

FINANCIAL LEADERS WORKING GROUP

INSURANCE

MODEL SCHEDULE

&

BEST PRACTICES

The Model Schedule was published on 19 October 2001.

The insurance associations subscribing to the Model Schedule include associations from all the Quad countries (Canada, the European Union, Japan and the United States). The full list of subscribing associations is as follows: American Council of Life Insurers, Reinsurance Association of America, American Insurance Association, International Insurance Council, Council of Insurance Agents and Brokers, Bureau International des Producteurs d'Assurances et de Réassurances (BIPAR), the World Federation of Insurance Intermediaries (WFI), the Marine & Fire Insurance Association of Japan, the Canadian Life and Health Insurance Association, the Comité Européen des Assurances (CEA) and its fifteen national member-associations from E.U. member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom). In the case of the United Kingdom, the constituent U.K. member of the CEA includes the Association of British Insurers, the International Underwriting Association of London and Lloyd's.

Proposed Model Schedule for future Insurance Commitments by WTO Members

Introduction

This Proposed Model Schedule is a proposed text for the use of WTO Members in scheduling commitments under the framework of the GATS.

It does not require a new framework of GATS, nor does it require a new annex or a new method of scheduling commitments under the GATS.

It is suggested as a desirable text to be used not only when Members schedule new commitments, but also for Members who have already made commitments as described in each item of the text.

The attached document represents two separate contributions which WTO Members would add to their commitments in insurance. The first represents commitments to market access and national treatment. It builds on existing commitments already in the schedules of many countries, but incorporates certain specific obligations so as to remove any ambiguity as to whether they are built into the more general obligations assumed in the schedule. For instance, some countries already have inserted "none" in their insurance commitments for certain modes of supply, such as that of commercial presence. The purpose of the attached text is to give greater specificity and predictability to those commitments that are important to the industry. In addition, it sets forth obligations clearly not addressed in current schedules, such as the obligation to fully stage a commitment within a specified timeframe, as well as a standstill to protect acquired rights.

The second part of the contribution could be entitled "Best Practices in Insurance", which take the form of "additional commitments" under GATS Article XVIII. It addresses those aspects of domestic regulation that are not addressed by the market access or national treatment provisions. They reflect regulatory obligations that exist for both foreign¹ and indigenous suppliers of services. Unlike the first part of the text, however, the best practices would be uniformly adopted by a critical mass of countries. Conceptually, the two parts serve the same objective, in that they are addressing effective market access for insurance providers. However, they are separated because of the way in which the GATS is structured.

In order to make clear the intended effect of this text, the following comments are felt necessary to ensure completeness in the obligations to be assumed in the area of insurance.

¹ "Foreign" means "from another WTO member" throughout the Model Schedule and the "Best Practices" annex

I. Proposed Model Schedule for Insurance Services

The following would be an integral part of the specific commitments in the insurance sector pursuant to Article XVI and XVII of the GATS, entered into in accordance with the wider obligations in Parts I and II of the GATS relating to Sub-Federal entities. The obligations to be assumed by a Member must be read with commitments expressed in the columns of market access and national treatment in its schedule, in order to reflect the full extent of the Member's undertakings. In some instances, the obligations assumed in the market access and national treatment columns in a Member's schedule may capture some of the undertakings listed in this text. It nonetheless is suggested that those obligations should be described or supplemented by the wordings used in this proposed model schedule with the objective of providing greater clarity and specificity to certain aspects of the Member's insurance obligations.

It is recognized that some obligations cannot be assumed at the conclusion of the current negotiation. However, some appropriate time frame for the staging of obligations is to be established, in general leading to full obligations in a maximum two years time from entry into force of the results of this negotiation.

The proposed text does not suggest a different method of scheduling commitments. It recognizes the right of Members to schedule commitments according to the Financial Services Understanding, which is annexed to the GATS; or according to standard scheduling techniques as provided in Article XX of GATS.

Unless otherwise indicated, the terms "insurance services" and "insurance supplier" incorporate all forms of insurance and reinsurance underwriting; insurance intermediation (brokerage and agency services, including reinsurance brokerage); surety; consultancy, actuarial, risk management, risk assessment, and claims settlement services.

Market Access and National Treatment

A. Acquired Rights

With respect to all insurance services, future measures and schedules of commitments adopted by Members will, at a minimum, not reduce or impair the current level of market access and national treatment available to foreign insurance services and services suppliers.

B. Market Access - Cross Border delivery in respect of Reinsurance, MAT Insurance

1. Reinsurance, MAT insurance and insurance services related to these types of insurance are to be bound under the cross border mode of supply without restrictions to market access. Members will assume identical undertakings with respect to access to MAT and insurance intermediation (brokerage and agency) services related to these types of insurance by clients located abroad, without regard to whether the foreign insurance supplier is registered in the consumer country.

2. For life and non-life reinsurance² the following additional specific commitments are to be included in the schedule:
 - (a) Elimination of mandatory cessions imposed on insurance suppliers to cede all or a portion of their risks to specified insurance or reinsurance suppliers;
 - (b) Elimination of any requirements that impose greater restrictions on the percentage of cessions to foreign reinsurance suppliers than to domestic reinsurance suppliers;
 - (c) Elimination of right-of-first refusal privileges for domestic reinsurance suppliers;
 - (d) Elimination of discriminatory requirements imposed on foreign reinsurance suppliers as they relate to collateralisation and localization of assets;
 - (e) The abolition of reinsurance monopolies; and
 - (f) The guarantee of freedom of form of reinsurance and freedom of reinsurance contract terms.

C. Market Access - Commercial Presence

1. Form of establishment

- (a) A foreign insurance supplier may establish a commercial presence by setting up a subsidiary (either wholly or partly (majority) owned), or by forming a new company, or through acquisition of an insurance supplier already established in the host country or as a branch;
- (b) In their regulatory approach to a foreign insurance supplier, Members shall have full regard for the relationship between such a supplier and its parent company when the supplier enters into the market;
- (c) Consistent with international intellectual property, business name registration and trademark law, a licensed foreign insurance supplier may provide its services using its home company name in the host country market, provided it does not infringe an already established trademark in that country;
- (d) Foreign insurance suppliers should not be denied a commercial presence in the form of a branch or a subsidiary on the basis of their form of legal organization in the home market.

2. Equity shares

² The commitment should allow for differentiation on a least trade restrictive basis for life and non-life reinsurance market segments, consistent with the nature of risks assumed.

- (a) Where commercial presence is in the form of a joint venture with a partner located in the host country, the decision to operate through a joint venture, and the percentage of equity shares assumed by the foreign partner, should be determined solely by the joint venture partners themselves;
- (b) Foreign equity share restrictions will be eliminated. Where necessary, this will be achieved over a transition period terminating by a fixed date, not to exceed two years from the entry into force of this schedule of commitments;
- (c) During the above transition period, any such limitations should permit the foreign partner to hold at least 51% of the equity in the company, with staged increases.

3. Compulsory Lines

Members will assume full commitments to market access and national treatment that cover compulsory risks, to ensure that foreign insurance suppliers can compete for insurance lines and insurance services that are required of persons and businesses that reside in Member countries.

4. Monopolies

Members should endeavour to eliminate the provision of insurance services by designated monopolies or exclusive services suppliers.

5. Private participation in Pensions and Funds Management³

Upon the adoption of measures that allow for private participation in the pension systems of WTO Members whose current regime prohibits this, or for Members whose current system authorized private participation in such pension systems, such Members will commit in their schedules to give other WTO Members the benefits of market access and national treatment. Foreign suppliers providing pensions and funds management services⁴ will have access, on a non-discriminatory basis, to offer their services to private and/or public pension systems provided by host country Members. Where pension fund services are provided through the commercial presence mode, foreign suppliers will be afforded the choice of opportunities as provided in C.1 (a) and C.2 above. Foreign suppliers providing public and private pension funds and services may offer the range of product and investment options they find necessary to meet benefit needs consistent with national treatment requirements.

D. Market Access - Temporary Entry of Natural Persons

³ Reservation by the Italian market.

⁴ Pension fund services would include the design of public and private pensions systems; the marketing of such pensions to individuals, employers, and governmental entities; the investment of pension funds on behalf of pension plan participants and retirees; and the administration of public and private pension plans including, but not limited to, administrative services and record keeping, compliance and enrollment services.

1. In general, nationality and residency requirements on personnel should be avoided.
2. Where a foreign insurance supplier operates through a commercial presence, it may select, as its representative in the host country, any person who physically resides in the host country, irrespective of nationality; provided that the representative meets regulatory standards that identify competency to perform services in such a role, and any other provisions relating to the fitness of that individual to perform the obligations of a company representative.
3. In addition to the commitments undertaken in the general headnote to the GATS schedule pertaining to the temporary entry of natural persons, the following additional obligation is assumed with respect to insurance: host country Members shall provide temporary visa and associated work permits, where required, to professional level personnel employed by the foreign insurance services supplier's home and third country offices in a timely manner for the purpose of entering the country and providing short and mid-term assistance to its host country insurance services operations.⁵

E. National Treatment

1. In addition to the right to compete for all lines of insurance in a host country, foreign insurance suppliers, who are licensed or established in the host country, shall have the same opportunities to compete for domestic insurance business as indigenous insurance services suppliers with respect to insurance for state-owned or state affiliated enterprises, or any enterprise where the state holds an equity share.
2. Foreign insurance suppliers will be treated no less favourably than domestic services suppliers with respect to capital, solvency, reserve, tax and other financial requirements, subject to the provisions of Paragraph 2 (a) of the Annex on Financial Services. Where less favourable treatment is imposed on the basis of Paragraph 2 (a) of the Annex, Members will explain the basis for the different treatment accorded and, in particular, why such treatment is necessary for the protection of policyholders.
3. In the case of insurance intermediation, Members will limit any conditions or limitations with respect to monetary transfers by insurance intermediaries to what is necessary to assume their legal responsibilities in the country where the service is delivered.

⁵ These obligations under the fourth mode of supply must be read with undertakings in the headnotes to services schedules addressing this category. For Members who have scheduled according to the Understanding on Financial Services, any specific obligations assumed under the Understanding must be read with these obligations.

II. Best Practices in Insurance

The following obligations are assumed under Article XVIII of the General Agreement on Trade in Services, which allows for additional commitments to be entered into schedules other than those covered by market access and national treatment, as defined in Articles XVI and XVII, respectively.

A. Transparency

1. New and existing regulations, as well as revisions to existing regulations, will be made publicly available at all times, preferably in a public journal or register, in order to insure their availability to all interested parties.⁶
2. New or revised regulations will be submitted for public comment prior to their enactment. A reasonable period of time, ordinarily no less than one month, will be provided to interested parties to submit comments on all proposed regulations.
3. New or revised regulations will not be made effective until market participants have had a reasonable period of time to become familiar with their contents and take necessary steps to implement them. Except for regulations which must be implemented immediately, due to emergency or other exigency, they will, at a minimum, enter into legal force two weeks following their publication.
4. As part of the procedures for implementing new or revised regulations, Members will provide, in writing, their explanation as to the reasons for rejecting or accepting proposals made by interested parties.
5. An insurance supplier applying for a license will be provided with a written statement, setting out fully and precisely the documents and other information necessary for obtaining authorization. This statement should aim to simplify and accelerate, as appropriate, the specific procedures to be followed.
6. Members will ensure that there are established procedures that enable consumers to assess the creditworthiness of insurance companies. In addition, they will insure that insurance suppliers are free to provide information on their creditworthiness to the public, including information from independent rating organizations that provide such assessments.⁷
7. Subject to the exception under Article XIV(c)(ii), Members will ensure that there will be no restrictions on the availability of financial services information from domestic or foreign sources to registered insurance suppliers.
8. Members will ensure that there are publicly available, non-discriminatory rules and procedures established that govern the identification and handling (including disclosure) of financially troubled institutions.

⁶ This obligation forms part of a general obligation assumed by all Members under GATS Article III.

⁷ This obligation is subject to Article 2 (b) of the Annex on Financial Services.

9. Measures adopted with respect to taxation (national and sub-national) that affect all insurance products will not enter into force until they have been notified to the WTO through a semi-annual notification process established under the Services Council.

B. Solvency and Prudential Focus

1. Members will provide for insurance market stability and consumer protection through solvency and prudential regulations, allowing the market to determine which products and services are offered and rates applied.
2. Members will adopt and implement procedures that encourage and expedite the offering of insurance products and services.
 - (a) With the exception of products sold and rates applied to individual persons and compulsory lines, insurance regulation will not require new products, rates, and services to be filed or approved;
 - (b) Where filing and approval of an insurance product or service is required, the Member regulatory authority will make publicly available the policy reasons for such requirements and explain how the requirements are the least burdensome means of accomplishing those objectives;
 - (c) Where filing and approval is required, insurance suppliers will be permitted to introduce a new product, which will be deemed to be approved after sixty days time if the insurance supervisor has not taken action to disapprove it;
 - (d) No limits will be placed on the number and frequency of new product and service introductions by an insurance supplier.
3. Members will not restrict the payment of dividends by foreign insurance suppliers provided solvency margins are met.
4. Standardised Reporting, Actuarial, Training Practices/Requirements.

Members should encourage adoption of accounting and auditing standards based on recognized international "best practices" standards. International Actuarial Association standards should be adopted to harmonize standards, and to facilitate the evaluation and comparison of insurance suppliers' financial strength, and their incorporation of new skills.

C. Insurance Monopolies

For remaining insurance monopolies, the following obligations are to be assumed:

1. As a general rule, designated insurance monopolies are to be prohibited from offering insurance products outside the area of their monopoly designation. Where monopolies are permitted to engage in the sale or underwriting of insurance products outside the area of their monopoly rights, appropriate supervisory and oversight steps will be

taken to ensure that monopolies do not abuse their monopoly position when competing in product areas that are open to competition.⁸

2. Insurance suppliers with designated monopoly rights will maintain separate accounts for monopoly and non-monopoly activities, to insure that revenues from the monopoly do not subsidize competitive insurance activities.

D. Independent Regulatory Authority

The insurance regulatory body will be an independent government entity, to ensure that decisions regarding procedures adopted by the regulator are impartial with respect to all participants, and will encourage a competitive insurance market.

⁸ This obligation is addressed in Article VIII (2) of GATS.

