

Safeguard List: Philippines

Safeguard Framework for Financial Services Liberalisation under ASEAN Framework Agreement on Services

Sector: Insurance

Areas to Safeguard by 2015

Sub-sector	Negotiable elements	Non-negotiable elements
<p>1. Life insurance as follows:</p> <ul style="list-style-type: none"> - Ordinary - Group - Industrial - Health and Accident - Annuities 	<p>(1) Risks located in the Philippines shall be insured with the companies authorized to transact business in the Philippines.</p> <p>(2) Same as above</p> <p>(3) Commercial presence required subject to:</p> <p>a. Acquisition of up to seventy percent (70%) of voting stock of an existing domestic insurance company.</p> <p>b. Investments of up to seventy percent (70%) of the voting stock of new locally incorporated insurance company.</p> <p>c. Participation of non-Filipino citizens in the Board of Directors of locally incorporated insurance company is proportional to the percentage of foreign equity.</p>	

	<p>(4) Qualified non-Filipino citizens may be employed for technical positions only within the first five (5) years of operation of the enterprise, their stay not to exceed five (5) years upon entry.</p>	
<p>2. Non-Life :</p> <ul style="list-style-type: none"> - fire - marine - casualty - surety 	<p>(1) Except for marine hull and marine cargo insurance, risks located in the Philippines shall be insured with the companies authorized to transact business in the Philippines.</p> <p>(2) Same as (1) above</p> <p>(3) Commercial presence required subject to:</p> <ul style="list-style-type: none"> a. Acquisition of up to seventy percent (70%) of voting stock of an existing domestic insurance company. b. Investments of up to seventy percent (70%) of the voting stock of new locally incorporated insurance company. c. Participation of non-Filipino citizen in the Board of Directors of locally incorporated insurance company is proportional to the percentage of foreign equity. <p>(4) Qualified non-Filipino citizens may be employed for technical positions only</p>	

	<p>within the first five (5) years of operation of the enterprise, their stay not to exceed five (5) years upon entry.</p>	
<p>3. Reinsurance, Retrocession</p>	<p>(1) Priority cessions to authorized insurance/reinsurance companies.</p> <p>(2) a. Foreign unauthorized reinsurers should be represented by resident agents duly registered with the Insurance Commission.</p> <p>(3) Commercial presence required subject to:</p> <p>a. Acquisition of up to seventy percent (70%) of voting stock of an existing domestic insurance company.</p> <p>b. Investments of up to seventy percent (70%) of the voting stock of new locally incorporated insurance company</p> <p>c. Participation of non-Filipino citizen in the Board of Directors of locally incorporated insurance company is proportional to the percentage of foreign equity.</p> <p>(4) Qualified non-Filipino citizens may be employed for technical positions only</p>	<p>Ten percent (10%) of the total cessions to foreign unauthorized reinsurers should be offered first to the Philippine National Reinsurance Corporation formerly National Reinsurance Company of the Philippines.</p>

	<p>within the first five (5) years of operation of the enterprise, their stay not to exceed five (5) years upon entry.</p>	
<p>4. Services Auxiliary to insurance: Actuaries, Average Adjusters</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) Commercial presence required subject to foreign equity limitation of 50% or joint venture</p> <p>Participation of non-Filipino citizen in the Board of Directors of locally incorporated insurance company is proportional to the percentage of foreign equity</p> <p>(4) Qualified non-Filipino citizens may be employed for technical positions only within the first five (5) years of operation of the enterprise, their stay not to exceed five (5) years upon entry.</p>	

Sector: Banking

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Guiding Principles for Listing Measures Affecting the Supply of Financial Services:

- These safeguarded measures are to be listed on a best endeavour and non-exhaustive basis, and aligned to the legal texts of ASEAN's agreements. The Safeguard Framework is a non-legally binding document that aims to promote greater understanding of a Member State's financial services regime in respect of sectors committed for liberalisation under the ASEAN Framework Agreement on Services (AFAS).
- In this regard, Member States maintain the flexibility to amend their list of measures in relation to the commitments made, when necessary. Updates are to be reflected and notified through the ASEAN Secretariat within one year of amendment.

For the listing of Market Access and National Treatment Measures

- Member States shall adopt the World Trade Organisation's Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (document S/L/92, dated 28 March 2001) in listing the measures affecting 'market access' and 'national treatment' in the sectors committed for liberalisation under AFAS.
- Member States shall, to the best extent possible, indicate all 'market access' and 'national treatment' measures that are to be maintained in relation to the commitments made under the AFAS Packages of Financial Services Commitments. However, as 'market access' and 'national treatment' measures are **negotiable** elements, this does not preclude other Member States requesting for the removal of these measures from the safeguard list for future rounds of negotiations under AFAS.

For the listing of Laws and National Policies, including Prudential and Foreign Exchange Measures

- The listing of laws and national policies, including prudential regulations and foreign exchange measures, are **non-negotiable** and are listed for the purposes of promoting greater transparency. This list will not be subject to further liberalisation.
- The listing of these measures does not affect the right of ASEAN Member States to adopt prudential and balance of payment measures as accorded by the relevant Articles affecting prudential and balance of payment safeguard measures as provided in the ASEAN legal texts.

Sector: Banking and Other Financial Services (excluding Insurance)

Sub-sector	Measures to be Safeguarded	
	Market Access and National Treatment Restrictions	Laws and National Policies, including Prudential and Foreign Exchange Measures
Commercial Banking	<p>1),2),3),4) Foreign service suppliers are not allowed in the following sectors:</p> <ul style="list-style-type: none"> ▪ Universal banks; ▪ Thrift banks, composed of: <ul style="list-style-type: none"> - Savings and mortgage banks, - Stock savings and loan associations, and - Private development banks ▪ Rural banks ▪ Cooperative banks ▪ Islamic banks <p>1),2),3),4) Provision of electronic banking services and third party custodians not allowed.</p> <p>1) Banks are required to establish commercial presence through establishment of foreign bank branches, acquisition of voting stock of an existing domestic bank or investing in a new locally incorporated banking subsidiary in order to provide cross-border services. This also applies to money broking and foreign exchange broking services, credit card services and promotion and provision of information about the services/products offered by a foreign bank.</p> <p>2) No restrictions on consumption abroad of commercial banking services.</p>	<p>National Policies</p> <p><u>R.A. No. 7721, or “An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes”</u></p> <ul style="list-style-type: none"> • The appropriate regulatory authority in the Philippines shall determine whether public interest and economic conditions justify authorization for the establishment of commercial presence or expansion of existing operations in banking and other financial services in the Philippines. For foreign financial institutions with internationally recognized standing, such determination shall include a demonstrated capacity to contribute to the attainment of Philippine development objectives particularly in the promotion of trade, investments and appropriate technology transfer; and the country of incorporation has strategic trade and investment relations with the Philippines. • In banking, the Monetary Board shall ensure that at all times seventy per cent (70%) of the resources or assets of the Philippine banking system is held by domestic banks which are at least majority-owned by Filipinos.

Sub-sector	Measures to be Safeguarded	
	Market Access and National Treatment Restrictions	Laws and National Policies, including Prudential and Foreign Exchange Measures
	<p>3)</p> <ul style="list-style-type: none"> No new licenses will be given for the establishment of foreign bank branches. Acquisition of the voting stock of an existing domestic bank is allowed up to sixty percent (60%). Investing in the voting stock of a new locally incorporated banking subsidiary is allowed up to sixty percent (60%). An institution providing money broking and foreign exchange broking services, and credit card services is required to be organized as a commercial bank or a non-bank financial intermediary. Non Filipino citizens may become members of the Board of Directors of a bank to the extent of the foreign participation in the equity of said bank. For foreign service suppliers other than banks, aggregate share in the voting stock of a locally incorporated bank shall be limited to forty per cent (40%). Shareholding in a locally incorporated bank must not exceed twenty per cent (20%) for an individual and thirty per cent (30%) for a corporation. 	<ul style="list-style-type: none"> With respect to granting of authorization for the establishment of commercial presence or expansion of existing operation in Financial Services in the Philippines, favourable treatment would be accorded, on a discretionary basis, to financial service suppliers of another ASEAN Member that accords favourable treatment to financial service suppliers of the Philippines. <p><u>Philippine Constitution</u></p> <ul style="list-style-type: none"> All lands of the public domain are owned by the State. Only citizens of the Philippines or corporations or associations at least 60 percent of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease. Foreign investors may lease only private-owned lands. <p>Prudential Measures</p> <ul style="list-style-type: none"> The prescribed capital ratio shall consist of the permanently assigned capital and "net due to" account in the ratio prescribed by law or as prescribed by the Monetary Board. The permanently assigned capital and fifteen per cent (15%) of the required "net due to" account shall be inwardly remitted and converted into Philippine currency.

Sub-sector	Measures to be Safeguarded	
	Market Access and National Treatment Restrictions	Laws and National Policies, including Prudential and Foreign Exchange Measures
	<ul style="list-style-type: none"> • Commercial banks should secure authorization prior to: <ul style="list-style-type: none"> - Acceptance of deposit substitutes and other repayable funds from the public; - Guarantees and commitments; - Performance of trust, investment management and other fiduciary functions; - Foreign currency deposit unit operations; - Derivatives activities; and - Provision of new financial services such as bancassurance. • Only commercial banks with expanded commercial banking authority are allowed to perform underwriting. • Private banks authorized to do business in the Philippines, regardless of the place of incorporation, are eligible to apply to the Bangko Sentral ng Pilipinas for authority to accept for deposit, only minimum working balances of the government and its instrumentalities, including government owned and controlled corporations. • Foreign banks authorized to do 	

Sub-sector	Measures to be Safeguarded	
	Market Access and National Treatment Restrictions	Laws and National Policies, including Prudential and Foreign Exchange Measures
	<p>business in the Philippines shall be allowed to bid or take part in any sale of the mortgaged property in case of judicial or extrajudicial foreclosure, avail of receivership, enforcement and other proceedings and take possession of the mortgaged property, after default of the borrower, and for a period not exceeding five (5) years from actual possession, provided that in no event shall title to the real property be transferred to such foreign bank, which shall be required to transfer its rights to a qualified Filipino national during the said five (5) year period, without prejudice to the mortgagor's rights of redemption under applicable laws.</p> <p>4) Non-resident natural persons may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing, at the time of application, to perform the services for which the alien is desired. Once admitted, a non-Filipino citizen employed as officer or assigned to do technical functions shall have two Filipino understudies.</p>	