subparagraph (b), subparagraph (c) and subparagraph (d).

4. In accordance with Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to sectors, sub-sectors or activities set out in the Description element of that entry.

5. Where an inconsistency arises in relation to the interpretation of an entry, the Description element of the entry shall prevail to the extent of the inconsistency.

II-HKC-1 (Services)

Sector: All Sectors

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

(a) public law correctional services; and enforcement, ambulance services, services, fire-fighting and rescue

(b) the following, to the extent that they services established for a public purpose: are social

(i) health;

(ii) education;

(iii) housing;

(iv) training;

- (v) transport;
- (vi) public utilities;
- (vii) social security; and
- (viii) social welfare.

II-HKC-2 (Services)

Sector: All Sectors

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure affecting the presence of natural persons and supply of service through such presence, except as specified in its Schedule to Annex 10-A (Specific Commitments on Temporary Entry for Business Persons) of Chapter 10 (Temporary Entry for Business Persons).

II-HKC-3 (Services)

Sector: All Sectors

Industry Classification:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure that accords differential treatment to non-parties under any bilateral or multilateral agreement or arrangement in force or signed prior to the date of entry into force of this Agreement.

For greater certainty, the above paragraph includes measures under any bilateral or multilateral agreement or arrangement that strengthens, expands or modifies an agreement or arrangement referred to in the above paragraph.

Hong Kong, China reserves the right to adopt or maintain any measure that accords differential treatment to non-parties under any bilateral or multilateral agreement or arrangement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters including salvage.

II-HKC-4 (Services)

Sector: BUSINESS SERVICES Professional Services

Industry Classification: CPC 861 Legal Services (2)

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Legal Services.

(2) For Hong Kong, China, arbitration, mediation and conciliation services are classified under services related to management consulting (CPC 866).

II-HKC-5 (Services)

Sector: BUSINESS SERVICES Professional Services

Industry Classification: CPC 9312 Medical and dental services CPC 93191 Services provided by midwives, nurses, physiotherapists and para-medical personnel Other Professional Services (3)

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above, except for Mode 2 for:

(a) Medical and dental services (CPC 9312); and

(b) Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191).

(3) This refers to the services covered by item k. of sub-sector "A. Professional Services" under the Sector "BUSINESS SERVICES" of MTN.GNS/W/120.

#### II-HKC-6 (Services)

Sector: BUSINESS SERVICES Real Estate Services

Industry Classification: CPC 821 Real Estate Services leased property Involving own or CPC 822 Real Estate Services On a fee or contract basis

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Real Estate Services, except for:

Real estate services which are limited to the provision, on a fee or contract basis, of management services for residential or commercial buildings which, in turn, consist of cleaning, maintenance and guarding of such buildings (part of CPC 822) for:

(a) Mode 3; and

(b) Market Access (Article 8.5) obligation for Mode 2.

#### II-HKC-7 (Services)

Sector: BUSINESS SERVICES Rental/Leasing Services without Operators

Industry Classification: CPC 83104 Rental/Leasing Services without Operators Relating to aircraft CPC 83101, 83102 and 83105 Rental/Leasing Services without Operators Relating to other transport equipment CPC 832 Other Rental/Leasing without Operators Services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

(a) Rental/Leasing Services without Operators Relating to aircraft (CPC 83104) and other land transport equipment (CPC 83105);

(b) Other Rental/Leasing Services without Operators (CPC 832); and

(c) Rental/Leasing Services without Operators relating to air transport.

#### II-HKC-8 (Services)

Sector: BUSINESS SERVICES Other Business Services Services incidental to energy distribution Manufacturing

DISTRIBUTION SERVICES Storage and warehouse services

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to electricity market.

#### II-HKC-9 (Services)

Sector: COMMUNICATION SERVICES Postal services

Industry Classification: CPC 7511 Postal services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Postal services.

II-HKC-10 (Services)

Sector: COMMUNICATION SERVICES Courier services

Industry Classification: CPC 7512 Courier services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Courier services, except for Mode 3 and Market Access (Article 8.5) obligation for Mode 2 (limited to the provision of services on a fee or contract basis for the delivery of documents and parcels, but excluding services reserved to the Post Office under the Post Office Ordinance (Cap. 98)).

II-HKC-11 (Services)

Sector: COMMUNICATION SERVICES Telecommunication services

Industry Classification:

Obligations Concerned: Market Access (Article 8.5)

Description: With respect to Telecommunication services, commitments made by Hong Kong, China shall not prevent it from adopting or maintaining non-discriminatory measures, which restrict or require specific types of legal entity through which a service supplier may supply a service, to achieve a legitimate policy objective.

II-HKC-12 (Services)

Sector: COMMUNICATION SERVICES Audiovisual services

Industry Classification: CPC 9613 Radio and television services CPC 7524 Radio and television transmission services Other Audiovisual services (4)

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above, except for:

(a) Radio and television services which are limited to Modes 2 and 3 of:

(i) production services of programme content for sale to operators of radio services, provided that such production services are not subject to licensing under the relevant legislation of Hong Kong, China; and

(ii) production services of programme content for sale to operators of television services, provided that such production services are not subject to licensing under the relevant legislation of Hong Kong, China;

(b) Market Access for Other Audiovisual services.

(4) This refers to the services covered by item f. of sub-sector "D. Audiovisual services" under the sector "COMMUNICATION SERVICES" of MTN.GNS/W/120.

II-HKC-13 (Services)

Sector: CONSTRUCTION AND RELATED ENGINEERING SERVICES (5), (6)

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to CONSTRUCTION AND RELATED ENGINEERING SERVICES, except for:

(a) General construction work for civil engineering (CPC 513);



(b) Installation and assembly work (CPC 514 and 516) (other than Mode 1);

(c) Building completion and finishing work (CPC 517) (other than Mode 1); and

(d) Other – project management services (other than Mode 1): limited to the supervision and coordination of construction projects but do not cover engineering or architectural services.

(5) For railway construction and project implementation services, refer to II-HKC-21 in this Schedule.

(6) Also refer to I-HKC-12 in Annex I Schedule of Hong Kong, China (Existing Non-Conforming Measures for Trade in Services).

#### II-HKC-14 (Services)

Sector: EDUCATIONAL SERVICES

Industry Classification: CPC 923 Higher education services CPC 924 Adult education CPC 929 Other education services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Mode 3 of the services set out above.

#### II-HKC-15 (Services)

Sector: HEALTH RELATED AND SOCIAL SERVICES

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to HEALTH RELATED AND SOCIAL SERVICES, except for Mode 2 for:

(a) Hospital services (CPC 93110); and

(b) Other human health services not elsewhere classified (CPC 93199).

#### II-HKC-16 (Services)

Sector: TOURISM AND TRAVEL RELATED SERVICES

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to TOURISM AND TRAVEL RELATED SERVICES, except for:

(a) Hotel lodging services (CPC 6411);

(b) Motel lodging services (CPC 6412);

(c) Other lodging services (limited to CPC 64191, 64192, 64194 and 64195 only) (other than Mode 1);

(d) Restaurant and catering services (CPC 642 and 643) (other than Mode 1); and

(e) Travel agencies and tour operators services (limited to the business of obtaining for clients carriage or accommodation outside Hong Kong, China and the provision of related services such as the furnishing of travel information, advice and planning (part of CPC 7471)).

#### II-HKC-17 (Services)

Sector: RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Gambling and betting services (part of CPC 964).

Hong Kong, China reserves the right to adopt or maintain any measure with respect to RECREATIONAL, CULTURAL AND SPORTING SERVICES, except for:

(a) Entertainment services (CPC 9619) (other than Circus, amusement park and similar attraction services (CPC 96194) and Other entertainment services n.e.c. (CPC 96199)); and

(b) Library and archives services (CPC 9631) (other than Mode 1); and (c) Sporting and other recreational services.

II-HKC-18 (Services)

Sector: TRANSPORT SERVICES Maritime Transport Services

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

(a) cabotage (7) transport; and

(b) provision of certain port services (pilotage; anchorage, berth and berthing services; towing and tug assistance; provisioning, fuelling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operation, including communications, water and electrical supplies; and emergency repair facilities). However, no measures shall be applied which deny international maritime transport service suppliers reasonable and non-discriminatory access to the above port services.

(7) "Cabotage" covers transportation of passengers or goods between a point in Hong Kong, China and another point in Hong Kong, China, as well as traffic originating and terminating in the same point in Hong Kong, China, provided that this traffic remains within the waters of Hong Kong, China.

II-HKC-19 (Services)

Sector: TRANSPORT SERVICES Internal Waterways Transport Space Transport Other Transport Services (8)

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above.

(8) This refers to the services covered by sub-sector "1. Other Transport Services" under the sector "TRANSPORT SERVICES" of MTN.GNS/W/120.

II-HKC-20 (Services)

Sector: TRANSPORT SERVICES Air Transport Services or related services in support of air services

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Air Transport Services or related services in support of air services, except for:

(a) selling and marketing of air transport services; and

(b) computer reservation system services.

II-HKC-21 (Services)

Sector: TRANSPORT SERVICES Rail Transport Services Railway construction and project implementation

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above, except for:

- (a) Pushing and towing services (CPC 7113);
- (b) Maintenance and repair of rail transport equipment (part of CPC 8868); and
- (c) Supporting services for rail transport services CPC 743).

Paragraph (a), paragraph (b) and paragraph (c) do not include those services relating to cross boundary train services (including Intercity Passenger Services and Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link).

Note: For transparency, the MTR Corporation Limited (Corporation) has been granted a franchise to operate railway (including maintenance of railway assets, construction of any extension and any other railway which the Secretary for Transport and Housing has authorised the Corporation to construct, and management of railway premises and related transport interchanges) in Hong Kong for a period of 50 years from 2 December 2007. The Corporation may apply for extension of the franchise.

II-HKC-22 (Services)

Sector: TRANSPORT SERVICES Road Transport Services

Industry Classification:

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to Road Transport Services, except for:

- (a) Freight transportation (CPC 7123);
- (b) Rental services of commercial freight vehicles with operator (CPC 71240); and
- (c) Maintenance and repair of road transport equipment (CPC 6112 and 8867).

II-HKC-23 (Services)

Sector: TRANSPORT SERVICES Services auxiliary to all modes of transport

Industry Classification: CPC 741 Cargo-handling services CPC 742 Storage and warehouse services, including distribution centre services and materials handling and equipment services such as container station and depot services

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

- (a) Cargo-handling services in respect of air and rail; and
- (b) Storage and warehouse services, including distribution centre services and materials handling and equipment services such as container station and depot services, in respect of air and rail.

II-HKC-24 (Services)

Sector: OTHER SERVICES NOT INCLUDED ELSEWHERE

Industry Classification: CPC 95 Services of membership organisations CPC 97 Other services CPC 98 Private households with employed persons CPC 99 Services provided by organisations and bodies extraterritorial

Obligations Concerned: National Treatment (Article 8.3) Market Access (Article 8.5) Local Presence (Article 8.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the services as set out above, except for Modes 2 and 3 for Spa services (part of CPC 9702).

## Annex II. SCHEDULE OF PERU (Reservations for Trade in Services and Establishment) (1)

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

### EXPLANATORY NOTES

1. This Schedule sets out, pursuant to Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the specific sectors, sub-sectors or activities for which Peru may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services) Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions); or

(b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade Services); in

(c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services); or (e) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

2. Each Schedule entry sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) To identify the different sectors and sub-sectors in this list, the CPC prov, 1991 is used, which stands for the Central Product Classification according to the definition of the United Nations Statistics Office, Statistical Reports, Series M, No. 77, CPC prov, 1991;

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the sectors, sub-sectors or activities listed in the entry;

(e) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies; and

(f) Existing Measures, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors or activities covered by the entry.

3. In accordance with Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, sub-sectors and activities identified in the Description element of that entry.

II-PERU-1

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries in accordance with any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries in accordance with any bilateral or multilateral international agreements in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters (2) , including salvage.

Existing Measures:

(2) For greater certainty, maritime matters include transport by lakes and rivers.

## II-PERU-2

Sector: Indigenous Communities, Peasant, Native and Minority Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For the purposes of this entry, "ethnic groups" means indigenous, native and peasant communities.

Existing Measures:

## II-PERU-3

Sector: Fishing and Services related to Fishing Sub-Sector

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Existing Measures:

## II-PERU-4

Sector: Cultural Industries

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4)

Description: Trade in Services

For the purposes of this entry, "cultural industries" means:

(a) publication, distribution or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

(b) production, distribution, sale or display of recordings of movies or videos;

(c) production, distribution, sale or display of music recordings in audio or video format;

(d) production and presentation of theatre arts (3);

(e) production and exhibition of visual arts;

(f) production, distribution or sale of printed music scores or scores readable by machines;

(g) design, production, distribution and sale of handicrafts; or

(h) radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities,

satellite programming services, and broadcasting networks. Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement regarding cultural industries, including audio-visual cooperation agreements.

For greater certainty, Chapter 8 (Trade in Services) and Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions) shall not apply to government support for the promotion of cultural industries.

Existing Measures:

(3) The term "theatre arts" means live performances or presentations such as drama, dance or music.

II-PERU-5

Sector: Handicraft Industries

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing or exhibition of handicrafts that are identified as Peruvian handicrafts. Performance requirements shall in all cases be consistent with the Agreement on Trade-Related Investment Measures, set out in Annex 1A to the WTO Agreement (TRIMs Agreement).

Existing Measures:

II-PERU-6

Sector: Audio-Visual Industry

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 per cent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage, Peru shall take into account factors including the national cinematographic production, the existing exhibition infrastructure in the country and attendance.

Existing Measures:

II-PERU-7

Sector: Jewellery Design, Theatre Arts, Visual Arts, Music Publishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support for the development and production of jewellery design, theatre arts, visual arts, music and publishing on the recipient achieving a given level or percentage of domestic creative content.

Existing Measures:

II-PERU-8

Sector: Audio-Visual Industry, Publishing Music

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4)

Description: Establishment and Trade in Services

Peru may adopt or maintain any measure that affords a person of the other Party the treatment that is afforded by that Party to Peruvian persons in the audio-visual, publishing and music sectors.

Existing Measures:

II-PERU-9

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health and childcare.

Existing Measures:

II-PERU-10

Sector: Public Supply of Potable Water

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water. For greater certainty, nothing in this entry shall affect the ability of a foreign enterprise to supply bottled water.

Existing Measures:

II-PERU-11

Sector: Public Sewage Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

Existing Measures:

II-PERU-12

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation and exploitation of public telecommunication services.

Existing Measures:

II-PERU-13

Sector: Education Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who supply educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including technical and productive training (educación técnico productiva) as well as other people who supply services related to education including sponsors of educational institutions of any level or stage of the educational system.

Existing Measures:

II-PERU-14

Sector: Transportation Services

Sub-Sector: Road transportation services

Obligations Concerned: National Treatment (Article 8.3)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure that authorises only Peruvian natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Peru (cabotage). For this, the enterprises shall use vehicles registered in Peru.

Existing Measures:

II-PERU-15

Sector: Transportation

Sub-Sector: International road transportation services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:

(a) the service supplier/juridical person; must be a Peruvian natural or

(b) the service supplier must have a real and effective domicile in Peru; and

(c) in the case of juridical persons, the service supplier must be legally constituted in Peru and more than 50 per cent of its capital stock must be owned by Peruvian nationals and its effective control must be by Peruvian nationals.

Existing Measures:

II-PERU-16

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)



Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to ground-handling services.

Existing Measures:

II-PERU-17

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to airport operation services.

Existing Measures:

II-PERU-18

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 8.5)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to Article 8.5 (Market Access) of Chapter 8 (Trade in Services), except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

Legal services: For (a) and (c): None, except that the number of notary positions depends of the number of inhabitants of each city. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Accounting, auditing and bookkeeping services: For (a) and (c): None, except that auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima). No partner may be a member of another auditing society in Peru. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Taxation services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Architectural services: For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Integrated engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Urban planning and landscape architectural services: For (a), (b) and (c): None, except that to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Veterinary services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services provided by midwives, nurses, physiotherapists and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores

Extranjeros).

Computer and related services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on natural sciences: For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may require the inclusion to the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and know the studies and its scope. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on social sciences and humanities: For (a), (b) and (c): None, subject to the respective authorisations of the competent authority. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Interdisciplinary research and development services: For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Real estate services: Involving owned or leased property or on a fee or contract basis: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment: For (a), (b) and (c): None, except that:

A "national ship owner" or "national ship enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic, cabotage (4) or international traffic, who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel, and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

(4) For greater certainty, water transportation includes transportation by lakes and rivers.

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(i) up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

(ii) foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned. That period may be renewed for up to one year.

For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Advertising services: For (a), (b) and (c): None, except that: Commercial advertising produced in Peru, must use at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising. For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to agriculture, hunting and forestry: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services incidental to fishing: solely advisory and consulting services relating to fishing: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to mining, placement and supply services of personnel, and investigation and security services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Related scientific and technical consulting services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Maintenance and repair of equipment (not including vessels, aircraft or other transport equipment), building-cleaning services, photographic services, packing services and convention services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Printing and publishing services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Other (CPC 8790) except: credit rating services (CPC 87901); jewellery design services; design services of handicrafts that are identified as Peruvian handicrafts; and other business services not elsewhere classified (CPC 87909): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Express delivery services: For (a) and (b): No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Advisory services on telecommunications: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

National or international long-distance telecommunications services: For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with the commitments of Peru under Article XVI of GATS.

Carrier telecommunications services, private telecommunications services and value added services (5): For (a), (b), (c): None, except for the obligation of obtaining a concession, authorisation, registry or any other title which Peru considers convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

(5) Value added services shall be defined in accordance with Peruvian legislation.

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited. International traffic shall be routed through the installations of a company holding a concession or other permission for operation granted by the Ministry of Transport and Communications (Ministerio de Transportes y Comunicaciones). Interconnection among private services is prohibited. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Commission agents services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Retailing services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros). Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Franchising: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Construction services: solely consulting services related to construction: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Higher education services (6): For (a): No commitments, except for subjects that are part of a programme that mainly takes place outside Peru. For (b): None. For (c) and (d): No commitments.

(6) For greater certainty, these commitments do not affect any regulation or mandatory requirements related to the recognition of certificates or degrees and they shall not be construed to exempt any student from meeting any applicable requirement to practice a profession or otherwise engage in business activities.

Environmental services: solely consulting services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Entertainment services (including theatre, live bands and circus services), news agencies services, libraries, archives, museums, and other cultural and sporting services: For (a), (b) and (c): None, except that:

(i) any domestic theatre arts (7) and visual arts production and any domestic artistic live performance must be comprised of at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

(ii) a foreign circus may stay in Peru with the original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

(7) The term "theatre arts" means live performances or presentations such as drama, dance or music.

Exploitation of facilities for competitive and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros). Recreational parks services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Road transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Selling and marketing of air transport services, and computer reservation system services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

For greater certainty, nothing in this entry shall be inconsistent with the commitments of Peru in accordance with Article XVI of GATS. For the purposes of this entry:

1. "(a)" refers to the supply of a service from the Area of the other Party into the Area of Peru;
2. "(b)" refers to the supply of a service in the Area of the other Party by a person of that Party to a person of Peru;
3. "(c)" refers to the supply of a service through commercial presence in the Area of Peru by a service supplier of the other Party; and
4. "(d)" refers to the supply of a service by a natural person of the other Party in the Area of Peru.
5. "None" means no limitations or conditions on the application of Article 8.5 (Market Access) of Chapter 8 (Trade in Services).

Existing Measures:

## Chapter 9. FINANCIAL SERVICES

### Article 9.1. Definitions

For the purposes of this Chapter:

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

means the supply of a financial service:

from the Area of a Party into the Area of the other Party;

in the Area of a Party to a person of the other Party; or

by a natural person of a Party in the Area of the other Party,

but does not include the supply of a financial service in the Area of a Party by a financial institution of the other Party;

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

financial institution of the other Party means a financial institution, including a branch, located in the Area of a Party that is controlled by persons of the other Party (1);

(1) In the event that more than 50 per cent of the equity interest in the financial institution is beneficially owned by persons of the other Party, that financial institution is deemed to be controlled by persons of that other Party for the purposes of this Chapter.

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

Insurance and insurance-related services

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

(i) life; and

(ii) non-life;

(b) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(i) guarantees and commitments;

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

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

- (ii) foreign exchange;
- (iii) derivative products including futures and options;
- (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
- (v) transferable securities; and
- (vi) other negotiable instruments and financial assets, including bullion;
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that seeks to supply or is engaged in the business of supplying a financial service within the Area of that Party;

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

person of a Party means "person", as defined in Article 1.3 (General Definitions) of Chapter 1 (Initial Provisions and General Definitions), of a Party and, for greater certainty, does not include a branch of an enterprise of a non-party;

public entity means:

(a) a government, a central bank or a monetary authority of a Party, or any financial institution owned or controlled by a Party; or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

self-regulatory organisation means a non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or by delegation from a Party.

## **Article 9.2. Scope**

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

(a) the supply of financial services by financial institutions of the other Party; and

(b) cross-border trade in financial services.

2. This Chapter shall not apply to:

(a) government procurement of financial services;

(b) subsidies or grants provided by a Party with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt of such subsidies or grants;

(c) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(d) activities forming part of a statutory system of social security or public retirement plans; or

(e) other activities conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (d) or (e) to be conducted by its financial institutions in competition with a public entity or a financial institution.

3. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its permanent employment market or who is employed on a permanent basis in its Area, and does not confer any right on that natural person with respect to that access or employment.

### **Article 9.3. National Treatment (2)**

1. Each Party shall accord to financial institutions of the other Party, and to financial services supplied by such institutions, treatment no less favourable than that it accords to its own financial institutions, and to financial services supplied by its own financial institutions, in like circumstances.

2. For the purposes of the national treatment obligations in Article 9.6.1, a Party shall accord to cross-border trade in financial services and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial services and financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

(2) For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.3 or 9.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between financial services, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

### **Article 9.4. Most-Favoured-Nation Treatment**

1. Each Party shall accord to:

(a) financial institutions of the other Party and financial services supplied by such institutions, treatment no less favourable than that it accords to financial institutions of a non-party and financial services supplied by such financial institutions, in like circumstances; and

(b) cross-border trade in financial services and cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords to cross-border trade in financial service and cross-border financial service suppliers of a non-party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms.

### **Article 9.5. Market Access for Financial Institutions**

Neither Party shall adopt or maintain, with respect to financial institutions of the other Party or financial services supplied by such institutions, either on the basis of a regional subdivision or on the basis of its entire Area, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (3) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a financial service.

(3) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

## **Article 9.6. Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border trade in financial services and cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 9-A.

2. Each Party shall permit persons located in its Area, and its natural person wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the Area of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its Area. A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

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

## **Article 9.7. Special Formalities and Information Requirements**

1. Nothing in Article 9.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the supply of a financial service by a financial institution of the other Party, such as a residency requirement for registration or a requirement that a financial institution be legally constituted or organised under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to financial institutions pursuant to this Chapter.

2. Notwithstanding Articles 9.3 and 9.4, a Party may require a financial institution of the other Party to provide information concerning that financial institution solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of that financial institution. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 9.8. Senior Management and Boards of Directors**

1. A Party shall not require that a financial institution of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial institution of the other Party be composed of natural persons of the Party or natural persons residing in the Area of the Party or a combination thereof.

## **Article 9.9. Non-Conforming Measures**

1. Articles 9.3, 9.4, 9.5, 9.6 and 9.8 shall not apply to:

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

(i) the central level of government, as set out in Section A of its Schedule to Annex III;

(ii) a regional level of government, as set out in Section A of its Schedule to Annex III; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed:



(i) immediately before the amendment, with Articles 9.3, 9.4, 9.5 or 9.8; or

(ii) on the date of entry into force of this Agreement, with Article 9.6.

2. Articles 9.3, 9.4, 9.5, 9.6 and 9.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Articles 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), 8.5 (Market Access) or 8.6 (Local Presence) of Chapter 8 (Trade in Services) or Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions), shall be treated as not subject to Articles 9.3, 9.4, 9.5, 9.6 or 9.8, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the entry is covered by this Chapter.

## **Article 9.10. Electronic Payment Card Systems**

1. A Party shall allow the supply of electronic payment services for payment card transactions (4) into its Area from the Area of the other Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a service supplier of the other Party:

(a) register with or be authorised (5) by relevant authorities;

(b) be a supplier who supplies such services in the Area of the other Party; or

(c) designate an agent office or maintain a representative or sales office in the Area of a Party.

2. For the purposes of this Article, electronic payment services for payment card transactions do not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not used as a means to avoid the Party's obligation under this Article. For greater certainty, such measures may include:

(a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border service supplier of the other Party, of information concerning cardholder names;

(b) the regulation of fees, such as interchange or switching fees; and

(c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

4. For the purposes of this Article, payment card means:

For Peru:

(a) credit and debit cards as defined under Peruvian laws and regulations; and

(b) prepaid cards, as defined under Peruvian laws and regulations, that are issued by financial institutions.

(4) For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

(5) Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home Party's supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross-border supply of electronic payment services into the Party.

## **Article 9.11. Transparency and Administration of Measures**

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Articles 16.2.2 and 16.2.3 of Chapter 16 (Transparency and Anti-Corruption) shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

(a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation. (6)

(6) For greater certainty, a Party may address those comments collectively on an official government website.

5. To the extent practicable, each Party shall allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

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

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

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

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make a decision on a complete application of a financial institution or a cross-border financial service supplier of the other Party relating to the supply of financial services and notify the applicant of the decision within a reasonable period of time. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received.

11. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

12. Each Party shall endeavour to implement and apply in its Area internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering. For this purpose, the Parties may cooperate and exchange information and experience through the contact points of this Chapter.

## **Article 9.12. Expedited Availability of Insurance Services**

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, the Party shall endeavour to maintain or improve these existing procedures.

## **Article 9.13. Financial Services New to the Area of a Party**

Each Party shall permit financial institutions of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. (7) Notwithstanding Article 9.5(b), a Party may determine the institution and juridical form through which the new financial

service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may be refused for prudential reasons.

(7) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

## **Article 9.14. Self-Regulatory Organisations**

When membership of, participation in, or access to, a self-regulatory organisation is required by a Party in order for financial institutions or a cross border financial service suppliers of the other Party to supply financial services in or into the Area of the Party, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 9.3 and 9.4.

## **Article 9.15. Performance of Back-Office Functions**

1. The Parties recognise that the performance of the back-office functions of a financial institution in its Area by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its Area, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its Area to retain certain functions.

## **Article 9.16. Payment and Clearing Systems**

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

## **Article 9.17. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a financial institution or cross- border financial service supplier of the other Party if the financial institution or cross- border financial service supplier is:

(a) an enterprise owned or controlled by persons of a non-party; and

(b) the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a financial institution or cross- border financial service supplier of the other Party if the financial institution or cross- border financial service supplier is an enterprise owned or controlled by persons of a non- party or by persons of the denying Party that has no substantial business activities in the Area of the other Party.

## **Article 9.18. Payments and Transfers**

1. Each Party shall permit all transfers and payments that relate to the supply of financial services to be made freely and without delay into and out of its Area.

2. Each Party shall permit transfers and payments that relate to the supply of financial services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws (8) relating to:

(a) bankruptcy, insolvency (9) or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

(8) For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

(9) For greater certainty, for Hong Kong, China, insolvency includes resolution as defined under the Financial Institutions (Resolution) Ordinance (Cap. 628).

## **Article 9.19. Treatment of Certain Information**

Without prejudice to Article 19.1 (Disclosure of Information) of Chapter 19 (General Provisions and Exceptions), nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers or any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## **Article 9.20. Exceptions Including for Prudential Reasons**

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Trade Remedies), a Party shall not be prevented from adopting or maintaining measures for prudential reasons (10), including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 8 (Trade in Services), or Chapter 11 (Electronic Commerce), shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. (11)

3. Notwithstanding Article 9.18, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

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

(10) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

(11) For greater certainty, this paragraph shall not affect a Party's obligations under Article 8.12 (Payments and Transfers) of Chapter 8 (Trade in Services).

## **Article 9.21. Recognition**

1. A Party may recognise prudential measures of a non-party in the application of measures covered by this Chapter. (12) That recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonisation or other means; or
- (c) based upon an agreement or arrangement with the non-party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

(12) For greater certainty, nothing in Article 9.4 shall be construed to require a Party to accord recognition to prudential measures of the other Party.

## **Article 9.22. Consultations**

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

2. Consultations under this Article shall include officials of the authorities specified in Annex 9-B.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial institution or cross-border financial service supplier of the other Party, such financial authority may approach the competent financial authority in the Area of the other Party to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant laws and regulations or to the requirement of a prior agreement or arrangement between the respective financial authorities.

## **Article 9.23. Contact Points**

1. Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party.

2. Each Party shall notify the other Party promptly of any amendments to the details of its contact points.

## **Article 9.24. Specific Provisions on Dispute Settlement**

1. Chapter 18 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 18.9 (Composition of Panels) of Chapter 18 (Dispute Settlement) shall apply, except that:

- (a) if the disputing Parties agree, each panellist shall meet the qualifications in paragraph 3; and
- (b) in any other case:
  - (i) each disputing Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 18.10

(Qualifications of Panellists) of Chapter 18 (Dispute Settlement); and

(ii) if the responding Party invokes Article 9.20, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 18.10.1(b) to (d) of Chapter 18 (Dispute Settlement), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 18.19.7 of Chapter 18 (Dispute Settlement), shall seek the views of financial services experts, as necessary.

## **Annex 9-A. CROSS-BORDER TRADE**

Hong Kong, China

1. Article 9.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” (Mode 1) in Article 9.1 (Definitions), with respect to the financial services as referred to in the following subparagraphs of the definition of “financial service” in Article 9.1 (Definitions):

subparagraph (a)(ii), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (g), subparagraph (i) and subparagraph (o).

2. Article 9.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (b) of the definition of “cross-border supply of financial services” (Mode 2) in Article 9.1 (Definitions), with respect to the financial services as referred to in the following subparagraphs of the definition of “financial service” in Article 9.1 (Definitions):

subparagraph (a)(ii), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (e), subparagraph (f), subparagraph (g), subparagraph (h), subparagraph (i), subparagraph (j)(i), subparagraph (j)(ii), subparagraph (j)(iii), subparagraph (j)(iv), subparagraph (j)(v), subparagraph (k), subparagraph (l), subparagraph (m), subparagraph (o) and subparagraph (p) (excluding intermediation services under subparagraph (p)).

3. For greater certainty, Hong Kong, China reserves the right to adopt or maintain any measure under III B-HKC-1 of Section B of Hong Kong, China’s Schedule to Annex III, to the extent that the measure is related to this Annex 9-A.

Peru

Insurance and insurance-related services

1. Article 9.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” (Mode 1) in Article 9.1 (Definitions), with respect to:

(a) insurance of risks related to:

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

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial, risk assessment and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 9.1 (Definitions), of insurance of risks relating to services listed in subparagraph (a) and subparagraph (b) in this paragraph.

Banking and other financial services (excluding insurance)

2. Article 9.6.1 (Cross-Border Trade) shall apply only with respect to the provision and transfer of financial information, and

financial data processing and related software as referred to in subparagraph (o) of the definition of “financial service” in Article 9.1 (Definitions) (1), subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial services (2), excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of “financial service” in Article 9.1 (Definitions).(3)

(1) The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peru’s law regulating the protection of such data.

(2) The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of “financial service” in Article 9.1 (Definitions).

(3) The Parties understand that a trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

## **Annex 9-B. AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES**

The authorities for each Party responsible for financial services are:

(a) for Hong Kong, China, the Financial Services and the Treasury Bureau, and the Trade and Industry Department; and

(b) for Peru, the Ministry of Economy and Finance (Ministerio de Economía y Finanzas -MEF), in coordination with financial regulators.

## **Annex III. SCHEDULE OF HONG KONG, CHINA (Financial Services) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

### **EXPLANATORY NOTES**

1. The Schedule sets out, pursuant to Article 9.9 (Non-Conforming Measures) of Chapter 9 (Financial Services):

(a) introductory notes that limit or clarify the commitments of Hong Kong, China with respect to the obligations described in subparagraph (b) and subparagraph (c) below;

(b) in Section A, Hong Kong, China’s existing measures with respect to sectors or sub-sectors that are not subject to the following obligations:

(i) Article 9.3 (National Treatment);

(ii) Article 9.4 (Most-Favoured-Nation Treatment);

(iii) Article 9.5 (Market Access for Financial Institutions);

(iv) Article 9.6 (Cross-Border Trade); or

(v) Article 9.8 (Senior Management and Boards of Directors); and

(c) in Section B, the specific sectors, sub-sectors or activities for which Hong Kong, China may maintain existing, or adopt new or more restrictive, measures that do not conform with the following obligations:

(i) Article 9.3 (National Treatment);

(ii) Article 9.4 (Most-Favoured-Nation Treatment);

(iii) Article 9.5 (Market Access for Financial Institutions);

(iv) Article 9.6 (Cross-Border Trade); or

(v) Article 9.8 (Senior Management and Boards of Directors).

2. Each Schedule entry in Section A sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1(b) that, pursuant to Article 9.9.1(a) (Non-Conforming Measures), do not apply to the listed measures for the sectors or sub-sectors pursuant to paragraph 4;

(d) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(e) Description sets out the non-conforming measure for which the entry is made.

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

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1(c) that, pursuant to Article 9.9.2 (Non-Conforming Measures), do not apply to the sectors, sub-sectors or activities covered by the entry pursuant to paragraph 5; and

(d) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies.

4. For Section A, in accordance with Article 9.9.1(a) (Non-Conforming Measures), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures for the sectors or sub-sectors set out in the Description element of that entry.

5. For Section B, in accordance with Article 9.9.2 (Non-Conforming Measures), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, sub-sectors or activities set out in the Description element of that entry.

6. For Section A, a measure that is only inconsistent with Article 9.8 (Senior Management and Boards of Directors) need not be reserved against Article 9.3 (National Treatment).

7. For the purposes of this Annex:

(a) "Mode 1" means the supply of a financial service from the Area of a Party into the Area of the other Party;

(b) "Mode 2" means the supply of a financial service in the Area of a Party to a person of the other Party;

(c) "Mode 3" means the supply of a financial service in the Area of a Party by a financial institution of the other Party; and

(d) "Mode 4" means the supply of a financial service by a natural person of a Party in the Area of the other Party.

8. The sectors or sub-sectors listed in this Schedule refer to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991), to the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991), or to the activities listed in Article 9.1 (Definitions).

## **INTRODUCTORY NOTES**

1. The commitments made by Hong Kong, China under this Agreement with respect to Mode 1 and Mode 2 of financial services as defined in paragraph 7 of the Explanatory Notes for this Schedule do not signify a commitment to allow a service supplier from the Area of Peru to solicit business or to conduct marketing in the Area of Hong Kong, China.

2. The commitments made by Hong Kong, China under this Agreement shall not prevent it from adopting or maintaining non-discriminatory measures which restrict or require specific types of legal entity through which a service supplier may supply a service.



3. There is a statutory monopoly on the operation of a stock market in Hong Kong, China.

## **Section A**

III A-HKC-1

Sector: FINANCIAL SERVICES

Sub-Sector: Insurance and insurance-related services

Obligations Concerned: National Treatment (Article 9.3) Senior Management and Boards of Directors (Article 9.8)

Measures: Paragraph 2.8 of the Guideline on application for authorization to carry on insurance business in or from Hong Kong (GL5) published by the Insurance Authority. Description The chief executive appointed by the authorised insurer shall normally reside in Hong Kong, China.

III A-HKC-2

Sector: FINANCIAL SERVICES

Sub-Sector: Banking and other financial services (excluding insurance)

Obligations Concerned: National Treatment (Article 9.3) Senior Management and Boards of Directors (Article 9.8)

Measures: Section 74 of the Banking Ordinance (Cap. 155)

Description: For Mode 3 supply of financial services related to acceptance of deposits and other repayable funds from the public, all authorised institutions (local or overseas) must appoint a chief executive and not less than one alternative chief executive, each of whom shall be an individual and ordinarily resident in Hong Kong, China.

III A-HKC-3

Sector: FINANCIAL SERVICES

Sub-Sector: Banking and other financial services (excluding insurance)

Obligations Concerned: National Treatment (Article 9.3) Senior Management and Boards of Directors (Article 9.8)

Measures: Section 8ZZU of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584)

Description: For Mode 3 supply of financial services related to all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts, all licensees to operate stored value facilities must appoint a chief executive and not less than one alternative chief executive each of whom shall be an individual and ordinarily resident in Hong Kong, China.

## **Section B**

III B-HKC-1

Sector: FINANCIAL SERVICES

Sub-Sector: All

Obligations: Concerned Market Access for Financial Institutions (Article 9.5) Cross-Border Trade (Article 9.6)

Description: Hong Kong, China reserves the right to adopt or maintain any measure relating to Article 9.5 (Market Access for Financial Institutions) or Article 9.6 (Cross-Border Trade), except for the sectors and sub-sectors, and subject to the terms, limitations and conditions, listed in the Appendix to this Schedule.

III B-HKC-2

Sector: FINANCIAL SERVICES

Sub-Sector: All

Obligations Concerned: National Treatment (Article 9.3) Senior Management and Boards of Directors (Article 9.8)

Description: Hong Kong, China reserves the right to adopt or maintain:

Mode 3: Any measure with respect to all financial services other than the financial services referred to in subparagraph (a), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (e), subparagraph (f), subparagraph (g), subparagraph (h), subparagraph (i), subparagraph (j)(i), subparagraph (j)(ii), subparagraph (j)(iii), subparagraph (j)(iv), subparagraph (j)(v), subparagraph (k), subparagraph (l), subparagraph (m), subparagraph (o), and subparagraph (p) (excluding intermediation services under the subparagraph (p)) under the definition of financial service in Article 9.1 (Definitions).

For the financial services subject to Securities and Futures Ordinance (Cap. 571), Hong Kong, China reserves the right to adopt or maintain:

Mode 3: The requirement that, in relation to the regulated activity, at least one responsible officer of the licensed corporation is available at all times to supervise the business of the regulated activity for which the corporation is licensed.

III B-HKC-3

Sector FINANCIAL SERVICES

Sub-Sector: All

Obligations Concerned: National Treatment (Article 9.3)

Description: With respect to Mode 3, Hong Kong, China reserves the right to adopt or maintain any measure relating to subsidies or grants, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt of such subsidies or grants.

## APPENDIX

For the purposes of this Appendix, the “Terms, limitations and conditions in relation to Article 9.5 (Market Access for Financial Institutions) and Article 9.6 (Cross-Border Trade)” column refers to the modes of supply of financial services as defined in paragraph 7 of the Explanatory Notes for this Schedule.

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

| Sector or Sub-Sector  | Terms, limitations and conditions in relation to Article 9.5 (Market Access for Financial Institutions) and Article 9.6 (Cross-Border Trade)   |
|---|--|
| SECTOR-SPECIFIC COMMITMENTS   |  |
| Insurance and Insurance-related Services                              |  |
| (a) direct insurance (including co-insurance): (i) life (ii) non-life | 1) None other than that statutory insurances must be purchased from an insurer authorised in Hong Kong, China. 2) None other than that statutory insurances must be purchased from an insurer authorised in Hong Kong, China. 3) None other than that only an incorporated company authorised by the Insurance Authority (IA) or an association of underwriters approved by the IA is permitted to carry on insurance business. In the case of the former, commercial presence must take the form of a subsidiary or branch. Insurance business shall not be carried out through a representative office (2) |
| (b) reinsurance and retrocession                                      | 1) None, provided that the insurance company is a company incorporated outside Hong Kong, China and has no agent nor place of business in Hong Kong, China. 2) None 3) None other than that only an incorporated company authorised by the IA or an association of underwriters approved by the IA is permitted to carry on insurance business. In the case of the former, commercial presence must take the form of a subsidiary or branch. Insurance business shall not be carried out through a representative office (2).  |
| (c) insurance   |  |

|   |   |
|---|---|
| intermediation, such as brokerage and agency (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services | 1) None other than claims settlement services, except for settlement of claims under contracts of goods in transit insurance entered into wholly outside Hong Kong, China in respect of goods consigned to Hong Kong, China 2) None 3) None |
|---|---|

(2) A representative office is considered a promotion (for non-business purpose only) and liaison office and can only serve some auxiliary functions such as conduct market research, collect business statistics and establish contacts with prospective customers and partners. It cannot conduct any profit generating business activities

| <b>Banking and Other Financial Services (excluding insurance)</b>   |  |
|---|--|
| (e) acceptance of deposits and other repayable funds from the public.   | 1) Unbound 2) None 3) None other than that: (a) all authorised institutions (i.e. licensed banks, restricted licence banks and deposit-taking companies) shall maintain a physical presence in Hong Kong, China; and (b) in the case of an overseas bank seeking to establish a representative office in Hong Kong, China, such offices are prohibited from taking deposits and undertaking banking business in general. |
| (f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions.   | 1) Unbound 2) None 3) None   |
| (g) financial leasing   | 1) None 2) None 3) None  |
| (h) all payment and money transmission services including credit, charge and debit cards, travellers cheques and bankers drafts   | 1) Unbound 2) None 3) None   |
| (i) guarantees and commitments  | 1) None 2) None 3) None  |
| (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: (i) money market instruments, including cheques, bills, certificates of deposits; (ii) foreign exchange; (iii) derivative products including futures and options; (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements; and (v) transferable securities. | 1) Unbound 2) None 3) None   |
| (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of  | 1) Unbound 2) None 3) None   |

|   |   |
|---|---|
| services related to such issues   |   |
| (l) money broking   | 1) Unbound 2) None 3) None  |
| (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services  | 1) Unbound 2) None 3) None  |
| (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services  | 1) None 2) None 3) None   |
| (p) advisory and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o) under the definition of financial service in Article 9.1 (Definitions), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy | 1) None other than commodity trading and investment advisory services 2) None 3) None |
| All financial services not specified above  | 1) Unbound 2) Unbound 3) Unbound  |

### **Annex III. SCHEDULE OF PERU (Financial Services) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

#### **EXPLANATORY NOTES**

1. The Schedule of Peru to this Annex sets out:

(a) introductory notes that limit or clarify the commitments of Peru with respect to the obligations described in subparagraph (b) and subparagraph (c);

(b) in Section A, pursuant to Article 9.9.1 (Non-Conforming Measures) of Chapter 9 (Financial Services), Peru's existing measures that are not subject to some or all the obligations imposed by:

(i) Article 9.3 (National Treatment);

(ii) Article 9.4 (Most-Favoured-Nation Treatment);

(iii) Article 9.5 (Market Access for Financial Institutions);

(iv) Article 9.6 (Cross-Border Trade); or

(v) Article 9.8 (Senior Management and Boards of Directors); and

(c) in Section B, pursuant to Article 9.9.2 (Non-Conforming Measures), the specific sectors, sub-sectors or activities for which Peru may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(i) Article 9.3 (National Treatment);

(ii) Article 9.4 (Most-Favoured-Nation Treatment);

(iii) Article 9.5 (Market Access for Financial Institutions);

(iv) Article 9.6 (Cross-Border Trade); or

(v) Article 9.8 (Senior Management and Boards of Directors).

2. Each Schedule entry in Section A sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1(b) that, pursuant to Article 9.9.1(a) (Non-Conforming Measures), do not apply to the listed measures as indicated in the introductory notes for the Schedule of Peru;

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(f) Description, as indicated in the introductory notes for the Schedule of Peru, provides a general non-binding description of the measure for which the entry is made.

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

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1(c) that, pursuant to Article 9.9.2 (Non-Conforming Measures), do not apply to the sectors, sub-sectors or activities listed in the entry;

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies; and

(f) Existing Measures identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors or activities covered by the entry.

4. Peru recognises that measures falling under exceptions applicable to this Chapter, such as those in Article 9.20 (Exceptions Including for Prudential Reasons), need not be scheduled. Nevertheless, Peru may have listed measures that fall within applicable exceptions. For greater certainty, the listing of a measure in the Schedule of Peru to Annex III is without prejudice to whether that measure or any other measure adopted or maintained by Peru is covered by exceptions such as those in Article 9.20 (Exceptions Including for Prudential Reasons)

## **INTRODUCTORY NOTES**

1. Commitments under Chapter 9 (Financial Services), in the sector and sub-sectors listed in this Schedule, are undertaken subject to the limitations and conditions set forth in these introductory notes and in the Schedule below.

2. To clarify the commitment of Peru with respect to Article 9.5 (Market Access for Financial Institutions), juridical persons supplying financial services constituted under the laws of Peru are subject to non-discriminatory limitations on juridical form. (2)

3. Article 9.9.1(c) (Non-Conforming Measures) shall not apply to those nonconforming measures relating to Article 9.5(b) (Market Access for Financial Institutions).

4. For Section A of this Schedule, Description provides a general non-binding description of the measure for which the entry is made.

(2) For example, limited liability partnerships and sole proprietorships with limited liability are generally not acceptable juridical forms for financial institutions in Peru. This introductory note does not affect, or otherwise limit, a choice by an investor of the other Party between branches and subsidiaries.

## **Section A**

### III A-PERU-1

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: Market Access for Financial Institutions (Article 9.5)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: A financial institution of the other Party providing banking services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose in accordance with Article 9.20.1 (Exceptions Including for Prudential Reasons), the operations of the branch are limited by its capital located in Peru.

### III A-PERU-2

Sector: Financial Services

Sub-Sector: Insurance and insurance-related services

Obligation Concerned: Market Access for Financial Institutions (Article 9.5)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: A financial institution of the other Party providing insurance or insurance-related services and established in Peru through a branch must assign to its branch certain capital, which must be located in Peru. In addition to measures that Peru may impose in accordance with Article 9.20.1 (Exceptions Including for Prudential Reasons), the operations of the branch are limited by its capital located in Peru.

### III A-PERU-3

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: Cross-Border Trade (Article 9.6)

Level of Government: Central

Measures: Securities Market Law (Ley del Mercado de Valores), approved by Legislative Decree N° 861 and its amendments, Articles 280, 333, 337 and Seventeenth Final Provision General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments, Articles 136 and 296

Description: Financial institutions constituted under the laws of Peru and debt securities offered in a primary or secondary public offering in the territory of Peru must be rated by credit rating companies constituted under the laws of Peru. They may also be rated by other credit rating agencies, but only in addition to the mandatory rating.

### III A-PERU-4

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligation Concerned: National Treatment (Article 9.3)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments Law Establishing the Banco Agropecuario (Ley de Creación del Banco Agropecuario), Law N° 27603 and its amendments

Law Decree N° 18807, Law Establishing the Corporación Financiera de Desarrollo (COFIDE) (Ley de Creación de la Corporación Financiera de Desarrollo (COFIDE))

Legislative Decree N° 206, Law on the System of Financial Support and Encouragement for Business Development and its amendments

Law N° 25382, Repeal Legislative Decree N° 725 and amend Article 24 of Legislative Decree N° 206

Law Establishing the Banco de la Nación (Ley de Creación del Banco de la Nación), Law N° 16000 and its amendments

Law N° 28579, (Ley de Conversión del Fondo Hipotecario de la Vivienda - Fondo MIVIVIENDA a Fondo MIVIVIENDA S.A.) and its amendments

Law N° 10769 (Creando la Caja Municipal de Crédito Popular de Lima) and its amendments

Supreme Decree N° 157-90-EF (Norman Funcionamiento en el País de las Cajas Municipales de Ahorro y Crédito) and its amendments

Supreme Decree N° 07-94-EF (Aprueban el Estatuto del Banco de la Nación) and its amendments

Description: Peru may grant advantages or exclusive rights, without limitation, to one or more of the following financial entities, as long as they are partially or fully owned by the State: Corporación Financiera de Desarrollo (COFIDE), Banco de la Nación, Banco Agropecuario, Fondo Mivivienda, Cajas Municipales de Ahorro y Crédito, and the Caja Municipal de Crédito Popular.

Examples of such advantages are the following: (3)

The Banco de la Nación and Banco Agropecuario are not required to diversify their risk; and

The Cajas Municipales de Ahorro y Crédito may directly sell collateral they repossess in cases of loan default, in accordance with pre-established procedures.

(3) For greater certainty, and notwithstanding the location of this entry within Section A of this Schedule, the Parties understand that the advantages or exclusive rights that Peru may grant to the specified entities are not limited only to the cited examples.

### III A-PERU-5

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligations Concerned: Market Access for Financial Institutions (Article 9.5)

Level of Government: Central

Measures: Securities Market Law (Ley del Mercado de Valores), approved by Legislative Decree N° 861 and its amendments, Articles 130, 167, 185, 204, 223, 259, 269, 270, 302, 324, 354 and Seventeenth Final Provision

Legislative Decree N° 862, Law of the Investment Funds and their Management Corporations (Ley de Fondos de Inversión y sus Sociedades Administradoras) and its amendments; Article 12

Law N° 26361, Law on Commodities Exchange (Ley sobre Bolsas de Productos) and its amendments, Articles 2, 9 and 15

Law Decree N° 22014 (Empresas Administradoras de Fondos Colectivos se constituirán como Sociedades Anónimas), Article 1

Consolidated Text of the Law of Private Pension Funds (Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones), approved by Supreme Decree N° 054-97-EF, Article 13; and the Regulation of the Consolidated Text of the Law of Private Pension Funds (Reglamento del Texto Único Ordenado de la Ley del Sistema Privado de Administración de Fondos de Pensiones), approved by Supreme Decree N° 004-98-EF, Article 18

Description: Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including pension fund managers, must be constituted under the laws of Peru. Therefore, financial institutions of the other Party established in Peru to supply these financial services may not be established as branches or agencies.

III A-PERU-6

Sector: Financial Services

Sub-Sector: All

Obligation Concerned: Cross-Border Trade (Article 9.6)

Level of Government: Central

Measures: General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Ley General del Sistema Financiero y del Sistema de Seguros y Orgánica de la Superintendencia de Banca y Seguros), Law N° 26702 and its amendments

Description: Creditors domiciled in Peru have legal preference with regard to the assets located in Peru of a branch of a foreign financial institution, in case of liquidation of the financial institution or its branch in Peru.

## **Section B**

III B-PERU-1

Sector: Financial Services

Sub-Sector: Insurance and insurance-related services

Obligation Concerned: Cross-Border Trade (Article 9.6)

Level of Government: Central

Existing Measures: Law N° 27181, General Law of Land Transport and Traffic (Ley General de Transporte y Tránsito Terrestre) and its Regulation approved by Supreme Decree 024-2002-MTC Law N° 26790, Law on the Modernization of the Social Security in Health (Ley de la Modernización de la Seguridad Social en Salud), and its Regulation approved by Supreme Decree N° 03-98-SA

Description: Peru reserves the right to adopt or maintain measures that restrict the acquisition of obligatory insurance outside of Peru, or that require that obligatory insurance be purchased from suppliers established in Peru, such as "Compulsory Car Insurance" (Seguro Obligatorio de Accidentes de Tránsito - SOAT) and "Hazardous Work Supplementary Insurance" (Seguro Complementario de Trabajo en Riesgo). These restrictions shall not apply to any insurance covered by Annex 9-A (Cross-Border Trade).

III B-PERU-2

Sector: Financial Services

Sub-Sector: Social services

Obligation Concerned: Market Access for Financial Institutions (Article 9.5) Cross-Border Trade (Article 9.6)

Description: Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health and childcare.

# **Chapter 10. TEMPORARY ENTRY FOR BUSINESS PERSONS**

## **Article 10.1. Definitions**

For the purposes of this Chapter:

business person means a natural person of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities, seeking temporary entry for business purposes;



immigration formality means a visa, permit, pass or other document or electronic authority granting a business person of a Party temporary entry;

immigration measure means any measure affecting the entry and stay of a business person of a Party in the Area of the other Party; and

temporary entry means entry into the Area of a Party by a business person of the other Party who does not intend to establish permanent residence.

## **Article 10.2. Scope**

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the Area of the other Party under any of the categories referred to in Annex 10-A.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

4. The sole fact that a Party requires business persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

## **Article 10.3. Application Procedures**

1. Each Party shall, as expeditiously as possible, process complete applications for immigration formalities, including further immigration formality requests or extensions, and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. On request of an applicant, a Party that has received a complete application for an immigration formality shall endeavour to promptly provide the applicant with information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable.

## **Article 10.4. Grant of Temporary Entry**

1. Each Party shall set out in Annex 10-A the commitments it makes with regard to temporary entry of business persons of a Party, which shall specify the conditions and limitations (1) for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

(a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and

(b) meet all relevant eligibility requirements for temporary entry to, or extension of temporary stay in, the granting Party.

3. The sole fact that a Party grants temporary entry to a business person of the other Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

(1) For greater certainty, conditions and limitations include any numerical quota or labour market testing requirement, which neither Party shall impose unless specified in Annex 10-A.

## **Article 10.5. Provision of Information**

1. Further to Articles 16.2 (Publication) and 16.3 (Notification and Provision of Information) of Chapter 16 (Transparency and

Anti-Corruption), each Party shall:

(a) promptly publish online if possible or otherwise make publicly available, information on:

(i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Party to become acquainted with those requirements; and

(ii) the typical timeframe within which an application for an immigration formality is processed; and

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry under this Chapter.

2. The information referred to in paragraph 1(a) shall include, where applicable, the following information:

(a) types of visa, permit or any similar authorisation regarding entry and temporary stay;

(b) documentation required and conditions to be met; and

(c) method of filing an application and options on where to file, such as consular offices or online.

## **Article 10.6. Relation to other Chapters**

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 17 (Administrative and Institutional Provisions), Chapter 18 (Dispute Settlement), Chapter 20 (Final Provisions) and Articles 16.2 (Publication) and 16.3 (Notification and Provision of Information) of Chapter 16 (Transparency and AntiCorruption), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

## **Article 10.7. Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

(a) the matter involves a pattern of practice; and

(b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

## **Annex 10-A. SPECIFIC TEMPORARY ENTRY FOR BUSINESS PERSONS. Schedule of Hong Kong, China (1)**

1. Hong Kong, China's commitments under Article 10.4 (Grant of Temporary Entry) are covered wholly and exclusively in this Schedule. Hong Kong, China reserves the right to adopt or maintain any measure in respect of the supply of a service by a service supplier of Peru, through presence of business persons of Peru in the Area of Hong Kong, China other than the commitments to grant temporary entry and stay for the purpose of carrying out the specified business activities in relation to the supply of services as set out in this Schedule.

2. This Schedule specifies the conditions and limitations for entry and temporary stay, including the requirements and length of stay, for each category of business persons included in this Schedule.

3. Hong Kong, China shall grant temporary entry or extension of stay to the extent provided for in the commitments set out in this Schedule to business persons of Peru, provided that those business persons:

(a) follow prescribed application procedures for the immigration formality (2) sought; and

(b) meet all relevant eligibility requirements for temporary entry to or extension of temporary stay in Hong Kong, China.

4. Temporary entry granted by Hong Kong, China to a business person of Peru pursuant to this Schedule shall not exempt that person from the requirements needed to carry out a profession or activity in accordance with its laws and regulations, and any applicable mandatory codes of practice made pursuant to its laws and regulations, in force in the Area of Hong Kong, China.

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

(2) It is understood that "immigration formality" means a visa, permit, pass or other document or electronic authority granting a business person permission to enter, stay, work or establish commercial presence in the Area of Hong Kong, China.

| Entry in the following categories only   | Conditions (including duration of stay)   |
|--|---|
| <p><b>(A) Business visitors.</b> Definition: A business visitor means a business person of Peru: (a) who is seeking temporary entry to Hong Kong, China for the purpose of: (i) attending meetings or conferences, or engaging in consultations with business colleagues; (ii) taking orders or negotiating contracts for an enterprise in Hong Kong, China but not selling goods or providing services to the general public; or (iii) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise or investment in Hong Kong, China; (b) who is not seeking to enter the labour market of Hong Kong, China; and (c) whose principal place of business, actual place of remuneration and predominant place of accrual of profits remain outside Hong Kong, China.</p> | <p>The commitments shall apply to: (a) all sectors in the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991); and (b) entry and temporary stay for a period not exceeding 90 days, provided that normal immigration requirements are met.</p> |

Note for transparency: Under the existing immigration regime of Hong Kong, China, visitors to Hong Kong, China may make an extension of stay application before the expiry of the limit of stay if they have a special or urgent need to stay longer. Such applications will be considered on their own merits. Detailed information can be found at [https://www.immd.gov.hk/eng/services/visas/visit\\_transit.html](https://www.immd.gov.hk/eng/services/visas/visit_transit.html).

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| <p><b>(B) Intra-corporate transferees.</b> Definition: An <b>intra-corporate transferee</b> means a senior manager or a specialist who is an employee of a service supplier of Peru with a commercial presence in Hong Kong, China. A <b>senior manager</b> means a business person of Peru within an organisation of Peru who: (a) is a senior employee of that organisation with responsibility for the entire organisation's operations, or a substantial part of it, in Hong Kong, China; (b) has proprietary information of the organisation and receives only general supervision or direction from higher level executives or the board of directors or stockholders of the organisation; and (c) supervises and controls the work of other supervisory, professional or managerial employees in Hong Kong, China. This does not include a first-line supervisor, unless the employees supervised are professional; nor does it include an employee who primarily performs tasks necessary for the provision of the service. A <b>specialist</b> means a business person of Peru within an organisation of Peru who possesses knowledge at an advanced level of expertise; possesses proprietary knowledge of the organisation's service, research equipment, techniques,</p> | <p><b>Conditions (including duration of stay)</b> Business persons of Peru seeking entry into Hong Kong, China as senior manager or specialist under Hong Kong, China's commitments on intra-corporate transferees shall: (a) be an employee who has been in the prior employment of the concerned service supplier which sponsors their entry into Hong Kong, China for a period of not less than one year immediately preceding the date of application for admission; and (b) during their stay in Hong Kong, China except with the prior approval of the Government of Hong Kong, China, not change employment or employer. The commitments: (a) shall only apply to the sectors and sub-sectors as set out in paragraph 5 of this Schedule; (b) shall only apply to business persons of Peru in the employment of service suppliers of Peru which have a bona fide business establishment operating in Hong Kong, China. The number of business persons who may seek entry under these commitments shall be reasonable having regard to the size and the nature of the business operation of the relevant establishment in Hong Kong, China; and (c) are limited to entry and temporary stay. Temporary stay implies that the appropriate prior authority will have been applied for and obtained before departure for Hong Kong, China. Temporary stay shall be limited to one year in the first instance,</p> |
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| or management; and who is essential to the operation of the concerned service supplier's establishment in Hong Kong, China.  | which may be extended up to a total of five years.   |
| <b>(C) Installers or servicers.</b> Definition: An installer or servicer means a business person of Peru who is an installer or servicer of machinery, equipment or both machinery and equipment, where such installation or servicing by the supplying enterprise is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract. | The commitments shall only apply to: (a) the sectors and sub-sectors as set out in paragraph 6 of this Schedule; and (b) entry and temporary stay for a period not exceeding three months in any 12-month period and subject to economic needs tests (3)   |
| <b>(D) Dependants.</b> Definition: A dependant means the spouse or unmarried dependant child under the age of 18 of a business person of Peru who has been granted entry and temporary stay in Hong Kong, China under category (B) (Intra-corporate transferees) of this Schedule for a period of longer than 12 months (the sponsor).   | The commitments: The sponsor may apply to bring in a dependant or dependants during his or her stay in Hong Kong, China, subject to the prevailing policy governing the entry of dependants. If approved, the dependant is not prohibited from taking up employment in Hong Kong, China and prior permission from the competent authority is not required. The length of stay granted for such dependant will normally be linked to that of the sponsor. |

5. In respect of intra-corporate transferees, the commitments apply only to the following sectors and sub-sectors (4):

(3) Including economic benefits test and labour market test.

(4) The sectors and sub-sectors in this Schedule are listed on the basis of the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991) and with reference to the Maritime Model Schedule appended as Appendix 2 to the WTO document JOB/SERV/137 of March 7, 2013, where appropriate.

| SECTORS AND SUB-SECTORS                                | CORRESPONDING CPC |
|--|-------------------|
| 1 BUSINESS SERVICES                                    | Section B         |
| A. Professional Services                               |                   |
| b. Accounting, auditing and bookkeeping services       | 862               |
| c. Taxation Services                                   | 863               |
| d. Architectural services                              | 8671              |
| e. Engineering services                                | 8672              |
| f. Integrated engineering services                     | 8673              |
| g. Urban planning and landscape architectural services | 8674              |

|  |             |
|--|-------------|
| i. Veterinary services   | 932         |
| B. Computer and Related Services   |             |
| a. Consultancy services related to the installation of computer hardware   | 841         |
| b. Software implementation services  | 842         |
| c. Data processing services  | 843         |
| d. Data base services  | 844         |
| e. Other   | 845-849     |
| C. Research and Development Services   |             |
| a. R&D services on natural sciences  | 851         |
| b. R&D services on social sciences and humanities  | 852         |
| c. Interdisciplinary R&D services  | 853         |
| D. Real Estate Services  |             |
| b. On a fee or contract basis (limited to the provision, on a fee or contract basis, of management services for residential or commercial buildings which in turn consist of cleaning, maintenance and guarding of such buildings) | 822**       |
| E. Rental/Leasing Services without Operators   |             |
| a. Relating to ships   | 83103       |
| c. Relating to other transport equipment (excluding services relating to air transport and other land transport equipment)   | 83101-83102 |
| d. Relating to other machinery and equipment (excluding transport equipment)   | 83106-83109 |
| F. Other Business Services   |             |
| a. Advertising services  | 871         |
| b. Market research and public opinion polling services   | 864         |
| c. Management consulting service   | 865         |
| d. Services related to management consulting   | 866         |
|  |             |

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|---|----------------------------|
| e. Technical testing and analysis services  | 8676                       |
| f. Services incidental to agriculture, hunting and forestry   | 881                        |
| g. Services incidental to fishing   | 882                        |
| h. Services incidental to mining  | 883+5115                   |
| i. Services incidental to manufacturing   | 884+885 (except for 88442) |
| k. Placement and supply services of Personnel   | 872                        |
| l. Investigation and security   | 87301-87305                |
| m. Related scientific and technical consulting services   | 8675                       |
| n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)  | 633+8861-8866              |
| o. Building-cleaning services   | 874                        |
| p. Photographic services  | 875                        |
| q. Packaging services   | 876                        |
| r. Printing, publishing   | 88442                      |
| s. Convention services including exhibition management services which are limited to activities relating to planning, organising, managing and marketing services for exhibitions, conventions and similar events             | 87909*                     |
| t. Other  | 8790                       |
| 2. COMMUNICATION SERVICES   |                            |
| B. Courier services (limited to the provision of services on a fee or contract basis for the delivery of documents and parcels, but excluding services reserved to the Post Office under the Post Office Ordinance (Cap. 98)) | 7512**                     |
| C. Telecommunication services   |                            |
| a. Voice telephone services   | 7521                       |
| b. Packet-switched data transmission services   | 7523**                     |
| c. Circuit-switched data transmission services  | 7523**                     |
| d. Telex services   | 7523**                     |
|   |                            |

|   |               |
|---|---------------|
| e. Telegraph services   | 7522          |
| f. Facsimile services   | 7521**+7529** |
| g. Private leased circuit services  | 7522**+7523** |
| h. Electronic mail  | 7523**        |
| i. Voice mail   | 7523**        |
| j. On-line information and data base retrieval  | 7523**        |
| k. electronic data interchange (EDI)  | 7523**        |
| l. enhanced/value-added facsimile services, including store and forward, store and retrieve   | 7523**.       |
| m. code and protocol conversion   | n.a           |
| n. on-line information and/or data processing (including transaction processing)  | 843**         |
| o. other  |               |
| D. Audiovisual services   |               |
| Radio and television services   |               |
| - production services of programme content for sale to operators of radio services, provided that such production services are not subject to licensing under the relevant legislation of Hong Kong, China; and |               |
| - production services of programme content for sale to operators of television services, provided that such production services are not subject to licensing under the relevant legislation of Hong Kong, China |               |
| a. Motion picture and video tape production and distribution services   | 9611          |
| b. Motion picture projection service  | 9612          |
| c. Sound recording  | n.a.          |
| E. Other  |               |
| 3. CONSTRUCTION AND RELATED ENGINEERING SERVICES  |               |
| B. General construction work for civil engineering  | 513           |
| C. Installation and assembly work   | 514+516       |

|   |                         |
|---|-------------------------|
| D. Building completion and finishing work   | 517                     |
| E. Other  |                         |
| - project management services (limited to the supervision and coordination of construction projects but do not cover engineering or architectural services) |                         |
| 4. DISTRIBUTION SERVICES  |                         |
| A. Commission agents' services  | 621                     |
| B. Wholesale trade services   | 622                     |
| C. Retailing services   | 631+632; 6111+6113+6121 |
| D. Franchising  | 8929                    |
| E. Other  |                         |
| 5. EDUCATIONAL SERVICES   |                         |
| A. Primary education services   | 921                     |
| B. Secondary education services   | 922                     |
| 6. ENVIRONMENTAL SERVICES   |                         |
| A. Sewage services  | 9401                    |
| B. Refuse disposal services   | 9402                    |
| C. Sanitation and similar services  | 9403                    |
| D. Other  |                         |
| - Cleaning services of exhaust gases  | 9404                    |
| - Noise abatement services  | 9405                    |
| - Nature and landscape protection services  | 9406                    |
| - Other environmental protection services not elsewhere classified  | 9409                    |
| 7. FINANCIAL SERVICES   |                         |
| Insurance and insurance-related services  |                         |
| (a) direct insurance (including co-insurance): (i) life; and (ii) non-life (b) reinsurance and retrocession (c) insurance intermediation, such as           |                         |



|   |                         |
|---|-------------------------|
| <p>brokerage and agency (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services. Banking and other financial services (excluding insurance) (e) acceptance of deposits and other repayable funds from the public (f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions (g) financial leasing (h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (i) guarantees and commitments (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: (i) money market instruments, including cheques, bills, certificates of deposits (ii) foreign exchange (iii) derivative products including futures and options (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements (v) transferable securities; (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues (l) money broking (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services; (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; (p) advisory and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o) under the definition of financial service in Article 9.1 (Definitions) of Chapter 9 (Financial Services), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy</p> |                         |
| 9. TOURISM AND TRAVEL RELATED SERVICES.   |                         |
| A. Hotels and restaurants (including catering)  |                         |
| - Hotel lodging services  | 6411                    |
| - Motel lodging services.   | 6412                    |
| - Other lodging services  | 64191+64192+64194+64195 |
| - Restaurant and catering services  | 642+643                 |
| B. Travel agencies and tour operators services (limited to the business of obtaining for clients carriage or accommodation outside Hong Kong, China and the provision of related services such as the furnishing of travel information, advice and planning)  | 7471**                  |
| 10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)  |                         |
| A. Entertainment services   |                         |
| - Theatrical producer, singer group, band and orchestra entertainment services  | 96191                   |
| - Services provided by authors, composers, sculptors, entertainers and other individual artists   | 96192                   |

|  |        |
|--|--------|
| - Ancillary theatrical services not elsewhere classified   | 96193  |
| Ballroom, discotheque and dance instructor services  | 96195  |
| C. Libraries, archives, museums and other cultural services  |        |
| - Library and archive services   | 9631   |
| D. Sporting and other recreational services  |        |
| - Sporting and other recreational services except gambling and betting services  | 964**  |
| 11. TRANSPORT SERVICES   |        |
| A. Maritime Transport Services (excluding Cabotage) (5)  |        |
| a. Passenger transportation  | 7211   |
| b. Freight transportation  | 7212   |
| c. Rental of vessel with crew.   | 7213   |
| d. Maintenance and repair of vessels (limited to businesses related to maintenance and repair of ocean going vessels at anchor or alongside and maintenance and repair of local vessels) | 8868** |

(5) "Cabotage" covers transportation of passengers or goods between a point in Hong Kong, China and another point in Hong Kong, China, as well as traffic originating and terminating in the same point in Hong Kong, China, provided that this traffic remains within the waters of Hong Kong, China.

| SECTORS AND SUB-SECTORS   | CORRESPONDING CPC |
|---|-------------------|
| Maritime Auxiliary Services   |                   |
| - Customs clearance services (limited to activities consisting of carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity);   |                   |
| - Container station and depot services (limited to activities consisting of storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipment);  |                   |
| - Maritime agency services (limited to activities consisting of representing, within a given geographic area, as an agent the business interest of one or more shipping lines or shipping companies for marketing and sales of maritime transport and related services and for acting on behalf of the companies organising the call of the ship or taking over cargoes when required); |                   |

|   |           |
|---|-----------|
| - Preshipment inspection services (limited to services performed on a fee or contract basis involved in the verification of quality, quantity, price (including currency, exchange rate and financial terms), and/or the customs classification of goods to be exported. Customs or quarantine inspection is not included); and |           |
| - Maritime freight forwarding services (limited to the activities consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).  |           |
| C. Air Transport Services   |           |
| - Selling and marketing of air transport services   |           |
| - Computer reservation system services  |           |
| E. Rail Transport Services (excluding those services relating to cross boundary train services (including Intercity Passenger Services and Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link))  |           |
| c. Pushing and towing services  | 7113      |
| d. Maintenance and repair of rail transport equipment   | 8868**    |
| e. Supporting services for rail transport services  | 743       |
| F. Road Transport Services  |           |
| b. Freight transportation   | 7123      |
| c. Rental services of commercial freight vehicles with operator.  | 71240.    |
| d. Maintenance and repair of road transport equipment   | 6112+8867 |
| G. Pipeline Transport   |           |
| a. Transportation of fuels  | 7131      |
| b. Transportation of other goods  | 7139      |
| H. Services auxiliary to all modes of transport   |           |
| a. Cargo-handling services (except those of air and rail)   | 741**     |
| b. storage and warehouse services (except those of air and rail)  | 742**     |
| c. Freight transport agency services  | 748       |
| d. Other  | 749       |

|   |        |
|---|--------|
| 12. OTHER SERVICES NOT INCLUDED ELSEWHERE |        |
| Spa services                              | 9702** |

6. In respect of installers or servicers, the commitments apply only to the following sectors and sub-sectors in the Services Sectoral Classification List published by the WTO (WTO document MTN.GNS/W/120 of July 10, 1991) (6):

(6) In implementing this commitment, the sectors and segments listed under this paragraph shall be construed by reference to the field of activity of the supplying enterprise.

| SECTORS AND SUB-SECTORS  | CORRESPONDING CPC             |
|--|-------------------------------|
| BUSINESS SERVICES  | Section B                     |
| A. Professional Services   |                               |
| e. Engineering services  | 8672                          |
| f. Integrated engineering services   | 8673                          |
| B. Computer and Related Services   |                               |
| a. Consultancy services related to the installation of computer hardware   | 841                           |
| b. Software implementation services  | 842                           |
| c. Data processing services  | 843                           |
| d. Data base services  | 844                           |
| e. Other   | 845+849                       |
| F. Other Business Services   |                               |
| a. Advertising services  | 871                           |
| b. Services incidental to mining   | 883+5115                      |
| i. Services incidental to manufacturing, limited to the following field of activities: - Machinery and equipment for chemical manufacturing - Machinery and equipment for manufacturing of automotive parts - Machinery and equipment for metal working - Machinery and equipment for pharmaceutical manufacturing - Machinery and equipment for textile manufacturing - Measuring equipment - Precision equipment | 884**+885**<br>(except 88442) |
| n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)   | 633+8861-8866                 |
| r. Printing, publishing  | 88442                         |

|   |         |
|---|---------|
| 2. COMMUNICATION SERVICES   |         |
| C. Telecommunication services   |         |
| h. Electronic mail  | 7523**  |
| i. Voice mail   | 7523**  |
| j. On-line information and data base retrieval  | 7523**  |
| k. electronic data interchange (EDI)  | 7523**  |
| l. enhanced/value-added facsimile services, including store and forward, store and retrieve | 7523**  |
| m. code and protocol conversion   | n.a.    |
| n. on-line information and/or data processing (including transaction processing)            | 843**   |
| 3. CONSTRUCTION AND RELATED ENGINEERING SERVICES  |         |
| B. General construction work for civil engineering  | 513     |
| C. Installation and assembly work   | 514+516 |
| D. Building completion and finishing work   | 517     |
| 6. ENVIRONMENTAL SERVICES   |         |
| A. Sewage services  | 9401    |
| B. Refuse disposal services   | 9402    |
| C. Sanitation and similar services  | 9403    |
| D. Other  |         |
| - Cleaning services of exhaust gases  | 9404    |
| - Noise abatement services  | 9405    |
| - Nature and landscape protection services  | 9406    |
| - Other environmental protection services not elsewhere classified                          | 9409    |
| 9. TOURISM AND TRAVEL RELATED SERVICES  |         |
| A. Hotels and restaurants (including catering)  |         |

|  |            |
|--|------------|
| - Restaurant and catering services   | 642+643    |
| 11. TRANSPORT SERVICES   |            |
| A. Maritime Transport Services (excluding Cabotage) (7)  |            |
| d. Maintenance and repair of vessels (limited to businesses related to maintenance and repair of ocean going vessels at anchor or alongside and maintenance and repair of local vessels)                             | 8868**     |
| E. Rail Transport Services (excluding those services relating to cross boundary train services (including Intercity Passenger Services and Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link)) |            |
| Maintenance and repair of rail transport equipment   | 8868**     |
| F. Road Transport Services   |            |
| d. Maintenance and repair of road transport equipment  | 6112+8867. |
| H. Services auxiliary to all modes of transport  |            |
| a. Cargo-handling services (except those of air and rail)  | 741**      |
| b. Storage and warehouse services (except those of air and rail)   | 742**      |

(7) "Cabotage" covers transportation of passengers or goods between a point in Hong Kong, China and another point in Hong Kong, China, as well as traffic originating and terminating in the same point in Hong Kong, China, provided that this traffic remains within the waters of Hong Kong, China.

The (\*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in paragraph 5 of this Schedule.

The (\*\*) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

## **Annex 10-A. SPECIFIC COMMITMENTS ON TEMPORARY ENTRY FOR BUSINESS PERSONS. Schedule of Peru (1)**

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

The following sets out Peru's commitments in accordance with Article 10.4 (Grant of Temporary Entry) in respect of the temporary entry for business persons.

| <b>Description of Category</b> | <b>Conditions and Limitations (including length of stay)</b> |
|--------------------------------|--|
|                                |  |

|   |                                       |
|---|---------------------------------------|
| <b>A. Business Visitors</b>   |                                       |
| <p>Definition: Business Visitor means a business person seeking to travel to Peru for business purposes, including for: (a) attending meetings or conferences; (b) performing commercial transactions (2), but not selling goods or providing services to the general public; or (c) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise in Peru. The primary source of income for the proposed business activity is outside Peru, and the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Peru.</p> | <p>Length of Stay: Up to 90 days.</p> |

(2) In the case of financial services activities, this Category only includes financial services personnel of an enterprise located in the other Party, engaging in financial services, where the provision of such financial services does not require the authorisation of the competent authority of Peru or where Peru has explicitly made commitments for such financial services in Annex 9-A.1 (Cross-Border Trade) of Chapter 9 (Financial Services).

|  |   |
|--|---|
| <b>B. Intra-Corporate Transferees</b>  |   |
| <p>Definition: <b>Intra-Corporate Transferee</b> means a business person employed by an enterprise abroad, who is transferred to Peru for supplying services as an employee (3) of the headquarter, subsidiary or affiliate of that enterprise, pursuant to a labour contract approved by the Labour Administrative Authority. For the purposes of this Category, the business person supplies services as: (a) <b>Executive</b> means a business person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. (b) <b>Manager</b> means a business person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises, and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions such as promotion or leave authorisation, and exercises discretionary authority over day-to-day operations. (c) <b>Specialist</b> means a business person who possesses specialised knowledge of the company's products or services and applies it in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures. A specialist may include, but is not limited to, professionals. In accordance with, and subject to Peru's laws and regulations, a spouse of an Intra-Corporate Transferee shall, upon application, be granted temporary entry, provided that the spouse follows Peru's prescribed application procedures for the relevant immigration formality and meets all relevant eligibility requirements for such temporary entry (4)</p> | <p>Peru reserves the right to apply its commitments under this Category exclusively to the same sectors in which Hong Kong, China has made commitments for the same category. The labour contract approval by the Labour Administrative Authority implies an evaluation of the following quotas on the hiring of foreigners: (a) foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise; and (b) their pay may not exceed 30 per cent of the total payroll for wages and salaries of the enterprise. <b>Length of Stay:</b> Intra-Corporate Transferees: Up to one year, renewable for consecutive periods, to the extent that the conditions which motivated its granting are maintained.</p> |

(3) For greater certainty, the business person transferred shall provide services under a subordinate relationship in Peru.

(4) Such temporary entry does not imply an authorisation to perform the activities allowed under the Category of Intra-Corporate Transferee nor to perform remunerated activities.

|                     |  |
|---------------------|--|
| <b>C. Investors</b> |  |
|---------------------|--|

|  |   |
|--|---|
| <p>Definition: Investor means a business person seeking to establish or develop an investment in Peru, to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, established by the immigration legislation.</p>  | <p>Length of Stay: Up to one year.</p>  |
| <p><b>D. Technicians</b></p>   |   |
| <p>Definition: <b>Technician</b> means a business person seeking to engage, at a technical level, as an independent technician or as a contractual service supplier, in any of the following activities: (a) Civil, Electrical, Electronics, Mechanical and Industrial Engineering Technicians; (b) Construction Technicians; (c) Engineering Inspectors, Testers and Regulatory Officers; (d) Supervisors in the following: Machinists and Related Occupations; Printing and Related Occupations; Mining and Quarrying; Oil and Gas Drilling and Service; Mineral and Metal Processing; Petroleum, Gas and Chemical Processing and Utilities; Food, Beverage, and Tobacco Processing; Plastic and Rubber Products Manufacturing; Forest Products Processing; Textile Processing; (e) Contractors and Supervisors in the following: Electrical Trades and Telecommunications Occupations; Pipefitting Trades; Metal Forming, Shaping and Erecting Trades; Carpentry Trades; Mechanic Trades; Heavy Construction Equipment Crews; Mining and Extraction Equipment Personnel; Other Construction Trades, Installers, Repairers and Servicers; (f) Electricians; (g) Plumbers; (h) Industrial Instrument Technicians and Mechanics; (i) Aircraft Instrument, Electrical and Avionics Mechanics, Technicians, and Inspectors; (j) Oil and Gas Well Drillers, Servicers and Testers; (k) Graphic Designers and Illustrators; (l) Interior Designers; (m) Chefs; (n) Computer and Information Systems Technicians; (o) Industrial Designers; (p) Drafting Technologists and Technicians; (q) Land Survey Technologists and Technicians; (r) Technical occupations in Geomatics and Meteorology; (s) Architectural Technologists and Technicians; or (t) International Purchasing and Selling Agents. The Technician is engaged in a specialty occupation requiring: (a) theoretical and practical application of a body of specialised knowledge; and (b) attainment of a post-secondary degree, requiring three years of study, or the equivalent of such a degree, as a minimum for entry into the occupation; and of the appropriate educational and other qualifications relevant to the service to be provided. For the purposes of this Category: Independent Technician means a technician who: (a) is a self-employed services supplier who supplies services pursuant to a service contract with a person of Peru; and (b) receives his incomes from a person of Peru; and Contractual Service Supplier means a technician who: (a) is engaged in the supply of a service, as an employee of a juridical person that has no commercial presence in Peru, where the juridical person obtains a service contract from a juridical person of Peru; and (b) is required to receive no remuneration from a juridical person located in Peru. For greater certainty, contractual service supplier includes a business person who is an installer or servicer of machinery or equipment, where such installation or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract.</p> | <p>Length of Stay: Independent Technicians: up to one year, renewable for consecutive periods, the number of times that it is requested, to the extent that the conditions which motivated its granting are maintained. Contractual Service Suppliers: up to 90 days.</p> |

## Chapter 11. ELECTRONIC COMMERCE

### Article 11.1. Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for the processing or storage of information for commercial use;

covered person means:

(a) a service supplier of a Party as defined in Article 8.1 (Definitions) of Chapter 8 (Trade in Services);

(b) an establishment, as defined in Article 12.1 (Definitions) of Chapter 12 (Establishment and Related Provisions); or



(c) an investor of a Party, as defined in Article 12.1 (Definitions) of Chapter 12 (Establishment and Related Provisions),

but does not include a “financial institution” or a “cross-border financial service supplier of a Party” as defined in Article 9.1 (Definitions) of Chapter 9 (Financial Services);

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically; (1),(2)

electronic authentication means the process of establishing and subsequently verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

electronic transmission or transmitted electronically means a transmission made using any electromagnetic means, including by photonic means;

personal information means any information, including data, relating to an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the importation or exportation of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial purposes without the consent of the recipient or against the explicit rejection of the recipient, using an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

(1) For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

(2) The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

## **Article 11.2. Scope**

1. The Parties recognise:

(a) the economic growth and opportunities provided by electronic commerce;

(b) the importance of promoting consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development; and

(c) the value of competitive markets in electronic commerce for enhancing consumer choice and supporting the growth of SMEs.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

(a) government procurement; or

(b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the relevant obligations in Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 12 (Establishment and Related Provisions), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations in Articles 11.9, 11.10, 11.11 and 11.16 are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 12 (Establishment and Related Provisions); and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Articles 11.9, 11.10, 11.11 and 11.16 shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in

Services), Article 9.9 (Non-Conforming Measures) of Chapter 9 (Financial Services) or Article 12.6 (NonConforming Measures) of Chapter 12 (Establishment and Related Provisions).

### **Article 11.3. Review**

If the results of the WTO negotiations on trade-related aspects of electronic commerce, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review such results and consider bringing them into effect, as appropriate, under this Agreement.

### **Article 11.4. Electronic Signatures and Electronic Authentication**

1. Except in circumstances otherwise provided for under its laws or regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.
2. Neither Party shall adopt or maintain measures for electronic authentication that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
  - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited, in accordance with its laws.
4. The Parties shall encourage the use of interoperable electronic authentication.

### **Article 11.5. Electronic Contracts**

Unless otherwise provided for under its laws or regulations, a Party shall not deny the legal effect, legal validity, or enforceability of an electronic contract (3) solely on the basis that the contract has been made by electronic means.

(3) For greater certainty, an electronic contract includes a contract made by interaction with an automated message system.

### **Article 11.6. Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York on November 23, 2005.
2. Each Party shall endeavour to:
  - (a) avoid any unnecessary regulatory burden on electronic transactions; and
  - (b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

### **Article 11.7. Consumer Protection**

1. The Parties recognise the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce. Each Party shall adopt or maintain measures to proscribe misleading, fraudulent, and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic (4) commerce.
2. The Parties recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 14.7 (Consumer Protection) of Chapter 14 (Competition) includes cooperation with respect to online commercial activities.

(4) For the purposes of this Article, "engaged in electronic commerce" includes the pre-transaction phase of electronic commerce.

## **Article 11.8. Customs Duties**

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

## **Article 11.9. Non-Discriminatory Treatment of Digital Products**

1. Each Party shall endeavour to accord to digital products of the other Party treatment no less favourable than it accords to other like digital products (5).
2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 13 (Intellectual Property).
3. For greater certainty, this Article shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. This Article shall not apply to broadcasting.
5. The Parties shall take part actively and constructively in negotiations related to nondiscriminatory treatment of digital products in multilateral fora in which the Parties participate, with a view to reviewing the results of such negotiations for incorporation into this Agreement as appropriate.

(5) For greater certainty, to the extent that a digital product of a non-party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph.

## **Article 11.10. Movement of Information**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is in connection with the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade, and that such measures do not impose restrictions on transfers of information greater than are required to achieve the objective.

## **Article 11.11. Location of Computing Facilities**

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communication.
2. Neither Party shall require a covered person to use or locate computing facilities in the Area of a Party as a condition for conducting business in that Area.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade, and that such measures do not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

## **Article 11.12. Protection of Personal Information**

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.
3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.
4. Each Party shall publish information on the personal information protections it provides to users of electronic commerce, including how:
  - (a) individuals can pursue remedies; and
  - (b) business can comply with any legal requirements.
5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their Areas and explore ways to extend these or other suitable arrangements to promote compatibility between them.

### **Article 11.13. Paperless Trading**

Each Party shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents except where there is a legal requirement to the contrary.

### **Article 11.14. Principles on Access to and Use of the Internet for Electronic Commerce**

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their Areas having the ability to:

- (a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;
- (b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and
- (c) access information on the network management practices of a consumer's Internet access service supplier.

### **Article 11.15. Unsolicited Commercial Electronic Messages**

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
  - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of such messages; or
  - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with that Party's measures adopted or maintained pursuant to paragraph 1.
3. The Parties shall endeavour to cooperate in cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

### **Article 11.16. Treatment of Source Code**

1. Neither Party shall, as a condition for the importation, distribution, sale or use of software, or of products containing such software, require the transfer of or access to the source code of such software owned by a person of the other Party. (6)

2. For the purposes of this Article, software referred to in paragraph 1 is limited to mass-market software or products containing such software, and does not include software used for critical infrastructure.

3. Nothing in this Article shall be construed to prevent:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with its laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the laws or practices of a Party.

(6) For greater certainty, this Article shall not prevent a person of a Party from licensing its software on a free and open source basis.

## **Article 11.17. Cooperation**

1. Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist SMEs to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(d) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

2. The Parties recognise the importance of:

(a) building the capabilities of their entities (7) responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperatively identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

3. The Parties agree that cooperation under this Article shall be conducted in a manner compatible with their respective laws, regulations and competence.

(7) For Peru, this refers to entities at the central level of government.

## **Article 11.18. Future Discussion**

The Parties shall initiate discussions within a maximum period of three years, to explore the possibility of extending the relevant commitments on electronic commerce in this Chapter to the financial services covered by Chapter 9 (Financial Services).

# **Chapter 12. ESTABLISHMENT AND RELATED PROVISIONS**

## Article 12.1. Definitions

For the purposes of this Chapter:

enterprise of a Party means:

(a) an enterprise constituted or organised under the laws of a Party; or

(b) a branch of an enterprise of a Party located in the Area of a Party, which has substantial business activities in the Area of that Party; (1)

(1) For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

establishment means any type of business or professional establishment (2) through:

(2) The term "business" or "professional establishment" includes the establishment in any productive economic activity, whether industrial or commercial, relating to the production of goods

(a) the constitution, acquisition (3) or maintenance of an enterprise; or

(3) The terms "constitution" and "acquisition" of an enterprise shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

(b) the creation or maintenance of a branch or representative office,

within the Area of a Party for the purpose of performing an economic activity; and

investor of a Party means a Party, a natural person or an enterprise of a Party that seeks, through concrete actions to perform, is performing or has performed an economic activity in the Area of another Party through setting up an establishment.

## Article 12.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to investors of the other Party and establishments of investors of the other Party.

2. This Chapter shall apply to establishments in all sectors with the exception of sectors covered by Chapter 8 (Trade in Services). (4) (5)

3. The obligations of a Party under this Chapter shall apply to measures adopted or maintained by any person when it exercises any governmental authority delegated to it by that Party. For greater certainty, governmental authority is delegated under the laws of the Party, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

4. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors and establishments of the other Party in the Area of that Party, including government-supported loans, guarantees and insurance;

(b) government procurement; or

(c) any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

(4) For greater certainty, services and obligations specifically excluded from the scope of Chapter 8 (Trade in Services) do not fall under the

scope of this Chapter.

(5) For greater certainty, nothing in this Chapter shall be construed to impose any obligation in relation to measures in respect of: (a) expropriation; (b) minimum standard of treatment; (c) compensation for losses owing to a war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or riot; (d) subrogation; (e) transfer; or (f) most-favoured nation treatment. Notwithstanding this, the foregoing does not preclude the laws and regulations of either Party from providing measures in respect of any of these matters.

### **Article 12.3. Relation to other Chapters**

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

### **Article 12.4. National Treatment (6)**

Subject to the reservations set out in Article 12.6, each Party shall accord to investors of the other Party, and to establishments of such investors, treatment no less favourable than that it accords, in like circumstances, to its own investors and to the establishments of such investors in its Area.

(6) For greater certainty, whether treatment is accorded in "like circumstances" under Article 12.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or establishments on the basis of legitimate public welfare objectives.

### **Article 12.5. Performance Requirements**

1. Neither Party shall, in connection with the establishment of an investor of the other Party in its Area, impose or enforce any requirement, or enforce any commitment or undertaking, to (7):

- (a) export a given level or percentage of goods;
- (b) achieve a given level or percentage of domestic content;
- (c) purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment;
- (e) restrict sales of goods in its Area that such establishment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer a particular technology, a production process or other proprietary knowledge to a person in its Area; or
- (g) supply exclusively from its Area the goods that such establishment produces to a specific regional market or to the world market.

2. For greater certainty, a measure that requires an investor of a Party to use technology to meet health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Article 12.4 applies to such a measure.

3. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment of an investor of the other Party, on compliance with any requirement to:

- (a) achieve a given level or percentage of domestic content;
- (b) purchase, use or accord a preference to goods produced in its Area, or to purchase goods from persons in its Area;
- (c) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such establishment; or
- (d) restrict sales of goods in its Area that such establishment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment of investors of the other Party, on compliance with a requirement to locate production, train or employ workers, construct or expand particular facilities, or carry out research and development, in its Area.

5. Paragraph 1(f) shall not apply:

(a) if a Party authorises use of an intellectual property right in accordance with the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under competition laws and regulations of a Party.

6. Paragraph 1(a), paragraph 1(b), paragraph 1(c), paragraph 3(a) and paragraph 3(b) shall not apply to qualification requirements for goods with respect to export promotion and foreign aid programs.

7. Paragraph 3(a) and paragraph 3(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment of an investor of the other Party, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its Area provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its Area.

9. For greater certainty, paragraph 1 and paragraph 3 do not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

10. For greater certainty, this Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(7) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 3 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

(8) The Parties recognise that a patent does not necessarily confer market power.

## **Article 12.6. Non-Conforming Measures**

1. Articles 12.4 and 12.5 shall not apply to:

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

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

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

(iii) the local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.4 or 12.5.

2. Articles 12.4 and 12.5 shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in its Schedule to Annex II.

3. Article 12.4 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement.

## **Article 12.7. Special Formalities and Information Requirements**



1. Nothing in Article 12.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with an establishment, such as a residency requirement for registration or a requirement that an enterprise of a Party be legally constituted or organised under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and establishments in accordance with this Chapter.

2. Notwithstanding Article 12.4, a Party may require an investor of the other Party to provide information concerning that establishment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or establishment of such investor. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

## **Article 12.8. Denial of Benefits**

A Party may, at any time, deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party if:

- (a) persons of a non-party own or control the enterprise; and
- (b) the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

## **Article 12.9. Establishment and Environmental, Health and other Regulatory Objectives**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that the establishment in its Area is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

## **Article 12.10. Exceptions**

For the purposes of this Chapter and subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between establishments or between investors, or a disguised restriction on international trade or investment, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures:

- (a) necessary to protect public morals or to maintain public order (9);

(9) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption

## **Annex I. SCHEDULE OF HONG KONG, CHINA (Existing Non-Conforming Measures for Establishment) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

## EXPLANATORY NOTES

1. This Schedule sets out, pursuant to Article 12.6.1 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the existing measures of Hong Kong, China that are not subject to the following obligations:

(a) Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions); or

(b) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

2. Each Schedule entry sets out the following elements:

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

(b) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 12.6.1(a) (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the listed measure(s) pursuant to paragraph 4;

(c) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(d) Description sets out the non-conforming measure for which the entry is made.

3. A measure that is only inconsistent with Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions) need not be reserved against Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions).

4. In accordance with Article 12.6.1 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures set out in the Description element of that entry.

I-HKC-1 (Establishment)

Sector: Fishing

Obligations Concerned: National Treatment (Article 12.4)

Description: Under the Fisheries Protection Ordinance (Cap. 171), only certificated local fishing vessels which possess a valid operating licence under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) can be registered for engaging in fishing activities within the waters of Hong Kong, China.

Under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), fishing vessels must be certificated. To be certificated as a Local Vessel Class III "fishing vessel" plying within the waters of Hong Kong, China, the owner of a local vessel shall be:

(a) an individual who holds a valid Hong Kong Identity Card and who is ordinarily resident in Hong Kong; or

(b) a company or registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622).

Source of Measure: Fisheries Protection Ordinance (Cap. 171)

Section 12 of the Merchant Ordinance (Cap. 548) Shipping (Local Vessels)

I-HKC-2 (Establishment)

Sector: Mining

Obligations Concerned: National Treatment (Article 12.4)

Description: When not resident in Hong Kong, China every holder of a prospecting or mining licence and every lessee of a mining lease shall at all times have a duly authorised attorney, approved by the Director of Lands, resident in Hong Kong, China, with full power to represent the holder or lessee in all matters relating to his or her licence or lease.

Source of Measure: Section 7(1) of Mining Ordinance (Cap. 285)

I-HKC-3 (Establishment)

Sector: Manufacture and storage of dutiable commodities

Obligations Concerned: National Treatment (Article 12.4)

Description: To apply for a licence for the manufacture or storage of dutiable commodities under the Dutiable Commodities Ordinance (Cap. 109), the applicant has to appoint a responsible person to be held responsible for the running and management of the premises concerned. The responsible person has to be a Hong Kong resident holding a valid Hong Kong Identity Card.

Source of Measure: Sections 7 and 8A of the Dutiable Commodities Ordinance (Cap. 109)

Regulation 22 of the Dutiable Commodities Regulations (Cap. 109A)

I-HKC-4 (Establishment)

Sector: Manufacture of optical discs and stampers

Obligations Concerned: National Treatment (Article 12.4)

Description: To apply for a licence for the manufacture of optical discs or stampers under the Prevention of Copyright Piracy Ordinance (Cap. 544), the applicant has to be a Hong Kong resident holding a valid Hong Kong Identity Card.

Source of Measure: Sections 5(1), 5(2)(c)(v) and 30 of the Prevention of Copyright Piracy Ordinance (Cap. 544)

## **Annex I. SCHEDULE OF PERU (Existing Non-Conforming Measures for Trade in Services and Establishment) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

### **EXPLANATORY NOTES**

1. This Schedule sets out, pursuant to Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services) or Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions);

(b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services);

(c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services); or

(e) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

2. Each Schedule entry sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) To identify the different sectors and sub-sectors in this list, the CPC prove, 1991 is used, which stands for the Central Product Classification according to the definition of the United Nations Statistics Office, Statistical Reports, Series M, No. 77, CPC prov, 1991;

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.1.(a) (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.1(a) (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the listed measure(s);

(e) Level of Government indicates the level of government maintaining the listed measures;

(f) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) Description provides a general non-binding description of the measure for which the entry is made.

3. Articles 8.3 (National Treatment) and 8.6 (Local Presence) of Chapter 8 (Trade in Services) are separate disciplines and a measure that is only inconsistent with Article 8.6 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 8.3 (National Treatment) of Chapter 8 (Trade in Services).

4. In accordance with Article 8.7.1 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.1 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the Measures element of that entry.

I-PERU-1

Sector: All

Obligations Concerned: National Treatment (Article 12.4)

Level of Government: Central

Measures: Political Constitution of Peru (Constitución Política del Perú) (1993), Article 71

Legislative Decree N° 757, "El Peruano" Official Gazette of November 13, 1991, Framework Law for Private Investment Growth (Ley Marco para el Crecimiento de la Inversión Privada), Article 13

Description: Establishment

No foreign national, enterprise constituted under foreign law or enterprise constituted under Peruvian law, and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own, directly or indirectly, by any title, land or water (including mines, forest or energy sources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in conformity with law in cases of expressly declared public necessity.

For each case of acquisition or possession within the referred area, the investor shall hand in the correspondent request to the relevant Ministry, in accordance with laws in force. For example, authorisations of this kind have been given in the mining sector.

I-PERU-2

Sector: Services Related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central:

Measures: Supreme Decree N° 012-2001-PE, "El Peruano" Official Gazette of March 14, 2001, Regulation of the Fisheries Law (Reglamento de la Ley General de Pesca), Articles 67, 68, 69 and 70

Description: Trade in Services

Before commencing operations, ship owners of foreign-flagged fishing vessels must present an unconditional, irrevocable letter of guarantee with automatic execution and joint liability, which will be valid for no more than 30 calendar days after the expiry of the fishing permit, issued for the benefit and to the satisfaction of the Ministry of Production by a financial, banking or insurance institution recognised by the Superintendency of Banking, Insurance and Private Administrators of Pension Funds (Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones (AFP)). Such letter shall be issued in an amount equal to 25 per cent of the amount that must be paid for fishing rights.

A ship owner of a foreign-flagged fishing vessel that is not of large scale (in accordance with the regulation mentioned

above) and that operates in Peruvian jurisdictional waters must have a Satellite Tracking System in its vessel, except for ship owners operating in highly migratory fisheries who are excepted from this obligation by a Ministerial Resolution.

Foreign-flagged fishing vessels with a fishing permit must have on board a scientific technical observer appointed by the Sea Institute of Peru (Instituto del Mar del Perú (IMARPE)). The ship owner must provide accommodation on board for that representative and a daily stipend, which must be deposited in a special account to be administered by IMARPE.

Ship owners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30 per cent Peruvian crew, subject to its applicable domestic legislation.

I-PERU-3

Sector: Broadcasting Services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Article 24

Description: Establishment and Trade in Services

Only Peruvian nationals or juridical persons organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer broadcasting services.

No foreign national may hold an authorisation or a licence directly or through a sole proprietorship.

I-PERU-4

Sector: Broadcasting Services

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Level of Government: Central

Measures: Law N° 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Eighth Complementary and Final Provision

Description: Establishment and Trade in Services

At least 30 per cent, on average, of the total weekly programs by free-to-air broadcasters must be produced in Peru and broadcasted between the hours of 05:00 and 24:00.

I-PERU-5

Sector: Broadcasting Services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4)

Level of Government: Central

Measures: Supreme Decree N° 005-2005-MTC, "El Peruano" Official Gazette of February 15, 2005, Regulation of the Radio and Television Law (Reglamento de la Ley de Radio y Televisión), Article 20

Description: Establishment and Trade in Services

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a juridical person, that juridical person may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin, except in a case of public necessity authorised by the Council of Ministers.

This restriction does not apply to juridical persons with foreign equity which have two or more current authorisations, as long as they are of the same frequency band.

I-PERU-6

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4)

Level of Government: Central

Measures: Legislative Decree N° 689, "El Peruano" Official Gazette of November 5, 1991, Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros), Articles 1, 3, 4, 5 (modified by Law N° 26196) and 6

Description: Trade in Services

All employers in Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring employees.

Foreign natural persons who are service suppliers and who are employed by a service-supplying enterprise may supply services in Peru under a written and time-limited employment contract, which may not exceed three years. The contract may be subsequently extended for like periods of time. Service-supplying enterprises must show proof of the company's commitment to train national personnel in the same occupation.

Foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise, and their pay may not exceed 30 per cent of the total payroll for wages and salaries. These percentages will not apply in the following cases:

- (a) when the foreign national supplying the service is the spouse, parent, child or sibling of a Peruvian national;
- (b) when personnel work for a foreign enterprise supplying international land, air and water transport services under a foreign flag and registration;
- (c) when foreign personnel work in a multinational bank or an enterprise that supplies multinational services, subject to the laws governing specific cases;
- (d) for a foreign investor, provided that its investment permanently maintains in Peru at least five tax units (Unidad Impositiva Tributaria - UIT) (2) during the life of its contract;
- (e) for artists, athletes or other service suppliers engaged in public performances in Peruvian territory, for a maximum of three months a year;
- (f) when a foreign national has an immigrant visa;
- (g) for a foreign national whose country of origin has a labour reciprocity or dual nationality agreement with Peru; and
- (h) when foreign personnel supply services in Peru under a bilateral or multilateral agreement concluded by the Peruvian Government.

Employers may request waivers for the percentages related to the number of foreign employees and their share of the company's payroll in cases involving:

- (a) specialised professional or technical personnel;
- (b) directors or management personnel for a new business activity or reconverted business activity;
- (c) teachers hired for post-secondary education, for foreign private elementary and high schools, for language teaching in local private schools, or for specialised language centres;
- (d) personnel working for public or private enterprises with contractual agreements with public organisations, institutions or enterprises; and
- (e) in any other case determined by Supreme Decree pursuant to specialisation, qualification or experience criteria.

(2) The UIT is an amount used as a reference in taxation rules in order to maintain in constant values the tax basis, deductions, affectation limits and other aspects of the tax that the legislator considers convenient.

I-PERU-7

Sector: Professional Services

Sub-Sector: Legal services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4)

Level of Government: Central

Measures: Legislative Decree N° 1049, "El Peruano" Official Gazette of June 26, 2008, Notaries Law (Ley del Notariado), Article 10

Description: Establishment and Trade in Services

Only a Peruvian national by birth may supply notary services.

I-PERU-8

Sector: Professional Services

Sub-Sector: Architectural services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4)

Level of Government: Central

Measures: Law N° 14085, "El Peruano" Official Gazette of June 30, 1962, Law establishing the Peruvian Association of Architects (Ley de Creación del Colegio de Arquitectos del Perú)

Law N° 16053, "El Peruano" Official Gazette of February 14, 1966, Professional Practice Law, authorising the Peruvian Associations of Architects and Engineers to supervise Engineering and Architecture professionals of the Nation (Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Perú para supervisar a los profesionales de Ingeniería y Arquitectura de la República), Article 1

National Architects Council Agreement (Acuerdo del Consejo Nacional de Arquitectos), approved in Session N° 04-2009 of December 15, 2009

Description: Establishment and Trade in Services

To practice as an architect in Peru, an individual must join the Peruvian Association of Architects (Colegio de Arquitectos del Perú). The enrolment fees are different for Peruvians and foreigners, and subject to review by the Peruvian Association of Architects (Colegio de Arquitectos del Perú).

Also, to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

I-PERU-9

Sector: Professional Services

Sub-Sector: Auditing services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Rules of the Association of Public Accountants of Lima (Reglamento Interno del Colegio de Contadores Públicos de Lima), Articles 145 and 146

Description: Establishment and Trade in Services

Auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima).

I-PERU-10

Sector: Security Services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures Supreme Decree N° 003-2011-IN, "El Peruano" Official Gazette of March 31, 2011, Regulation of Private Security Services (Reglamento de Servicios de Seguridad Privada), Articles 12, 18, 22, 36, 40, 41, 46, 47 and 48

Description: Establishment and Trade in Services

The supply of personal and heritage security services by natural persons is reserved to Peruvian nationals.

Only juridical persons constituted in Peru may apply for an authorisation to supply security services. It must prove its constitution in Peru by a copy of the registration form of the constitution for the enterprise.

PERU-15

Sector Radio and Television Broadcasting Services

Obligations Concerned National Treatment (Article 8.3)

Performance Requirements (Article 12.5)

Level of Government Central

Measures Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 25 and 45

Description Establishment and Trade in Services

Free to air radio and television broadcast companies must dedicate at least 10 per cent of their daily programming to folklore and national music and to series or programs produced in Peru on Peruvian history, literature, culture or current issues with artists hired in the following percentages:

a minimum of 80 per cent Peruvian national artists;

Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists; and

the same percentages established in the preceding subparagraphs shall govern the work of technical personnel involved in artistic activities.

I-PERU-11

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: National artistic audio-visual production services

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 23 and 25

Description: Trade in Services

Any domestic artistic audio-visual production must be comprised of at least 80 per cent Peruvian national artists.

Any domestic artistic live performances must be comprised of at least 80 per cent Peruvian national artists.

In any domestic artistic audio-visual production and any domestic artistic live performance, Peruvian national artists shall receive no less than 60 per cent the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

I-PERU-12

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Circus services

Obligations Concerned National Treatment (Article 8.3)



Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Article 26

Description: Trade in Services

A foreign circus may stay in Peru with its original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

I-PERU-13

Sector: Commercial Advertising Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 25 and 27.2

Description: Trade in Services

Commercial advertising produced in Peru must have at least 80 per cent Peruvian national artists.

In any commercial advertising produced in Peru, Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

I-PERU-14

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Bullfighting

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Article 28

Description: Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting fair. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

I-PERU-15

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Level of Government: Central

Measures: Law N° 28131, "El Peruano" Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), Articles 25 and 45

Description: Establishment and Trade in Services

Free to air radio and television broadcast companies must dedicate at least 10 per cent of their daily programming

to folklore and national music and to series or programs produced in Peru on Peruvian history, literature, culture or current issues with artists hired in the following percentages:

(a) a minimum of 80 per cent Peruvian national artists;

(b) Peruvian national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists; and

(c) the same percentages established in the preceding subparagraphs shall govern the work of technical personnel involved in artistic activities.

I-PERU-16

Sector: Customs Warehouses Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 08-95-EF, "El Peruano" Official Gazette of February 5, 1995, Approve the Regulation of Customs Warehouses (Aprueban el Reglamento de Almacenes Aduaneros), Article 7

Description: Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorisation to operate a customs warehouse.

I-PERU-17

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Supreme Decree N° 020-2007-MTC, "El Peruano" Official Gazette of July 04, 2007, Consolidated Text of the General Rules of the Telecommunications Law (Texto Único Ordenado del Reglamento General de la Ley de Telecomunicaciones), Article 258

Description: Trade in Services

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in Peru with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

I-PERU-18

Sector: Transportation

Sub-Sector: Air Transportation and Specialty Air Services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 27261, "El Peruano" Official Gazette of May 10, 2000, Civil Aviation Law (Ley de Aeronáutica Civil), Articles 75 (modified by Legislative Decree N° 999, April 19, 2008) and 79

Peruvian Aviation Regulation N° 61 (Regulación Aeronáutica del Perú – RAP N° 61), "El Peruano" Official Gazette of December 14, 2013

Supreme Decree N° 050-2001-MTC, "El Peruano" Official Gazette of December 26, 2001, Regulation of the Civil Aviation Law (Reglamento de la Ley de Aeronáutica Civil), Articles 159, 160 and VI Complementary Provision

Description: Establishment and Trade in Services

1. National Commercial Aviation (3) is reserved to a Peruvian natural or juridical person.

2. For the purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements:

(a) it is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru;

(b) at least half plus one of the directors, managers and persons who control and manage the enterprise are Peruvian nationals, have permanent domicile or are resident in Peru; and

(c) at least 51 per cent of the capital stock must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru (this limitation shall not apply to the enterprises constituted under Law N° 24882, which may maintain the ownership percentages set in such law). Six months after the date of authorisation of the enterprise to provide commercial air transportation services, foreign nationals may own up to 70 per cent of the capital stock of the enterprise.

3. In those operations conducted by national commercial aviation operators (explotadores nacionales), personnel performing aeronautical functions on board must be Peruvian nationals or foreign residents with a Peruvian licence.

4. In order to perform activities as a pilot of a Peruvian juridical person, the foreign pilot must prove, at least, two years of residence in Peru. This requirement is not applicable to the foreign resident who has the immigration category of "spouse" of a Peruvian national.

5. Notwithstanding the preceding paragraphs, the General Directorate of Civil Aviation (Dirección General de Aeronáutica Civil) may, for technical reasons, authorise foreign personnel without a Peruvian licence to perform these functions for a period not to exceed six months from the date on which the authorisation was granted, extendable due to ascertained non-existence of such skilled personnel.

(3) For greater certainty, National Commercial Aviation includes Specialty Air Services.

I-PERU-19

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Level of Government: Central

Measures: Law N° 28583, "El Peruano" Official Gazette of July 22, 2005, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6

Law N° 29475, Law that modifies Law N° 28583, "El Peruano" Official Gazette of December 17, 2009, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), Article 13.6 and Tenth Transitory and Final Provision

Law N° 30580, Law that modifies Law N° 29475, Law of the Reactivation and Promotion of the National Merchant Marine, for Promoting Cabotage in Foreign Trade Operations (Ley de Reactivación y Promoción de la Marina Mercante Nacional, para Promover el Cabotaje en las Operaciones de Comercio Exterior), Articles 1 and 2

Supreme Decree N° 028 DE/MGP, "El Peruano" Official Gazette of May 25, 2001, Regulation of the Law N° 26620 (Reglamento de la Ley N° 26620), Article I-010106, paragraph a)

Supreme Decree N° 015-2014-DE, "El Peruano" Official Gazette of November 28, 2014. Supreme Decree that approves the Legislative Decree N° 1147, that regulates the strengthening of the Armed Forces in the faculties of the National Maritime Authority-General Directorate of Captaincies and Coast Guard, Article 517

Description: Establishment and Trade in Services

A "national ship owner" or "national ship enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to

provide services in water transportation in national traffic or sabotage (4) or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel, and that has obtained the relevant Operating Permit from the General Aquatic Transport Directorate (Dirección de Transporte Acuático).

At least 51 per cent of the subscribed and paid-in capital stock must be owned by Peruvian citizens.

The Chair of the Board of Directors, the majority of the directors, and the General Manager must be Peruvian nationals and residents in Peru.

The captain and crew of Peruvian-flagged vessels must be entirely Peruvian nationals authorised by the General Directorate of Captaincy and Coastguards (Dirección General de Capitanías y Guardacostas). In exceptional cases and after ascertaining that there is no Peruvian qualified personnel with experience in that type of vessel available, foreign nationals may be hired to a maximum of 15 per cent of the total crew, and for a limited period of time. The latter exception does not include the captain of the vessel.

Only a Peruvian national may be a licensed harbour pilot.

Cabotage is exclusively reserved to Peruvian-flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(a) the transport of hydrocarbons in national waters is reserved up to 25 per cent for ships of the Peruvian Navy; and

(b) foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under a financial leasing or bareboat charter with purchase obligation. This period may be renewed up to one year.

The national ship owner or national ship enterprise who signs a contract for the construction or repair of a vessel with a national shipyard may lease a foreign flag vessel for a period equivalent to the period of construction or reparation. That period may not exceed five years.

(4) For greater certainty, water transportation includes transportation by lakes and rivers.

I-PERU-20

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 056-2000-MTC, "El Peruano" Official Gazette of December 31, 2000, Provides that aquatic transportation services and related services conducted in bays and port areas must be provided by authorised natural and juridical persons, with vessels and artifacts of national flag (Disponen que servicios de transporte marítimo y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional), Article 1

Ministerial Resolution N° 259-2003-MTC/02, "El Peruano" Official Gazette of April 4, 2003, Approve Regulation of Aquatic Transportation services and related services rendered in bay traffic and port areas (Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Áreas Portuarias), Articles 5 and 7

Description: Establishment and Trade in Services

Water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorised with Peruvian flag vessels and equipment, including:

(a) fuel replenishment services;

- (b) mooring and unmooring services;
- (c) diving services;
- (d) victualing services;
- (e) dredging services;
- (f) harbour pilotage services;
- (g) waste collection services;
- (h) tug boat services; and
- (i) transport of persons.

I-PERU-21

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 006-2011-MTC, "El Peruano" Official Gazette of February 4, 2011, Supreme Decree that approves the Regulation of Tourist Water Transportation (Decreto Supremo que aprueba el Reglamento de Transporte Turístico Acuático), Article 1

Description: Trade in Services

The tourist water transport service will be provided by natural or juridical persons, domiciled and constituted in Peru. At the regional and national level, the tourist water transport service is reserved to be provided exclusively with owned or chartered Peruvian flagged ships or in the form of financial lease or a bareboat charter, with purchase option mandatory.

I-PERU-22

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures; Law N° 27866, "El Peruano" Official Gazette of November 16, 2002, Port Labour Law (Ley del Trabajo Portuario), Articles 3 and 7

Description: Trade in Services

Only Peruvian citizens may register in the Registry of Port Workers.

I-PERU-23

Sector: Transportation

Sub-Sector: Land transportation of passengers

Obligations Concerned: Local Presence (Article 8.6)

Level of Government: Central

Measures: Supreme Decree N° 017-2009-MTC, "El Peruano" Official Gazette of April 22, 2009, National Regulation of Transport Management (Reglamento Nacional de Administración de Transportes), Article 33, modified by Supreme Decree N° 006-2010-MTC of 22 January 2010

Description: Trade in Services

To supply land transport services, it is necessary to have adequate physical infrastructure, which includes, when appropriate: offices; bus terminals for persons or goods; route stations; bus stops; all other infrastructure used as a place for loading, unloading and storage of goods; maintenance workshops; and any other infrastructure necessary for the supply of the service.

I-PERU-24

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Agreement on International Land Transport (Acuerdo sobre Transporte Internacional Terrestre - ATIT), signed between the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay, signed in Montevideo on January 1, 1990

Description: Trade in Services

Foreign vehicles allowed by Peru, in conformity with the ATIT (5), which carry out international transportation by road, are not able to supply local transport (cabotage) in the Peruvian territory.

(5) The ATIT applies to international land transport between signatory countries (the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay) for the purposes of land transportation between two signatory countries as well as transit to a third country.

I-PERU-25

Sector: Research and Development Services

Sub-Sector: Archaeological services

Obligations Concerned: National Treatment (Article 8.3)

Level of Government: Central

Measures: Supreme Decree N° 003-2014-MC, "El Peruano" Official Gazette of October 3, 2014, Regulation of Archaeological Interventions (Reglamento de Intervenciones Arqueológicas), Article 30

Description: Trade in Services

Archaeological research programmes and projects headed by a foreign archaeologist, who does not reside in Peru, must have a Peruvian director.

Both directors shall be registered in the National Registry of Archaeologists and shall assume the same responsibilities in the formulation and the integral execution of the project (field and office work), and in the elaboration of the final report.

I-PERU-26

Sector: Services related to Energy Services

Obligations Concerned: National Treatment (Article 8.3) Local Presence (Article 8.6)

Level of Government: Central

Measures: Law N° 26221, "El Peruano" Official Gazette of August 19, 1993, General Law of Hydrocarbons (Ley General de Hidrocarburos), Article 15

Description: Trade in Services

In order to enter into an exploration contract in Peru, foreign natural persons must register in the Public Registry and provide a power of attorney to a Peruvian national resident in the capital of the Republic of Peru.

Foreign enterprises must establish a branch or constitute a society under the General Law of Corporations (Ley General de Sociedades), be domiciled in the capital of the Republic of Peru, and appoint a Peruvian national as an executive agent.

## **Annex II. SCHEDULE OF HONG KONG, CHINA (Reservations for Establishment) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the English text of this Schedule shall prevail.

### **EXPLANATORY NOTES**

1. This Schedule sets out, pursuant to Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the specific sectors, sub-sectors or activities for which Hong Kong, China may maintain existing, or adopt new or more restrictive, measures that do not conform with the following obligations:

(a) Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions); or

(b) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

2. Each Schedule entry sets out the following elements:

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

(b) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the sectors, sub-sectors or activities covered by the entry; and

(c) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies.

3. In accordance with Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the obligations of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, sub-sectors or activities set out in the Description element of that entry.

#### **II-HKC-1 (Establishment)**

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the acquisition or ownership of land and properties in Hong Kong, China.

#### **II-HKC-2 (Establishment)**

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to the acquisition, sale or other disposition by natural persons of Peru of bonds, bills, notes, or other kinds of debt securities or instruments issued by the Government of the Hong Kong Special Administrative Region of the People's Republic of China (including the Hong Kong Monetary Authority) or by a Government enterprise.

#### **II-HKC-3 (Establishment)**

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4) Performance Requirements (Article 12.5)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

(a) public law enforcement, ambulance services, correctional services, fire-fighting and rescue services; and

(b) the following, to the extent that they are social services established for a public purpose:

- (i) health;
- (ii) education;
- (iii) housing;
- (iv) training;
- (v) transport;
- (vi) public utilities;
- (vii) social security; and
- (viii) social welfare.

II-HKC-4 (Establishment)

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to:

- (a) the full or partial devolvement to the private sector of services provided in the exercise of governmental authority; and
- (b) the privatisation, divestment, sale or other disposition of corporate entities, equity interests or assets in government ownership.

II-HKC-5 (Establishment)

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to new sectors and industries.

II-HKC-6 (Establishment)

Sector: All sectors

Obligations Concerned: National Treatment (Article 12.4)

Description: Hong Kong, China reserves the right to adopt or maintain any measure with respect to its legislation relating wholly or mainly to taxation.

## **Annex II. SCHEDULE OF PERU (Reservations for Trade in Services and Establishment) (1)**

(1) In case of discrepancy or divergence between the authentic texts, the Spanish text of this Schedule shall prevail.

### **EXPLANATORY NOTES**

1. This Schedule sets out, pursuant to Article 8.7 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the specific sectors, sub-sectors or activities for which Peru may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 8.3 (National Treatment) of Chapter 8 (Trade in Services) Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions); or

(b) Article 8.4 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services);

(c) Article 8.5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 8.6 (Local Presence) of Chapter 8 (Trade in Services); or



(e) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions)

2. Each Schedule entry sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sub-sector for which the entry is made;

(c) To identify the different sectors and sub-sectors in this list, the CPC prov, 1991 is used, which stands for the Central Product Classification according to the definition of the United Nations Statistics Office, Statistical Reports, Series M, No. 77, CPC prov, 1991;

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), do not apply to the sectors, sub-sectors or activities listed in the entry;

(e) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies; and

(f) Existing Measures, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, sub-sectors or activities covered by the entry.

3. In accordance with Article 8.7.2 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 12.6.2 (Non-Conforming Measures) of Chapter 12 (Establishment and Related Provisions), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, sub-sectors and activities identified in the Description element of that entry.

II-PERU-1

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries in accordance with any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries in accordance with any bilateral or multilateral international agreements in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters (2), including salvage.

Existing Measures:

(2) For greater certainty, maritime matters include transport by lakes and rivers.

I-PERU-2

Sector: Indigenous Communities, Peasant, Native and Minority Affairs

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For the purposes of this entry, "ethnic groups" means indigenous, native and

peasant communities.

Existing Measures:

II-PERU-3

Sector: Fishing and Services related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Existing Measures:

II-PERU-4

Sector: Cultural Industries

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4)

Description: Trade in Services

For the purposes of this entry, "cultural industries" means:

- (a) publication, distribution or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;
- (b) production, distribution, sale or display of recordings of movies or videos;
- (c) production, distribution, sale or display of music recordings in audio or video format;
- (d) production and presentation of theatre arts (3);
- (e) production and exhibition of visual arts;
- (f) production, distribution or sale of printed music scores or scores readable by machines;
- (g) design, production, distribution and sale of handicrafts; or
- (h) radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.

Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement regarding cultural industries, including audio-visual cooperation agreements.

For greater certainty, Chapter 8 (Trade in Services) and Article 12.4 (National Treatment) of Chapter 12 (Establishment and Related Provisions) shall not apply to government support for the promotion of cultural industries.

Existing Measures:

(3) The term "theatre arts" means live performances or presentations such as drama, dance or music.

II-PERU-5

Sector: Handicraft Industries

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing or exhibition of handicrafts that are identified as Peruvian handicrafts.

Performance requirements shall in all cases be consistent with the Agreement on Trade-Related Investment Measures, set out in Annex 1A to the WTO Agreement (TRIMs Agreement).

Existing Measures:

II-PERU-6

Sector: Audio-Visual Industry

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 per cent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage,

Peru shall take into account factors including the national cinematographic production, the existing exhibition infrastructure in the country and attendance.

Existing Measures:

II-PERU-7

Sector: Jewellery Design. Theatre Arts. Visual Arts. Music. Publishing

Sub-Sector:

Obligations: Concerned National Treatment (Article 8.3) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support for the development and production of jewellery design, theatre arts, visual arts, music and publishing on the recipient achieving a given level or percentage of domestic creative content.

Existing Measures:

II-PERU-8

Sector: Audio-Visual Industry. Publishing. Music

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4)

Description: Establishment and Trade in Services

Peru may adopt or maintain any measure that affords a person of the other Party the treatment that is afforded by that Party to Peruvian persons in the audio-visual, publishing and music sectors.

Existing Measures:

II-PERU-9

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6) Performance Requirements (Article 12.5)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health and childcare.

Existing Measures:

II-PERU-10

Sector: Public Supply of Potable Water

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water.

For greater certainty, nothing in this entry shall affect the ability of a foreign enterprise to supply bottled water.

Existing Measures:

II-PERU-11

Sector: Public Sewage Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

Existing Measures:

II-PERU-12

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation and exploitation of public telecommunication services.

Existing Measures:

II-PERU-13

Sector: Education Services

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who supply educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including technical and productive training (educación técnico productiva) as well as other people who supply services related to education including sponsors of educational institutions of any level or stage of the educational system.

Existing Measures:

II-PERU-14

Sector :Transportation Services

Sub-Sector: Road transportation services

Obligations Concerned: National Treatment (Article 8.3)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure that authorises only Peruvian natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Peru (cabotage). For this, the enterprises shall use vehicles registered in Peru.

Existing Measures:

II-PERU-15

Sector: Transportation

Sub-Sector: International road transportation services

Obligations Concerned: National Treatment (Article 8.3 and Article 12.4) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Establishment and Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:

(a) the service supplier must be a Peruvian natural or juridical person;

(b) the service supplier must have a real and effective domicile in Peru; and

(c) in the case of juridical persons, the service supplier must be legally constituted in Peru and more than 50 per cent of its capital stock must be owned by Peruvian nationals and its effective control must be by Peruvian nationals.

Existing Measures:

II-PERU-16

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to ground-handling services.

Existing Measures:

II-PERU-17

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: National Treatment (Article 8.3) Most-Favoured-Nation Treatment (Article 8.4) Local Presence (Article 8.6)

Description: Trade in Services

Peru reserves the right to adopt or maintain any measure relating to airport operation services.

Existing Measures:

II-PERU-18

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 8.5) Trade in Services

Description:

Peru reserves the right to adopt or maintain any measure relating to Article 8.5 (Market Access) of Chapter 8 (Trade in Services), except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

Legal services: For (a) and (c): None, except that the number of notary positions depends of the number of inhabitants of each city. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Accounting, auditing and bookkeeping services: For (a) and (c): None, except that auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima). No partner may be a member of another auditing society in Peru. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Taxation services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Architectural services: For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Integrated engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Urban planning and landscape architectural services: For (a), (b) and (c): None, except that to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Veterinary services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services provided by midwives, nurses, physiotherapists and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Computer and related services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on natural sciences: For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may require the inclusion to the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and know the studies and its scope. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and development services on social sciences and humanities: For (a), (b) and (c): None, subject to the respective authorisations of the competent authority. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Interdisciplinary research and development services: For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Real estate services: Involving owned or leased property or on a fee or contract basis: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment: For (a), (b) and (c): None, except that:

A “national ship owner” or “national ship enterprise” is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic, sabotage (4) or international traffic, who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel, and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

4 For greater certainty, water transportation includes transportation by lakes and rivers.

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a national ship owner or national ship enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(i) up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

(ii) foreign-flagged vessels may be operated exclusively by national ship owners or national ship enterprises for a period of three years for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned. That period may be renewed for up to one year.

For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Advertising services: For (a), (b) and (c): None, except that: Commercial advertising produced in Peru, must use at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising. For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to agriculture, hunting and forestry: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services incidental to fishing: solely advisory and consulting services relating to fishing: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to mining, placement and supply services of personnel, and investigation and security services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Related scientific and technical consulting services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Maintenance and repair of equipment (not including vessels, aircraft or other transport equipment), building-cleaning services, photographic services, packing services and convention services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Printing and publishing services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Other (CPC 8790) except: credit rating services (CPC 87901); jewellery design services; design services of handicrafts that are identified as Peruvian handicrafts; and other business services not elsewhere classified (CPC 87909): For (a), (b) and (c):

None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Express delivery services: For (a) and (b): No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Advisory services on telecommunications: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

National or international long-distance telecommunications services: For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with the commitments of Peru under Article XVI of GATS.

Carrier telecommunications services, private telecommunications services and value added services (5): For (a), (b), (c):

(5) Value added services shall be defined in accordance with Peruvian legislation.

None, except for the obligation of obtaining a concession, authorisation, registry or any other title which Peru considers convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

International traffic shall be routed through the installations of a company holding a concession or other permission for operation granted by the Ministry of Transport and Communications (Ministerio de Transportes y Comunicaciones).

Interconnection among private services is prohibited.

For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Commission agents services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Retailing services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Franchising: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Construction services: solely consulting services related to construction: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Higher education services (6) : For (a): No commitments, except for subjects that are part of a programme that mainly takes place outside Peru. For (b): None. For (c) and (d): No commitments.

(6) For greater certainty, these commitments do not affect any regulation or mandatory requirements related to the recognition of certificates or degrees and they shall not be construed to exempt any student from meeting any applicable requirement to practice a profession or otherwise engage in business activities.

Environmental services: solely consulting services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Entertainment services (including theatre, live bands and circus services), news agencies services, libraries, archives, museums, and other cultural and sporting services: For (a), (b) and (c): None, except that:



(i) any domestic theatre arts (7) and visual arts production and any domestic artistic live performance must be comprised of at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

(7) The term "theatre arts" means live performances or presentations such as drama, dance or music.

(ii) a foreign circus may stay in Peru with the original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Exploitation of facilities for competitive and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Recreational parks services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Road transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Selling and marketing of air transport services, and computer reservation system services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

For greater certainty, nothing in this entry shall be inconsistent with the commitments of Peru in accordance with Article XVI of GATS.

For the purposes of this entry:

1. "(a)" refers to the supply of a service from the Area of the other Party into the Area of Peru;
2. "(b)" refers to the supply of a service in the Area of the other Party by a person of that Party to a person of Peru;
3. "(c)" refers to the supply of a service through commercial presence in the Area of Peru by a service supplier of the other Party; and
4. "(d)" refers to the supply of a service by a natural person of the other Party in the Area of Peru.
5. "None" means no limitations or conditions on the application of Article 8.5 (Market Access) of Chapter 8 (Trade in Services).

Existing Measures:

## **Chapter 13. INTELLECTUAL PROPERTY**

### **Article 13.1. Definitions**

For the purposes of this Chapter, unless otherwise provided:

geographical indications mean indications which identify a good as originating in the Area of a Party, or a region or a locality in that Area, where a given quality, reputation or other characteristic of the good is essentially attributable to its

geographical origin;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 (Copyright and Related Rights), 2 (Trademarks), 3 (Geographical Indications), 4 (Industrial Designs), 5 (Patents), 6 (Layout – Designs (Topographies) of Integrated Circuits), 7 (Protection of Undisclosed Information) of Part II of the TRIPS Agreement;

Paris Convention means the Paris Convention for the Protection of Industrial Property, done at Paris on March 20, 1883, as revised or amended from time to time by a revision or amendment that applies to the Parties; and

WIPO means the World Intellectual Property Organization.

## **Article 13.2. Objective**

The objective of this Chapter is to increase the benefits from trade and investment through the protection, utilisation, commercialisation and enforcement of intellectual property rights in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

## **Article 13.3. Principles**

The Parties recognise that:

- (a) establishing and maintaining transparent intellectual property systems and promoting and maintaining balanced, adequate and effective protection and enforcement of intellectual property rights provides certainty to right holders and users;
- (b) protecting and enforcing intellectual property rights should contribute to the promotion of creativity, innovation and to the transfer and dissemination of technology;
- (c) intellectual property protection promotes economic and social development, competitiveness and can reduce distortion and obstruction to international trade;
- (d) intellectual property systems should support open, innovative and efficient markets, including through the effective creation, utilisation, commercialisation, protection and enforcement of intellectual property rights, appropriate limitations and exceptions, and an appropriate balance between the legitimate interests of right holders, users and the public;
- (e) intellectual property systems should not themselves become barriers to legitimate trade;
- (f) appropriate measures, provided they are consistent with the provisions of the TRIPS Agreement and this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade, are anti-competitive or adversely affect the international transfer of technology; and
- (g) necessary measures to protect public health and nutrition, and to promote the public interest in sectors of vital importance to each Party's socio-economic and technological development, may be adopted provided that they are consistent with the TRIPS Agreement and this Chapter.

## **Article 13.4. Nature and Scope of Obligations**

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights in accordance with its law than this Chapter requires, provided that this additional protection or enforcement is not inconsistent with the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

## **Article 13.5. International Agreements**

Further to Article 1.2 (Relation to other Agreements) of Chapter 1 (Initial Provisions and General Definitions), each Party affirms its existing rights and obligations under the TRIPS Agreement and any other international agreement relating to intellectual property including the agreements concluded or administered under the auspices of the WIPO, to which the Parties are party.

## **Article 13.6. Exhaustion**

Nothing in this Chapter shall affect the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies.

## **Article 13.7. Procedures on Acquisition and Maintenance**

1. Each Party shall:

(a) continue to work to enhance its examination and registration systems for registrable intellectual property rights, including through improving examination procedures and maintaining quality registration systems;

(b) provide applicants with a communication in writing of the reasons for any refusal of an application for registration of an intellectual property right;

(c) provide grounds for interested parties to oppose an application (1) or an opportunity to appeal against any refusal of an application, or to seek, if appropriate, either cancellation, revocation, or invalidation of an existing registered intellectual property right; and

(d) require that opposition, appeal, invalidation, cancellation, or revocation (if applicable) decisions be reasoned and in writing.

2. For the purposes of this Article, writing and communication in writing may include writing and communication in an electronic form.

(1) For greater certainty, this provision shall not require a Party to establish in its legislation an objection or opposition procedure for the protection or recognition of an intellectual property right.

## **Article 13.8. Transparency**

For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall take appropriate measures, to the extent possible, in accordance with its laws and regulations, to publish or make available to the public, information on applications or registrations of intellectual property rights.

## **Article 13.9. Patentable Subject Matter**

1. Subject to paragraph 2 and paragraph 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.

2. Each Party may exclude from patentability inventions, the prevention within its Area of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its laws.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

## **Article 13.10. Amendments, Corrections and Observations on Patent Applications**

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections and observations in connection with their applications in accordance with the laws, regulations and rules of each Party.

## **Article 13.11. Trademarks**

The Parties shall grant adequate and effective protection to trademark right holders of goods or services.

## **Article 13.12. Well-Known Trademarks**

The Parties shall provide protection for well-known trademarks at least in accordance with Articles 16.2 and 16.3 of the TRIPS Agreement and Article 6 bis of the Paris Convention.

### **Article 13.13. Collective and Certification Marks**

Each Party shall provide for the protection of both collective marks and certification marks. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.

### **Article 13.14. Geographical Indications**

1. Each Party recognises that geographical indications may be protected through a trademark or sui generis system or other legal means. (2)

2. The Parties shall take all necessary measures as required under their laws and regulations to ensure protection of their geographical indications. Each Party shall provide interested parties with the legal means to prevent the use of a geographical indication on a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10 bis of the Paris Convention.

3. The terms listed in Annex 13-A are geographical indications in Peru within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement.

4. Subject to the laws and regulations of Hong Kong, China, and in a manner that is consistent with the TRIPS Agreement, the terms listed in Annex 13-A or any other geographical indication registered in Peru in the future may receive relevant protection on intellectual property in Hong Kong, China. (3)

5. Paragraph 4 shall not preclude Hong Kong, China from accepting an application for trademark registration where the relevant requirements for registration are fulfilled.

6. Paragraph 4 shall not be construed to impose any obligation on Hong Kong, China to amend its laws and regulations or affect its international position in relation to intellectual property.

(2) For greater certainty, without prejudice to the definition of geographical indications, in the case of Peru's commitments exclusively and without extending Hong Kong, China's commitments on geographical indications, Article 13.14 may apply to appellations of origin, which are defined under the Peruvian legislation as denominations consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation.

(3) For clarity: (a) The terms listed in Annex 13-A or any other geographical indication registered in Peru in the future may receive protection if they are registered and the registrations remain valid in accordance with the Trade Marks Ordinance (Cap. 559 of the Laws of Hong Kong, China) of Hong Kong, China and its subsidiary legislation; and (b) Any application for the registration of the terms listed in Annex 13-A or any other geographical indication registered in Peru in the future will be processed in accordance with the laws and regulations of Hong Kong, China.

### **Article 13.15. Country Brand**

The Parties acknowledge the importance of Brand Peru for Peru and reaffirm their commitment to prohibit unfair competition practices applicable as provided in Article 10 bis of the Paris Convention.

### **Article 13.16. Genetic Resources and Traditional Knowledge**

1. The Parties recognise the importance of intellectual property protection related to genetic resources and traditional knowledge.

2. Subject to the international obligations and laws of each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions.

3. The Parties, or their respective agencies responsible for administering their intellectual property systems or other

relevant institutions where appropriate, shall explore the possibility to cooperate to enhance the understanding of and further discuss relevant issues connected with genetic resources and traditional knowledge.

### **Article 13.17. Plant Breeders' Rights**

The Parties, through their competent agencies, shall cooperate to encourage and facilitate the protection and development of plant breeders' rights with a view to:

- (a) better harmonising the plant breeders' rights administrative systems of the Parties, including enhancing the protection of species of mutual interest and exchanging information; and
- (b) reducing unnecessary duplicative procedures between their respective plant breeders' rights examination systems.

### **Article 13.18. Collective Management of Copyright or Related Rights**

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright or related rights and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

### **Article 13.19. Protection of Undisclosed Information**

1. In the course of ensuring effective protection against unfair competition, each Party shall protect undisclosed information in accordance with paragraph 2.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices (4) as long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

(4) For the purposes of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

### **Article 13.20. Special Requirements Related to Border Measures**

1. Each Party shall provide that any right holder, initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods (5) into free circulation, is required to provide adequate evidence to satisfy its competent authorities that, under the relevant laws of that Party, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognisable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide its competent authorities with the powers to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities of a Party have made a determination that goods are counterfeit or pirated, that Party shall grant its competent authorities the right to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, as well as the quantity of the goods in question, in accordance with its laws.

4. Each Party shall provide that its competent authorities are permitted to initiate border measures ex officio, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or

suspect that goods being imported or exported are counterfeit or pirated.

5. When there is a reason to believe or suspect that goods in transit are counterfeit or pirated, each Party may also permit its competent authorities to initiate border measures ex officio as provided by its laws.

(5) For the purposes of this Article: (a) "counterfeit trademark goods" means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and (b) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

## **Article 13.21. Enforcement**

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party shall provide for criminal procedures and penalties in accordance with the TRIPS Agreement to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment or monetary fines sufficient to provide a deterrent, and consistent with the level of penalties applied for crimes of a corresponding gravity.

## **Article 13.22. Exchange of Information**

Each Party shall, on request of the other Party, exchange through their contact points designated in accordance with Article 13.24, experiences and information related, but not limited, to:

(a) intellectual property policies in their respective administrations;

(b) changes to, and developments in the implementation of, their respective intellectual property systems such as the protection regimes of country brands and traditional specialties guaranteed in Peru; and

(c) the laws, procedures and practices of general application relating to the administration and enforcement of intellectual property rights.

## **Article 13.23. Cooperation**

1. The Parties will consider opportunities for continuing cooperation under established arrangements in areas of mutual interest that aim to improve the operation of the intellectual property rights system, including administrative processes, in each other's jurisdictions. This cooperation may include:

(a) capacity building, experience sharing and collaboration, such as in improving patent examination quality and efficiency;

(b) enforcement of intellectual property rights; and

(c) raising public awareness on intellectual property issues.

2. Each Party shall, on request of the other Party, give due consideration to any specific cooperation proposal made by the other Party relating to the protection or enforcement of intellectual property rights, promotion of intellectual property trading and commercialisation of intellectual property, or promotion, including organising seminars and workshops, of the use of alternative dispute resolution such as arbitration and mediation to resolve intellectual property disputes between private parties.

## **Article 13.24. Communications and Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of its contact point to the other Party. Each Party shall notify the other Party promptly of any amendment to the details of its contact point.

2. Either Party may at any time request meetings with the other Party to discuss and consider any issue related to

intellectual property covered by this Chapter. Either Party may also request the Joint Commission to review and recommend amendments to this Chapter (including Annex 13-A) during the general review of this Agreement as provided under Article 17.4 (General Review) of Chapter 17 (Administrative and Institutional Provisions).

3. A request under paragraph 2 shall be conveyed through the contact points referred to in paragraph 1 by any means as may be agreed by the Parties.

## **Chapter 14. COMPETITION**

### **Article 14.1. Definitions**

For the purposes of this Chapter:

competition authority means:

for Hong Kong, China, the Competition Commission or the Communications Authority, or their successors; and

for Peru, the National Institute for the Defense of Competition and Protection of Intellectual Property (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual - INDECOPI) and the Supervisory Body for Private Investment in Telecommunications (Organismo Supervisor de Inversión Privada en Telecomunicaciones - OSIPTEL), or their successors; and

competition law means:

for Hong Kong, China, the Competition Ordinance (Cap. 619) and any subsidiary legislation made under that Ordinance, as well as any amendment thereto, or any successor legislation; and

for Peru, the Legislative Decree 1034, the Competition Act; the Law 31112, the Antitrust Merger Review Act; and their implementing regulations and amendments.

### **Article 14.2. Competition Laws and Authorities and Anti-competitive Conduct**

1. Recognising that anti-competitive conduct has the potential to restrict bilateral trade and investment, each Party shall maintain its competition law to proscribe (1) such conduct, with the objective of promoting economic efficiency, consumer welfare and free trade, and shall take appropriate action with respect to that conduct. These laws should take into account the APEC Principles to Enhance Competition and Regulatory Reform, done at Auckland on September 13, 1999.

2. Each Party shall endeavour to apply its competition law to all commercial activities in its Area. (2) However, each Party may provide for certain exemptions or exclusions from the application of its competition law provided that those exemptions or exclusions are transparent and are based on considerations such as economic efficiency, public policy grounds or public interest grounds.

3. Each Party shall maintain a competition authority responsible for the enforcement of its competition law. Each Party shall provide that it is the policy of that authority to act in accordance with the objectives set out in paragraph 1 and not to discriminate on the basis of nationality.

(1) For greater certainty, the competition law that a Party maintains to proscribe anti-competitive conduct can be civil or criminal in nature.

(2) For greater certainty, nothing in this paragraph shall be construed to preclude a Party from applying its competition law to commercial activities outside its Area that have anti-competitive effects within its jurisdiction.

### **Article 14.3. Procedural Fairness In Competition Law Enforcement (3)**

1. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its competition law, it affords that person:

(a) information about the competition authority's competition concerns;

(b) a reasonable opportunity to be represented by counsel; and

(c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy. In particular, each Party shall afford that person a reasonable opportunity to present evidence or testimony in its defence, including, if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness, and to review and rebut the evidence introduced in the enforcement proceeding (4).

2. Each Party shall ensure that its competition authority adopts or maintains written procedures in accordance with which its competition law investigations are conducted. If those investigations are not subject to definitive deadlines, the competition authority of each Party shall endeavour to conduct its investigations within a reasonable timeframe.

3. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its competition law and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all parties to a proceeding.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its competition law with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established in accordance with the laws of that Party.

5. The competition authority of each Party shall be able to resolve alleged violations of the competition law of that Party, as appropriate, voluntarily by consent of that authority and the person subject to the enforcement action.

6. If the competition authority of a Party issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the competition law of that Party.

7. If the competition authority of a Party alleges a violation of the competition law of that Party, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding. (5)

8. Each Party shall provide for the protection of business confidential information and other information treated as confidential in accordance with its laws, obtained by its competition authority during the investigative process. If the competition authority of a Party uses or intends to use that information in an enforcement proceeding, the Party shall, subject to its laws and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the competition authority's allegations.

9. Each Party shall ensure that its competition authority affords a person under investigation for possible violation of the competition law of that Party reasonable opportunity to consult with that competition authority with respect to significant legal, factual or procedural issues that arise during the investigation.

(3) For the purposes of this Article, "enforcement" means an application of competition law by way of investigation or proceeding conducted by a Party's competition authority, but shall not include research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries. Such research, studies or surveys shall not be construed so as to include an investigation with regard to suspected violation of a Party's competition law.

(4) For the purposes of this Article, "enforcement proceedings" means judicial or administrative proceedings following an investigation into the alleged violation of the Party's competition law.

(5) Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

## **Article 14.4. Private Right of Action**

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of the competition law of a Party, either independently or following a finding of violation by the competition authority of that Party.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition law, each Party should adopt or maintain laws or other measures that provide an independent private right of action.



3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, that Party shall adopt or maintain laws or other measures that provide a right that allows a person:

(a) to request that the competition authority of that Party initiate an investigation into an alleged violation of the competition law of that Party; and

(b) to seek redress from a court or other independent tribunal following a finding by a judicial body of a violation of the competition law of that Party.

4. Each Party shall ensure that a right provided in accordance with paragraph 2 or paragraph 3 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

## **Article 14.5. Cooperation**

1. The Parties recognise the importance of cooperation and coordination between their respective competition authorities to foster effective competition law enforcement in the Areas of the Parties. Accordingly, subject to their laws, regulations, policies and available resources, the Parties shall:

(a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and

(b) cooperate, as appropriate, on issues of competition law enforcement, including through technical assistance as appropriate, notification, consultation, exchange of information and coordination on cross-border enforcement matters.

2. The competition authority of a Party may consider entering into a cooperation arrangement or agreement with the competition authority of the other Party that sets out agreed terms of cooperation.

## **Article 14.6. Technical Cooperation**

1. The Parties may promote technical cooperation, including exchange of experiences, training programs, workshops and research collaborations for the purpose of enhancing their competition authorities' capacity related to competition policy and law enforcement.

2. Recognising that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to their laws, regulations, policies and available resources, including:

(a) providing advice or training on relevant issues, including through the exchange of officials; and

(b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition.

## **Article 14.7. Consumer Protection**

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in their respective Areas.

2. Each Party shall adopt or maintain laws or regulations on consumer protection.

3. The Parties recognise that unfair trade practices increasingly transcend economies and that cooperation and coordination between the Parties is desirable to effectively address such practices.

4. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to unfair trade practices.

5. The Parties shall, subject to their laws, regulations, policies and available resources, endeavour to cooperate and coordinate on the matters set out in this Article through the relevant public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party.

## **Article 14.8. Transparency**

1. The Parties recognise the value of transparency in making their competition enforcement policies.

2. Each Party shall make public its competition law, and regulations, guidelines and any rules issued in relation to the administration of such law, excluding internal operating procedures.
3. Each Party shall ensure that a final decision finding a violation of its competition law is in written form and sets out relevant findings of fact and the legal basis on which the decision is based subject to their respective laws and regulations.
4. Each Party shall ensure to make public the final decisions and any orders implementing them subject to its laws and regulations, excluding any business confidential information or other information that is protected by its laws and regulations from public disclosure.

### **Article 14.9. Consultations**

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of the other Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

### **Article 14.10. Non-application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Chapter.

## **Chapter 15. COOPERATION**

### **Article 15.1. Objectives**

1. The Parties affirm the importance of economic and trade cooperation, as means to contribute to implementing this Agreement and enhancing its benefits.
2. The objectives of this Chapter are to facilitate the establishment of close cooperation aimed, inter alia, at:
  - (a) strengthening the capacities of the Parties to maximise the opportunities and benefits deriving from this Agreement;
  - (b) promoting economic and social development;
  - (c) increasing the level of and deepening cooperation actions between the Parties at the bilateral, regional or multilateral level;
  - (d) promoting the export of goods and services of the Parties to international markets; and
  - (e) creating new opportunities for trade and investment and promoting competitiveness and innovation through the involvement, where appropriate, of the private sector including the SMEs by, inter alia, facilitating the integration of SMEs into global value chains and encouraging SMEs to organise or participate in trade promotion events.

### **Article 15.2. Scope**

1. The cooperation activities under this Chapter are related to trade in goods, trade in services, investment and other areas, as mutually agreed by the Parties.
2. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

### **Article 15.3. Economic Cooperation**

The Parties will encourage and facilitate economic and trade cooperation activities on a mutually agreed basis, which may include:

- (a) dialogues, workshops, seminars and conferences;
- (b) collaborative programmes and projects;
- (c) technical cooperation;

- (d) sharing of best practices on policies and procedures;
- (e) the exchange of economic and trade information; and
- (f) the organisation of trade fairs, missions and exhibitions.

#### **Article 15.4. Small and Medium Enterprises**

1. The Parties will promote a favourable environment for the development of SMEs as well as the exchange of experiences and good practices with SMEs.

2. Cooperation will be undertaken on a mutually agreed basis and may include the following subjects:

- (a) the designing and development of mechanisms to encourage partnership and value chain development;
- (b) development of human resources and management skills to increase the knowledge of each other's market;
- (c) developing methods and strategies for enhancing the growth and development among enterprises, especially SMEs, within a sector;
- (d) increasing access to information regarding mandatory procedures and any other relevant information for SME exporters;
- (e) designing programmes to improve the productivity of SMEs;
- (f) developing initiatives oriented to transfer technological innovation to SMEs;
- (g) increasing access to information on technological promotion programmes for SMEs and financial support and encouragement programmes for SMEs;
- (h) supporting SME exporters in promoting exports to overseas markets; and
- (i) encouraging partnership and information exchange for SME financing institutions.

3. Cooperation may be developed through:

- (a) information exchange;
- (b) conferences, seminars, dialogue and training programmes with experts;
- (c) promoting contacts and encouraging exploration of industrial and technical opportunities between stakeholders; and
- (d) trade promotion activities, including participation in trade fairs and missions.

#### **Article 15.5. Contact Points**

Each Party shall designate a contact point to facilitate communication between the Parties on any matter covered by this Chapter.

#### **Article 15.6. Resources**

The implementation of the cooperation activities under this Chapter shall be subject to the availability of funds and resources of each Party and the applicable laws and regulations of each Party.

#### **Article 15.7. Non-application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Chapter.

## **Chapter 16. TRANSPARENCY AND ANTI-CORRUPTION**

### **Section A. Transparency**

#### **Article 16.1. Definition**

For the purposes of this Chapter:

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

## **Article 16.2. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, including through official websites where feasible, or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2.. To the extent possible, each Party shall:

- (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
- (b) provide, where appropriate, interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its laws and regulations, are made publicly available and the date when they enter into force.

## **Article 16.3. Notification and Provision of Information**

1- To the extent possible, each Party shall notify the other Party of any proposed or actual laws, regulations, procedures or administrative rulings of general application that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the interests of the other Party under this Agreement.

2. On request of the other Party, a Party shall promptly provide information and respond to questions related to any proposed or actual measure referred to in paragraph 1 that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of it.

3. A Party may give notification, convey any request or provide information under this Article to the other Party through its contact points designated under Article 17.6 (Contact Points) of Chapter 17 (Administrative and Institutional Provisions).

4. Without prejudice to paragraph 3, the information referred to under this Article related to laws, regulations, procedures or administrative rulings of general application shall be considered to have been notified or provided by a Party when the information has been made available by notification to the WTO in accordance with the WTO Agreement.

5. Any notification, response or information provided in accordance with this Article shall be without prejudice as to whether the measure referred to in paragraph 1 is consistent with this Agreement.

## **Article 16.4. Administrative Proceedings**

With a view to administering in a consistent, impartial and reasonable manner the measures referred to in Article 16.2.1 with respect to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying these measures to a particular person, good or service of the other Party in specific cases that:

- (a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in question;
- (b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts

and arguments in support of the position of that person prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) the procedures are in accordance with its laws.

## **Article 16.5. Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures (1) for the purposes of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures referred to in paragraph 1, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by the laws of the Party, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

(1) For greater certainty, such procedures include any ad hoc complaint handling procedures and internal review procedures.

## **Section B. Anti-Corruption**

### **Article 16.6. General Provisions**

1. The scope of this Section is limited to measures to prevent and combat corruption with respect to any matter covered by this Agreement.

2. The Parties affirm their commitment to combat bribery and corruption in international trade and investment, recognising the harmful moral, social and political implications that arise and their negative impact on governance, institutions and sustainable economic development.

3. The Parties emphasise the importance of integrity in public and private sectors, through the promotion of transparency, accountability and responsible management of public assets. The Parties undertake to adopt appropriate measures within their respective laws and regulations to prevent, detect, combat and deter bribery and corruption in matters affecting international trade and investment.

### **Article 16.7. International Instruments**

1. Each Party affirms its existing obligations under the United Nations Convention against Corruption, done at New York on October 31, 2003 (UNCAC). This Agreement shall not affect their existing rights and obligations under other international anti-corruption agreements.

2. The Parties recognise the importance to support APEC's anti-corruption principles, including the APEC Conduct Principles for Public Officials, done at Cairns on July 3, 2007, and the APEC Principles on the Prevention of Bribery and Enforcement of Anti-Bribery Laws, done at Beijing on November 6, 2014, as well as the need to promote awareness within their private sectors regarding available anti-corruption guidance, such as the APEC Anti-Corruption Code of Conduct for Business, Business Integrity and Transparency Principles for the Private Sector, done at Sydney on September 5, 2007, along with APEC General Elements of Effective Voluntary Corporate Compliance Programs, done at Beijing on November 6, 2014.

3. The Parties acknowledge the significance of regional and multilateral efforts to combat corruption and bribery in international trade and investment, including cooperation within the WTO, APEC, the United Nations and other relevant fora, with an emphasis on implementing relevant findings and recommendations.

### **Article 16.8. Non-application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Section.

## **Chapter 17. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS**

### **Section A. Joint Commission**

#### **Article 17.1. Establishment of the Joint Commission**

The Parties hereby establish the Hong Kong, China – Peru Joint Commission (Joint Commission) comprising representatives of each Party at the level of Ministers or senior officials. Each Party shall be responsible for the composition of its delegation.

#### **Article 17.2. Functions of the Joint Commission**

1. The Joint Commission shall:

- (a) review and consider any matter relating to the application or implementation of this Agreement;
- (b) recommend to the Parties, as appropriate, any proposal to amend this Agreement;
- (c) consider issues referred to it by either Party or by any committee or working group established under this Agreement;
- (d) supervise the work of any committee or working group established under this Agreement;
- (e) consider any other matter that may affect the operation of this Agreement; and
- (f) adopt the Rules of Procedure referred to in Article 18.12 (Rules of Procedure for Panels) of Chapter 18 (Dispute Settlement) and, where appropriate, amend those Rules.

2. The Joint Commission may:

- (a) establish, merge or dissolve any committees and working groups, and refer matters for advice or assign tasks to any committee or working group;
- (b) further the implementation of the objectives of this Agreement through implementing arrangements;
- (c) consider and adopt, subject to completion of necessary internal legal procedures by each Party, modifications to this Agreement concerning the rules of origin set out in Annex 3-B (Product-Specific Rules of Origin) of Chapter 3 (Rules of Origin and Origin Procedures), proposed by the Trade in Goods Committee pursuant to Article 17.5.3(c);
- (d) consider and adopt, subject to completion of necessary internal legal procedures by each Party, modifications to this Agreement concerning the acceleration of the reduction or elimination of a customs duty set out in their tariff schedules in Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods), proposed by the Trade in Goods Committee pursuant to Article 17.5.3(d);
- (e) seek to resolve any difference or dispute that may arise regarding the interpretation, implementation or application of this Agreement;
- (f) seek the advice of non-governmental persons or groups on any matter falling within the Joint Commission's functions;
- (g) issue interpretations of this Agreement, which shall be binding on the panels referred to under Chapter 18 (Dispute Settlement);
- (h) consider ways to further enhance trade and investment between the Parties; and
- (i) carry out any other function, or take any other action, as the Parties may agree.

#### **Article 17.3. Meetings of the Joint Commission**

1. Unless the Parties otherwise agree, the Joint Commission shall hold its first meeting within two years of the date of entry into force of this Agreement. Its subsequent meetings shall be held every two years thereafter, or as otherwise mutually determined by the Parties. A Party may request at any time, through a notice in writing to the other Party, that a special meeting of the Joint Commission be held. Such a special meeting shall take place within 60 days of the date of receipt of the request, unless the Parties otherwise agree.

2. The meetings of the Joint Commission shall be held alternately in the Area of each Party or as otherwise mutually determined by the Parties, and shall be chaired by the hosting Party. The meetings may be held by any technological means as mutually determined by the Parties. The Party chairing a meeting of the Joint Commission shall provide any necessary administrative support for the meeting, and shall record any decision taken by the Joint Commission and provide copies of any such decision to the other Party.
3. The Joint Commission shall take decisions on any matter within its functions by agreement.
4. The Joint Commission may establish rules of procedures for the conduct of its work.

## **Article 17.4. General Review**

The Joint Commission shall undertake a general review, including matters relating to the implementation or operation of this Agreement, within three years of the date of entry into force of this Agreement and every five years thereafter, or as otherwise mutually determined by the Parties.

## **Section B. Trade In Goods Committee**

### **Article 17.5. Trade In Goods Committee**

1. The Parties hereby establish the Trade in Goods Committee (TIG Committee), comprising government representatives of each Party.
2. The TIG Committee shall meet on agreement of the Parties or on request of the Joint Commission to consider any matter arising under Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures) and Chapter 4 (Customs Procedures and Trade Facilitation).
3. The functions of the TIG Committee shall include:
  - (a) reviewing the future amendments to the HS to ensure that the obligations of each Party under this Agreement are not altered, and consulting to resolve any conflicts between:
    - (i) subsequent amendments to HS nomenclature, amended as at January 1, 2022, and Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods); or
    - (ii) Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods) and the Party's HS nomenclatures;
  - b) consulting on and seeking to resolve any difference between the Parties on tariff classification and, if the TIG Committee fails to resolve such difference, referring the matter to the Joint Commission for consideration;
  - (c) proposing modifications to Annex 3-B (Product-Specific Rules of Origin) of Chapter 3 (Rules of Origin and Origin Procedures), for consideration and adoption by the Joint Commission, on the basis of the World Customs Organization's periodic transpositions of the HS; and
  - (d) proposing modifications concerning the acceleration of the reduction or elimination of a customs duty set out in the tariff schedules of the Parties in Annex 2-B (Schedules of Tariff Commitments) of Chapter 2 (Trade in Goods), for consideration and adoption by the Joint Commission.

## **Section C. Contact Points**

### **Article 17.6. Contact Points**

For the purpose of facilitating communication between the Parties on any matter covered by this Agreement, the following contact points are designated:

- (a) for Hong Kong, China: the Trade and Industry Department, or its successor; and
- (b) for Peru: the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR), or its successor.

## **Chapter 18. DISPUTE SETTLEMENT**

## **Section A. Dispute Settlement**

### **Article 18.1. Definitions**

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 18.7.1;

panel means a panel established under Article 18.7;

perishable good means a good that rapidly decays due to its natural characteristics, in particular in the absence of appropriate storage conditions;

responding Party means a Party that has been complained against under Article 18.7; and

Rules of Procedure means the rules referred to in Article 18.12 and adopted in accordance with Article 17.2 (Functions of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions).

### **Article 18.2. General Provisions**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement and shall make every effort through cooperation and consultations to reach a mutually satisfactory resolution of any matter that may affect its operation.

2. The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

### **Article 18.3. Scope**

Unless otherwise provided in this Agreement, this Chapter shall apply:

(a) with respect to the avoidance or settlement of any dispute that arises between the Parties regarding the interpretation or application of this Agreement;

(b) when a Party considers that an actual measure of the other Party is inconsistent with its obligations of this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Trade Remedies) or Chapter 8 (Trade in Services), is being nullified or impaired as a result of the application of a measure of the other Party that is not inconsistent with this Agreement.

### **Article 18.4. Choice of Forum**

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel, an arbitral tribunal or other forum under an agreement referred to in paragraph 1 to settle the dispute, the forum selected shall be used to the exclusion of other fora.

### **Article 18.5. Consultations**

1. A Party may request consultations with the other Party, through the contact point designated under Article 17.6 (Contact Points) of Chapter 17 (Administrative and Institutional Provisions), with respect to any matter described in Article 18.3. The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual measure or other matter at issue and an indication of the factual and legal basis for the complaint.



2. Unless the Parties otherwise agree, the Party to which a request for consultations is made shall reply in writing to the request no later than 10 days after the date of its receipt. (1)
3. Unless the Parties otherwise agree, they shall enter into consultations no later than:
  - (a) 15 days after the date of receipt of the request in cases of urgency, including those which concern perishable goods; or
  - (b) 30 days after the date of receipt of the request for all other matters.
4. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held alternately in the Area of each Party, with the first meeting held in the Area of the Party to which the request for consultations is made, unless the Parties otherwise agree.
5. The Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end, each Party shall:
  - (a) provide sufficient information to enable a full examination of how the actual measure might affect the operation or application of this Agreement; and
  - (b) treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.
6. In consultations under this Article, on request of a Party, the other Party shall endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for or expertise in the matter under consultation.
7. Consultations shall be confidential and without prejudice to the rights of a Party in any other proceedings.

(1) For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request 10 days after the date on which the Party making the request for consultations transmitted that request.

## **Article 18.6. Good Offices, Conciliation and Mediation**

1. The Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.
2. Proceedings that involve such alternative methods of dispute resolution (2) shall be confidential and without prejudice to the rights of a Party in any other proceedings.
3. The Parties may suspend or terminate the proceedings established under this Article at any time.
4. If the Parties agree, the alternative method of dispute resolution may continue while the matter is being examined by a panel established or a panel reconvened under this Chapter.

(2) For greater certainty, such proceedings include positions taken by the Parties during these proceedings.

## **Article 18.7. Establishment of a Panel**

1. The Party that requested consultations under Article 18.5.1 may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the Parties fail to resolve the matter no later than:
  - (a) 30 days after the date of receipt of the request for consultations under Article 18.5.1 in cases of urgency, including those which concern perishable goods;
  - (b) 60 days after the date of receipt of the request for consultations under Article 18.5.1 for all other matters; or
  - (c) any other period as the Parties may agree.
2. The complaining Party shall include in the request to establish a panel an identification of the specific measure or other matter at issue and a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly.

3. A panel shall be established upon receipt of the request.

4. Unless the Parties otherwise agree, the panel shall be composed in a manner consistent with this Chapter and the Rules of Procedure.

### **Article 18.8. Terms of Reference**

1. Unless the Parties otherwise agree no later than 20 days after the date of receipt of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 18.7.1; and

(b) make findings and determinations, as well as recommendations, if any, together with the reasons therefor, as provided for in Articles 18.15.4 and 18.16.

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs benefits within the meaning of Article 18.3(c), the terms of reference shall so indicate.

### **Article 18.9. Composition of Panels**

1. A panel shall be composed of three members, including a chair.

2. Unless the Parties otherwise agree, each Party shall, in accordance with Article 18.10, no later than 30 days after the date of receipt of the request for the establishment of a panel, appoint one panellist who may be its natural person and propose up to three candidates for appointment as the chair of the panel. The chair shall not be a natural person of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3. The Parties shall agree on and appoint the chair no later than 45 days after the date of receipt of the request for the establishment of a panel, taking into account the list of candidates proposed in accordance with paragraph 2. If appropriate, the Parties may jointly consult the panellists appointed in accordance with paragraph 2.

4. If any of the three appointments have not been made no later than 45 days after the date of receipt of the request for the establishment of a panel, panellist not yet appointed shall be appointed, on request of either Party, by lot from the list of the candidates proposed in accordance with paragraph 2. The appointment by lot shall be undertaken no later than seven days after the date of receipt of the request for appointment by lot, unless the Parties otherwise agree. Where more than one panellist, including the chair, is to be selected by lot, the chair shall be selected first.

5. The date of the establishment of a panel shall be the date on which the last panellist is appointed.

6. If the Parties agree that a panellist has failed to comply with the code of conduct referred to in Article 18.10.1(d), they may remove the panellist, waive the violation or request the panellist to ameliorate the violation within a specified period of time. If the Parties agree to waive the violation or determine that, after amelioration, the violation has ceased, the panellist may continue to serve.

7. If a panellist appointed in accordance with this Article resigns or becomes unable to act, including as a result of his or her removal in accordance with paragraph 6, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist within 21 days, unless the Parties otherwise agree, and shall have all the powers and duties of the original panellist. The work of the panel, including any procedural timeframe, shall be suspended until the successor panellist has been appointed.

8. Where a panel is reconvened under Article 18.19 or Article 18.20, the reconvened panel shall, where possible, have the same panellists as the original panel. Where this is not possible, any successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist within 21 days, unless the Parties otherwise agree, and shall have all the powers and duties of the original panellist.

### **Article 18.10. Qualifications of Panellists**

1. All panellists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not affiliated with or take instructions from, either Party; and
- (d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 18.6 or dealt with the dispute in any other capacity.

### **Article 18.11. Function of Panels**

1. The function of a panel is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the Parties otherwise agree, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the customary rules of treaty interpretation of public international law as reflected in the Vienna Convention on the Law of Treaties, done at Vienna on May 23, 1969. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. A panel shall take its decisions by consensus. If a panel is unable to reach consensus, it may take its decisions by majority vote.

### **Article 18.12. Rules of Procedure for Panel**

The Rules of Procedure, adopted under this Agreement in accordance with Article 17.2 (Functions of the Joint Commission) of Chapter 17 (Administrative and Institutional Provisions), shall ensure that:

- (a) there is at least one hearing before the panel at which each Party may present its views orally;
- (b) subject to subparagraph (e), any hearing before the panel shall be open to the public if the Parties agree;
- (c) each Party shall have an opportunity to provide at least an initial and a rebuttal written submission;
- (d) subject to subparagraph (e), each Party may:
  - (i) release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and
  - (ii) if not already released, release all these documents by the time the final report of the panel is issued;
- (e) confidential information is protected;
- (f) the venue for hearings shall be decided by agreement between the Parties. If there is no agreement, the venue shall alternate between the Areas of the Parties with the first hearing to be held in the Area of the responding Party; and
- (g) administrative assistance is provided to a panel established under Article 18.7.

### **Article 18.13. Role of Experts**

On request of either Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, subject to any terms and conditions agreed by the Parties. The Parties shall have an opportunity to comment on any information or advice obtained under this Article. If the panel takes the information or technical advice into account in the preparation of its reports, it shall also take into account any comments by the Parties on the information or technical advice.

### **Article 18.14. Suspension or Termination of Proceedings**

1. The panel may suspend its work at any time on request of the complaining Party for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the Parties request it to do so by joint notification to the chair of the panel. In the event of a suspension, the timeframes set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the Parties otherwise agree.

2. The panel shall terminate its proceedings if the Parties request it to do so by joint notification to the chair of the panel.

### **Article 18.15. Initial Report**

1. The panel shall draft its report without the presence of the Parties.

2. The panel shall base its report on the relevant provisions of this Agreement, the interpretations issued by the Joint Commission, the submissions and arguments of the Parties, and any information or advice put before it under Article 18.13.

3. The panel shall present an initial report to the Parties no later than 120 days after the date of the appointment of the last panellist. In cases of urgency, including those which concern perishable goods, the panel shall endeavour to present an initial report to the Parties no later than 90 days after the date of the appointment of the last panellist.

4. The initial report shall contain:

(a) a summary of the written and oral submissions and arguments;

(b) the findings along with their factual and legal basis;

(c) the determination of the panel as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement;

(ii) the responding Party has otherwise failed to carry out its obligations in this Agreement; or

(iii) the measure at issue is causing nullification or impairment within the meaning of Article 18.3(c);

(d) any other determination requested in the terms of reference;

(e) recommendations, if any, whether on request of a Party or upon initiative of the panel, for the resolution of the dispute; and

(f) the reasons for the findings and determinations.

5. If the panel makes recommendations, it may provide the reasons thereof in the initial report.

6. In exceptional cases, if the panel considers that it cannot present its initial report within the time period specified in paragraph 3, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. Any delay shall not exceed an additional period of 30 days unless the Parties otherwise agree.

7. Panellists may present separate opinions on matters not unanimously agreed.

8. A Party may submit written comments to the panel on its initial report no later than 15 days after the date of receipt of the initial report or within another period as the Parties may agree.

9. After considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

### **Article 18.16. Final Report**

1. The panel shall present a final report to the Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days, or 20 days in cases of urgency, after the date of receipt of the initial report, unless the Parties otherwise agree. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the Parties shall release the final report to the public.

2. The panel shall not, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

### **Article 18.17. Request for Clarification by the Panel**

1. No later than 10 days after the date of receipt of the final report, a Party may submit a written request for the panel to clarify any finding, determination or recommendation of the final report that it considers ambiguous. The panel shall reply to such request no later than 10 days after its submission.
2. Clarification by the panel shall not affect its findings, determinations and recommendations.
3. The submission of a request as described in paragraph 1 shall not affect the timeframes referred to in Article 18.19.

### **Article 18.18. Implementation of Final Report**

1. The findings and determinations of the panel shall be final and binding on the Parties.
2. The Parties recognise the importance of prompt compliance with determinations made by the panel in its final report under Article 18.16 in achieving the aim of the dispute settlement procedures in this Chapter, which is to secure a positive solution to disputes.
3. If in its final report under Article 18.16 the panel determines that:
  - (a) the measure at issue is inconsistent with the obligations of the responding Party in this Agreement;
  - (b) the responding Party has otherwise failed to carry out its obligations in this Agreement; or
  - (c) the measure at issue is causing nullification or impairment within the meaning of Article 18.3(c),the responding Party shall eliminate the non-conformity or the nullification or impairment, unless the Parties otherwise agree pursuant to Article 18.19.1.
4. Unless the Parties otherwise agree, the responding Party shall comply with the obligations in paragraph 3 immediately, or if this is not practicable, within a reasonable period of time.
5. The Parties shall endeavour to agree on the reasonable period of time referred to in paragraph 4. If the Parties fail to agree on the reasonable period of time no later than 45 days after the presentation of the final report under Article 18.16.1, either Party may, no later than 60 days after the presentation of the final report under Article 18.16.1, refer the matter to the chair of the panel to determine the reasonable period of time through arbitration.
6. The chair of the panel shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 18.16.1. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.
7. The chair of the panel shall determine the reasonable period of time no later than 60 days after the date of referral to the chair under paragraph 5.
8. The Parties may agree to vary the procedures set out in paragraph 5, paragraph 6 and paragraph 7 for the determination of the reasonable period of time.

### **Article 18.19. Non-Implementation – Compensation and Suspension of Benefits**

1. The responding Party shall, if requested by the complaining Party, enter into negotiations no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:
  - (a) the responding Party has notified the complaining Party that it does not intend to comply with the obligations in Article 18.18.3; or
  - (b) following the expiry of the reasonable period of time established in accordance with Article 18.18, there is disagreement between the Parties as to whether the responding Party has complied with the obligations in Article 18.18.3.
2. A complaining Party may suspend benefits in accordance with paragraph 3 if the Parties have:
  - (a) been unable to agree on compensation within 30 days of the date of receipt of the request made under paragraph 1; or
  - (b) agreed on compensation but the complaining Party considers that the responding Party has failed to observe the terms of the agreement.
3. A complaining Party may, at any time after either of the conditions set out in paragraph 2 are met, provide written notice

to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. (3) The complaining Party may begin suspending benefits 30 days after the date on which it provides notice under this paragraph.

4. The right to suspend benefits arising under paragraph 3 shall not be exercised if:

(a) a review is being undertaken in accordance with paragraph 7; or

(b) an agreed solution has been reached by the Parties.

5. The level of the suspension of benefits shall be equivalent to the level of the non-compliance, nullification or impairment.

6. In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has determined non-conformity or nullification or impairment to exist;

(b) if it considers that it is not practicable or effective to suspend benefits in the same sector or sectors, it may suspend benefits in a different sector or sectors. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which such decision to suspend benefits is based; and

(c) in applying the principles set out in subparagraph (a) and subparagraph (b), it shall take into account:

(i) the trade in the sector or sectors in which the panel has determined the non-conformity or nullification or impairment to exist, and the importance of that trade to the complaining Party;

(ii) that goods, all financial services covered under Chapter 9 (Financial Services), services other than such financial services, and Chapter 13 (Intellectual Property), are each distinct sectors; and

(iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

7. If the responding Party considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive pursuant to paragraph 5 or the complaining Party has failed to follow the principles and procedures set out in paragraph 6; or

(b) it has complied with the obligations in Article 18.18.3,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene within 30 days of the date of delivery of the request and shall present its determination to the Parties no later than 60 days after it reconvenes to review a request under subparagraph (a) or subparagraph (b), or 90 days after it reconvenes for a request under both subparagraph (a) and subparagraph (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect pursuant to paragraph 5.

8. Unless the panel has determined that the responding Party has complied with the obligations in Article 18.18.3, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 7 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 6, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which sector or sectors in order to ensure full compliance with the principles and procedures set out in paragraph 6. The complaining Party may suspend benefits only in a manner consistent with the determination of the panel.

9. Compensation and suspension of benefits shall be temporary measures. Neither compensation nor suspension is preferred to compliance with the obligations in Article 18.18.3. Compensation and suspension of benefits shall only be applied until such time the responding Party has complied with the obligations in Article 18.18.3, or until a mutually satisfactory solution is reached.

(3) For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions or other obligations under this Agreement the application of which the Party proposes to suspend.

## **Article 18.20. Compliance Review**

1. Without prejudice to the procedures in Article 18.19, if a responding Party considers that it has complied with the obligations in Article 18.18.3, it may refer the matter to the panel by providing a written notice to the complaining Party. The panel shall issue its report on the matter no later than 90 days after the responding Party provides the written notice.
2. If the panel determines that the responding Party has complied with the obligation to eliminate the non-conformity or the nullification or impairment in accordance with Article 18.18.3, the complaining Party shall promptly stop the suspension of benefits as applied in accordance with Article 18.19.

## **Section B. Private Rights and Alternative Dispute Resolution**

### **Article 18.21. Private Rights**

Neither Party shall provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

### **Article 18.22. Alternative Dispute Resolution**

1. Each Party shall, to the extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.
2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.
3. A Party shall be deemed to be in compliance with paragraph 2 if it is in compliance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958.

## **Chapter 19. GENERAL PROVISIONS AND EXCEPTIONS**

### **Article 19.1. Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its laws and regulations or impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

### **Article 19.2. Confidentiality of Information**

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information.

### **Article 19.3. General Exceptions**

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Trade Remedies) and Chapter 11 (Electronic Commerce)<sup>1</sup>, Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Temporary Entry for Business Persons) and Chapter 11 (Electronic Commerce) (1), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

(1) This paragraph is without prejudice to whether a digital product should be classified as a good or service.

## Article 19.4. Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to fissionable materials or the materials from which they are derived;
  - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as is carried on directly or indirectly for the purpose of supplying a military establishment; or
  - (iii) taken in time of war or other emergency in external relations; or
- (c) prevent a Party from taking any action in pursuance of the obligations applicable to it under the United Nations Charter for the maintenance of international peace and security.

## Article 19.5. Taxation Measures

1. For the purposes of this Article:

designated authorities means:

- (a) for Hong Kong, China, an authority or its authorised representative to be designated by the Director-General of Trade and Industry; and
- (b) for Peru, the Ministry of Economy and Finance (Ministerio de Economía y Finanzas - MEF);

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures include excise duties, but do not include any import or customs duties.

2. Unless otherwise provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures if:

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement; or
- (b) they are granted or imposed under:
  - (i) Chapter 2 (Trade in Goods); or
  - (ii) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

4. Notwithstanding paragraph 3, nothing in the Article referred to in subparagraph 3(b)(ii) shall apply to:

- (a) any non-conforming provision of any existing taxation measure;
- (b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;
- (c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the rights and obligations in Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions);
- (d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties (2); or
- (e) a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a



requirement that the Party maintains continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention to which the Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

6. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention to which the Parties are party, the issue shall be referred to the designated authorities of the Parties. The designated authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of the inconsistency. If the designated authorities agree, such a period may be extended up to 12 months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 18 (Dispute Settlement) until the expiry of the six-month period, or such other period as may have been agreed by the designated authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

(2) The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

## **Article 19.6. Measures to Safeguard the Balance-of-Payments**

1. If a Party is in serious balance-of-payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement, adopt or maintain restrictive import measures; and

(b) in the case of trade in services, adopt or maintain restrictions on payments or transfers related to trade in services.

2. If a Party is in serious balance-of-payments and external financial difficulties or under threat thereof, or if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to Chapter 12 (Establishment and Related Provisions).

3. Restrictions adopted or maintained under paragraph 1(b) or paragraph 2 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1(b) or paragraph 2;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1(b) or paragraph 2 improves; and

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-party.

4. In determining the incidence of restrictions adopted or maintained under paragraph 1 or paragraph 2, a Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under paragraph 1 or paragraph 2, or any changes therein, shall be notified promptly to the other Party.

6. The Party adopting or maintaining any restrictions under paragraph 1 or paragraph 2 shall, on request, promptly commence consultations with the other Party in order to review the restrictions adopted or maintained by it.

## **Chapter 20. FINAL PROVISIONS**

### **Article 20.1. Annexes, Appendices and Footnotes**

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

## **Article 20.2. Amendments**

The Parties may agree, in writing, to amend this Agreement. Such amendments shall enter into force in accordance with the procedures required for the entry into force of this Agreement or as otherwise agreed by the Parties. All amendments shall, upon entry into force, constitute an integral part of this Agreement.

## **Article 20.3. Amendment of the WTO Agreement or other International Agreements**

If the WTO Agreement or any other international agreement, or a provision therein, that has been incorporated into this Agreement is amended, the Parties shall consult each other on whether to amend this Agreement, unless this Agreement otherwise provides.

## **Article 20.4. Entry Into Force**

This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications, through official channels, informing that they have completed their respective necessary internal procedures for the entry into force of this Agreement, or on such other date as the Parties may agree.

## **Article 20.5. Future Negotiations on Government Procurement**

After three years from the date of entry into force of this Agreement, the Parties shall consider entering into future negotiations with the aim to expand the coverage of this Agreement on government procurement on a reciprocity basis.

## **Article 20.6. Termination**

This Agreement shall remain in force unless either Party notifies the other Party in writing to terminate this Agreement. Such termination shall take effect 180 days after the date of receipt of the notification, or on such other date as the Parties may agree.

## **Article 20.7. Authentic Texts**

The English and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Lima, Peru, on November 15, 2024, in duplicate, in the English and Spanish languages.

FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU