ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS

COMMITTEE ON CAPITAL MOVEMENTS AND INVISIBLE TRANSACTIONS

RESTRICTED

Paris, drafted : 25 January 1994
OLIS : 26-Jan-94
dist. :

DAFFE/INV(93)38/REV1

Or. Eng.

INTRODUCTION TO THE OECD CODES OF LIBERALISATION (REVISED EDITION)

(Note by the Secretariat)

This document is submitted to the Committee for consideration at its meeting on 21-22 February 1994. It has been revised in light of Committee members' comments. Changes are indicated in bold. Deletions are shown in square brackets.

AN INTRODUCTION TO THE OECD CODES OF LIBERALISATION

OECD
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1994

FOREWORD

Since its inception in 1961, the Organisation for Economic Co-operation and Development (OECD) has had the vocation of aiding its Member countries to promote the liberalisation of international trade in goods and services and the progressive freedom of capital movements. This objective is set out in the OECD Convention and finds concrete expression -- in regard to services and capital movements -- in the twin Codes of Liberalisation of Current Invisible Operations and Capital Movements.

The purpose of this Introduction is to contribute to a better understanding of the principles and procedures of the OECD Codes. It also provides detailed explanations of the coverage of the Codes and may therefore serve as a manual for Code users. For a greater understanding of the issues and explanations provided, this booklet is best read together with the texts of the Codes themselves.

This report has been prepared at the initiative of the Committee on Capital Movements and Invisible Transactions (the "CMIT"), which is responsible for overseeing the implementation of the Codes. The report was derestricted by the OECD Council on ... 1994.

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Chapter I

INTRODUCTION:

Supporting Multilateral Liberalisation of Capital Movements and Trade in Services

1. Since its inception in 1961, the Organisation for Economic Co-operation and Development (OECD) has had the vocation of promoting stable, sustained economic growth of its Member countries. Accordingly, the OECD supports the liberalisation of trade in goods and services and movements of capital between Member countries. With regard to services and capital movements, this support finds concrete expression in two legally binding agreements between Member countries. These are known as the OECD *Codes of Liberalisation of Capital Movements and Current Invisible Operations*[1] to which all Member countries adhere.

2. The OECD Codes of Liberalisation have the legal status of an OECD Decision which is binding on all the Members. Accordingly, the Members are expected to take whatever steps are necessary to ensure that the obligations accepted are honoured. The strength of the Codes lies also in the determination of the Member countries to pursue the objectives of the Codes and to make active use of them as instruments of international economic co-operation. The Codes provide a framework of notification, examination and consultation through which observance of their prescriptions can be effectively monitored and achieved. They also serve as a reference point against which progress towards liberalisation can be judged.

3. The OECD Codes complement and reinforce other multilateral instruments promoting a liberal international economic environment. The General Agreement of Tariffs and Trade has been the main focus of the world's efforts to encourage free trade in goods and services, while the International Monetary Fund is the guardian of a free multilateral system of payments for current international transactions. For its part, the OECD Current Invisibles Code also promotes the liberalisation of current payments and transfers, but its obligations extend to ensure that the underlying transactions themselves are not frustrated by legal or administrative regulations. The OECD Capital Movements Code is the only multilateral instrument promoting liberalisation of the full range of international capital movements, other than the rules applying within the European Communities, whose twelve Member States are also Members of the OECD.

4. Although the two Codes differ from each other in certain respects, the general principles that govern these two instruments are broadly the same. In adhering to the Codes, the Member countries undertake to remove restrictions on specified lists of current invisible operations and capital movements[2]. The ultimate objective is that residents of different Member countries should be as free to transact business with each other as are residents of a single country.

5. This objective, however, is neither immediate nor unqualified. Neither could the Codes' approach to liberalisation be described as doctrinaire. Rather, it seeks to engage the Member countries in a process of progressive liberalisation, allowing reasonable scope for countries in different circumstances to move towards the ultimate objective in different ways and at varying speeds, mainly according to the economic circumstances they face.

6. The Codes have served the OECD well for the past 30 years. In recognition of the growing importance of trade in services, especially financial services, the "liberalisation lists" of the Codes have been adapted and broadened progressively over time. The last Revision of the Codes expanding liberalisation obligations was undertaken in February 1992. Virtually all capital movements are now covered by the Capital Movements Code. Similarly, the sectoral coverage of the Current Invisibles Code has been progressively broadened to provide for unrestricted cross-border provision of an ever greater range of services. The February 1992 Revision, in particular, introduced extensive **new** liberalisation obligations concerning **the provision of** banking and financial services **on a cross-border basis and through branching**.

7. Despite the progressive broadening of the Code obligations, the scope of reservations has **dramatically** declined. Liberalisation of capital movements has been nothing short of spectacular over the past 30 years, while the vital gains achieved in the 1950s concerning current invisible operations have been preserved and important new results were achieved in the 1980s. Apart from outstanding sectoral restrictions on inward direct investment and non-resident acquisition of real estate, virtually all Member countries had dismantled their controls on capital movements by the end of 1992. Only Greece and Iceland still maintain exchange controls, though both are committed to removing remaining restrictions before 1995.[3]

8. While the Codes themselves cannot take credit for all of the liberalisation that has taken place over this period, they have [...] provided an important multilateral framework for sustaining the individual liberalisation paths pursued by Member countries and encouraging non-discriminatory extension of liberalisation to all Member countries. The Codes have also served as a useful yardstick by which the liberalisation efforts of Member countries can be judged and compared over time.

9. This booklet updates an earlier introduction to the OECD Codes of Liberalisation in light of expanded obligations and new examination procedures.[4] In Chapter II, the meaning and scope of the liberalisation agreement are explored in detail, while Chapter III considers the coverage of operations contained within each Code. In Chapter IV, the OECD procedures for authorising outstanding restrictions under the Codes are discussed, while Chapter V considers the monitoring and examination procedures by which the Organisation encourages the removal of restrictions over time. Annex 1 reproduces the list of operations covered by the Capital Movements Code, accompanied by explanatory notes. Annex 2 lists the operations covered by the Current Invisibles Code. **Annex 3 provides a brief history of the precursors of the OECD Codes. An index of key terms is provided in Annex 4.**

Chapter II

ELIMINATING RESTRICTIONS:

The Meaning and Scope of Liberalisation Obligations of the Codes

> "Members shall progressively abolish between one another, in accordance with the provisions of Article 2, restrictions on movements of capital to the extent necessary for effective economic co-operation. Measures designed to eliminate such restrictions are hereinafter called 'measures of liberalisation'". *Article 1, Capital Movements Code*
>
> "Members shall eliminate between one another, in accordance with the provisions of Article 2, restrictions on current invisible transactions and transfers, hereinafter called 'current invisible operations'. Measures designed for this purpose are hereinafter called 'measures of liberalisation'". *Article 1, Current Invisibles Code*

10. In determining where measures maintained by Member countries constitute "restrictions", two broad principles are applied: *liberalisation* and *non-discrimination*. These principles are complemented by supplementary understandings which serve to define the Code obligations in specific circumstances. These principles and understandings are **explained** below.

1. Main principles

a) Liberalisation between residents and non-residents

11. "Liberalisation" in the sense of the Codes means the abolition of measures (laws, decrees, regulations, policies and practices) **taken** by the authorities which may restrict the conclusion or execution of transactions and transfers with respect to the operations specified in the Codes. **Where liberalised operations require authorisation, authorisation shall be automatically given, subject only to the right of the authorities to restrict or regulate operations under Articles 3, 5 and 6 of the two Codes (see below)**. The obligation to liberalise goes beyond the requirement that the transfer of funds to and from abroad should be free from exchange control restrictions. It also requires that the underlying transactions themselves, where applicable, should not be frustrated by legal or administrative regulations.

12. The liberalisation obligations apply only to operations between the residents of two OECD Member countries adhering to the Codes.[5] The obligations do not apply to operations between non-residents, nor between residents of the same country even if one party to the operation is the affiliate of a company owned or controlled by non-residents. Non-residents are to be dealt with on an equal footing with their resident counterparts, but Members are not required to extend preferential treatment to non-residents in their domestic markets. On the other hand, Members are expected to allow their residents to transact with non-residents in any operations abroad. There is no duty to extend liberalisation beyond the

Members of the OECD, although adherents to the Code**s** should endeavour to do so for member countries of the International Monetary Fund.

13. At the same time, restrictions may be imposed if they are judged necessary to meet certain specific concerns, in particular, the maintenance of public order and the protection of essential security interests **(Article 3)**. **Article 5 of** the Codes also permits Member countries to verify the authenticity of transactions and transfers, and to prevent evasion of their laws or regulations in other spheres (e.g. domestic taxation). The authorisation procedures employed for this purpose are nevertheless to be simplified as far as possible. Although considerable scope is allowed for national prudential regulation on a basis that does not discriminate against non-residents within the host country, the lack of internationally agreed standards of regulation is not recognised as a reason for delaying the liberalisation of operations covered by the Codes.

b) Non-discrimination

> "A Member shall not discriminate as between other Members in authorising current invisible operations which are listed in Annex A and which are subject to any degree of liberalisation". *Article 9, Current Invisibles Code*
>
> "A Member shall not discriminate as between other Members in authorising the conclusion and execution of transactions and transfers which are listed in Annex A and which are subject to any degree of liberalisation." *Article 9, Capital Movements Code*

14. An important feature of the Codes is that liberalisation measures -- as well as restrictions -- are to be applied to all Member countries on a non-discriminatory basis. Moreover, this right is independent of a Member country's degree of restrictiveness under the Codes (Article 8). Indeed, as noted in a report by the drafters of the Codes, "there should be no attempt by countries to bargain with their neighbours individually in securing reciprocal concessions on specific items. **[...]** Even Members which are in economic difficulties and cannot themselves liberalise must not be discriminated against and must continue to receive the economic advantages of liberalisation granted by other Members".[6]

15. In recent years, nonetheless, reciprocity has come to be used by some Members to support the efforts of their national enterprises to establish themselves in foreign markets. Reciprocity of this kind has been most prevalent in regard to inward direct investment and especially the banking and financial services sector, where particular problems arise from the existence of different institutional structures in Member countries and where some Members have taken the view that reciprocity requirements may contribute to increasing the overall degree of liberalisation.

16. In response to this development, it was decided in July 1986 that reciprocity measures and practices relating to inward direct investment and establishment should have a somewhat different status from that of restrictions against which reservations are normally lodged. While notification and examination procedures (see below) are essentially the same with a view to their eventual elimination, reciprocity measures and practices outstanding at that time were recorded in a special annex -- Annex E -- of the Capital Movements Code. Moreover, to further highlight instances of reciprocity, asterisks were placed against relevant Member countries' reservations to item I/A (inward direct investment) of the Capital Movements Code and items D/6 (establishment of branches, etc. for foreign insurers) and E/7 (establishment of branches, etc. in the banking and financial services sector) of the Current Invisibles Code.

17. Apart from the 1986 Decision concerning reciprocity, which applies exclusively to inward direct investment and establishment, the Codes admit only one exception to the principle of non-discrimination. Members forming part of a "special customs or monetary system" are permitted to apply to one another

additional measures of liberalisation without extending them to other Members (Article 10). This means that these countries may liberalise more rapidly or more widely among themselves; on the other hand, they may not raise new barriers to operations with third countries. **Moreover, liberalisation is not complete until restrictions are removed towards all OECD countries and reservations covering the restrictions vis-à-vis third countries have to be maintained until this is achieved.** The Belgium-Luxembourg Economic Union and the European Economic Community have been recognised as special customs or monetary systems within the meaning of this provision.

2. Supplementary principles and understandings

18. Apart from the two broad principles outlined above, Member countries have also agreed to certain other principles and understandings to help clarify **cases under** which measures should be considered "restrictions" under the Codes. Some of these understandings act to strengthen the application of the Codes, whereas others make allowance for certain national priorities and rights. These agreed understandings are contained in formal Acts of the Organisation (e.g. entries in the Council minutes) and in reports by the Committee on Capital Movements and Invisible Transactions that have been endorsed by the Council.

a) Currency rules for denomination and settlement

19. Under the Capital Movements Code, operations abroad by residents are required to be liberalised in whatever currencies **which may be** used for denomination and settlement in the Member country where the operation takes place. This includes currency composite units of account such as the ECU and the SDR. Member countries **in regulating** their domestic markets **may forbid** non-residents **[...] to** use currenc**ies** that residents are **not** permitted to use for domestic transactions.

b) Equivalent measures

20. **[...] Certain** international **capital** transactions may be affected by a range of measures which, while not preventing operations, have equivalent effects by raising their effective cost. Equivalent measures might take the form of compulsory deposit requirements, interest rate penalties, or queuing arrangements for security issues which disadvantage non-residents. Such measures are to be regarded as restrictions necessitating a reservation to the **Capital Movements** Code.

21. Specific **transaction** taxes directly affecting operations covered by the **Capital Movements** Code may also be regarded as restrictions requiring reservations under the Code if they **[...]** penalise international transactions **between** [...] residents **and non-residents [...]** in relation to comparable **[]** transactions **between residents**. Those taxes fall under heading 4400 in the OECD/IMF classification of taxes, which covers taxes on financial and capital transactions[7].

22. However, apparently discriminatory taxes levied in accordance with widely accepted principles of international tax law are not considered as contravening the Code. Moreover, taxes that result in "equivalent treatment" between residents and non-residents or between residents undertaking operations in the country concerned or abroad do not require reservations, even if the taxation regimes applying to such operations are different.

c) Authorised agents

23. **Under Article 6**, Members may **generally** require that **transactions** and transfers be **effected** through "authorised **[...]** agents" (typically designated foreign exchange banks). **This applies to operations under both Codes. However, any requirement that financial transactions be conducted only by authorised *resident* agents would constitute a restriction under the Current Invisibles Code.**

d) Payments channels

24. A governmental requirement that payments be made through a special payments channel (e.g. different exchange markets for different kinds of operations) would be regarded as a restriction under the Capital Movements Code if any exchange rate differential with the official market were to exceed 2 per cent continuously for a period of several months.

e) Equivalent treatment

25. Where establishment takes the form of a foreign-controlled subsidiary, Member countries are required to allow this subsidiary to be incorporated under the same conditions as apply to resident investors.[8]

26. Where establishment takes the form of branches or agencies, i.e. of entities not incorporated in the host country where the investment takes place, host country authorities may feel the need to impose special requirements, such as financial guarantees. Accordingly, the Codes adopt the principle of *equivalent treatment*. **Under this principle,** establishment conditions imposed on branches and agencies of non-resident enterprises may differ from those imposed on the establishment of resident enterprises, but only if the former requirements are not more burdensome and do not exceed what is necessary, for prudential or other purposes provided in the Codes, to place resident and non-resident investors on an equal footing.

27. Clearly, in establishing equivalent treatment, the determination of "burdensome" and "necessary" involves a degree of subjective judgement, and Member countries may legitimately have differing views. Nonetheless, through agreement, Member countries have attempted where possible within the Codes to define minimum conditions under which the equivalent treatment obligation would be maintained. For example, in the areas of insurance and banking and financial services, detailed provisions exist within the Current Invisibles Code regulating **the main** aspects concerning the establishment of branches and agencies of foreign enterprises, including authorisation procedures, representation, and prudential and financial requirements.

28. The principle of equivalent treatment is clearly important in the context of the creation of "single licence" procedures for branching and cross-border provision of services within countries participating in special regional arrangements. For instance, within the European Economic Area (EEA), a financial institution incorporated in an EEA country may establish a branch or provide certain services in another EEA country without prior approval while specific approval procedures are maintained for institutions from third countries. These procedures need not be reflected in reservations under the Codes if their purpose is only to verify that the foreign institutions are adequately supervised in their home country.

29. **The notion that different procedures for the admission of branches from non-resident institutions may apply without necessarily requiring reservations under the Codes provided they**

ensure equivalent treatment may be extended to the admission of foreign securities on the domestic market or to the cross-border provision of financial services from abroad.

f) Sub-national levels of government

30. Measures taken by the authorities of states, provinces, regions, autonomous units or other sub-national units are fully covered by the Codes. Exceptions apply to the actions taken by States of the United States by virtue of the Council Decision reproduced in Annex C to each Code and to actions falling under the purview of provincial jurisdiction in Canada by virtue of a "General Remark" to Canada's reservations in Annex B of the Capital Movements Code and in Annex D to the Current Invisibles Code. **[...] A** similar "general remark" **was added to Australia's** reservations under Annex B of the Capital Movements Code and the Current Invisibles Code to cover the expanded obligations of the Codes resulting from the February 1992 Revision. These special arrangements recognise the constitutional limits to the power of the federal government in those countries to dispose of matters within the purview of the Codes. They also record certain undertakings by the federal governments of those countries with regard to matters falling within the jurisdiction of State or Provincial governments.

31. Since 1983, special operational procedures have applied to measures taken by sub-national authorities that raise special barriers to operations with non-residents in the field of inward direct investment and establishment. These are as follows:

-- Each Member government should notify the Organisation of sub-national measures undertaken to the extent the central or federal government has or acquires knowledge of them. Recognising the practical limits that may be involved in this respect, Member governments should endeavour to obtain relevant information on such measures by appropriate means;

-- In order to secure greater transparency of measures taken by sub-national authorities, all categories of controls and impediments to inward direct investment taken by such authorities are to be addressed in examinations of Member countries. Such measures are also included in OECD's periodic survey of controls and impediments to inward direct investment and establishment, most recently published in *International Direct Investment: Policies and Trends in the 1980s* (OECD, 1992);

-- If a Member country considers that its interests under the Code are being prejudiced by such measures and notifies the Organisation of the circumstances, the Member government addressed will undertake, in conformity with procedures consistent with the political structure of its country, to bring the provisions of the Code and the circumstances notified, with an appropriate recommendation, to the attention of the competent sub-national authorities concerned. Member governments addressed undertake to inform the Organisation of the action they have taken in this regard and of the results thereof.

g) Dependent territories

32. In international law and practice, a country may exclude the application of its international obligations to one or more of its non-metropolitan territories, provided its constitutional system allows for this. Denmark, Finland and the United Kingdom have made declarations in that regard which temporarily exclude application of the expanded obligations to certain territories and which are **currently** reflected in notes to their entries in Annex B of the Codes.

h) Government operations on own account

33. When the Codes were adopted in 1961, the Council decided that they would not apply to operations for a Member government's own account except for transfers concerning social security and government expenditure under the Current Invisibles Code.[9] As a result, governments are allowed to undertake transactions on their own account in the fields covered by the Codes with the same degree of freedom as private enterprises. **In particular, at the time of privatisation of an enterprise, governments may decide to sell its shares to residents only; however, any subsequent governmental limitations on the ability of initial resident purchasers to resell their equity holdings to non-residents are considered restrictions under the Capital Movements Code.**

34. Governments operating on their own account as non-residents **nevertheless** benefit from the liberalisation obligations of the Codes. **For instance, Member countries are required to allow their residents to acquire foreign government securities and may not prevent foreign governments from acquiring shares in domestic enterprises for reasons other than public order or essential security interests.**

i) Government-owned enterprises

35. Under the Capital Movements Code, government-owned industrial, commercial or financial enterprises are to be treated as akin to private sector entities. They are thus free of Code obligations **falling on** governmental authorities, **which are considered** responsible for the laws, regulations and practices of the country concerned.

j) Non-government restrictions

36. Measures undertaken by private enterprises which may restrict operations by non-residents fall outside the scope of the Capital Movements Code. However, as measures of this kind may have important implications for liberalisation, especially in regard to foreign direct investment and portfolio operations involving shares, the Organisation reviews such private practices during the process of examination of Member countries regarding their position under the Code.

k) Public order and essential security interests

37. Under Article 3, the Codes allow for restrictions to be maintained if they are judged necessary to meet concerns relating to the maintenance of public order, the protection of public health, morals and safety, and essential security interests. Such restrictions are not normally covered by reservations to the Codes and are not subject to the principle of progressive liberalisation. However, Member countries have been encouraged over recent years to notify and lodge reservations against measures arising from national security concerns. The main purpose is to bring these measures within the disciplines of the Codes, especially when national security is not the predominant motive, **thereby enhancing transparency and information for users of the Codes and taking the first step towards eventual liberalisation.**

Chapter III

OPERATIONS COVERED BY THE CODES:

The Liberalisation Lists

38. Under the OECD Codes of Liberalisation, the general liberalisation obligation is applied with reference to a detailed liberalisation list of operations forming Annex A of each Code. The aim of these lists is to define specifically which operations fall under the obligations of the Codes. **Thus,** the lists **[...]** act as convenient yardsticks against which the relative compliance of Member countries to the Codes can be monitored and assessed over time. They are reproduced in annexes to this booklet, together with explanatory notes in some cases.

1. Capital Movements Code

39. Annex A to the Code contains an extensive list of international operations which would involve a transfer of capital between two Member countries. The list is sub-divided as follows:

- -- First, reflecting the twin elements associated with liberalisation, a common division is made between *a)* actions initiated by non-residents in the country concerned, and *b)* actions abroad initiated by residents;

- -- In turn, where applicable, each of these types of operations is further sub-divided into whether the operation involves a capital inflow or outflow;

- -- Finally, all operations are subdivided between two separate lists depending on whether **new** restrictions on the operation **can be imposed** [...] (**List B) or cannot be imposed (List A)**. This distinction is further explained in Chapter IV.

40. As different reasons may exist for different types of restriction, these separations aid the examination process and efforts to narrow over time the degree of restriction covering different aspects of an operation.

41. At its inception in 1961, the Capital Movements Code covered a rather limited list of international operations. However, reflecting the evolving integration of national economies, a trend toward more open financial market policies and increasingly innovative and sophisticated financing techniques amongst Member countries, Members have agreed, in successive steps over the years, to update and extend the liberalisation lists.

42. In April 1984, the OECD Council adopted an expanded definition of inward direct investment that included the main features of the right of establishment. At a stroke, a wide variety of restrictions on foreign investment became unambiguously subject to liberalisation obligations for the first time. The measures and practices covered by this basic right to establishment and investment include: licenses,

concessions and similar authorisations, as well as conditions and requirements for running an enterprise, ceilings on non-resident holdings in resident enterprises, and restrictions on the operating mode (subsidiary, branch, agency or other). The new addition to the Code was not, of course, intended to accord non-resident investors better treatment than residents. Investors may not avail themselves of the right to exercise an economic activity without obeying the general regulations of the Member country concerned. The addition excluded application of the Code to the right of foreign individuals to settle or work in a Member country and to laws, regulations and other measures governing public, private or mixed monopolies. Regarding monopolies, where one or several enterprises cover entire sectors of the economy, it was decided that they should be considered as part of a country's general economic system and thus not covered by the right of establishment.

43. In February 1992, the liberalisation lists were extended further to include short-term money market operations and new and innovative forms of financing such as futures, swaps and options.[10] As a result, today, virtually all capital movement operations are covered by liberalisation obligations. The only significant transactions to be explicitly excluded are financial credits and loans extended by non-residents to residents other than enterprises. This exclusion has been justified by concerns for consumer protection.

2. Current Invisibles Code

44. Within Annex A of the Current Invisibles Code, the liberalisation list specifies eleven areas, including Business and Industry, Foreign Trade, Transport, Insurance, Banking and Financial Services, Income from Capital, Travel and Tourism, Films, Personal Income and Expenditure, Public Income and Expenditure, and General. These items are in turn subdivided into different types of services **[...]**. Some of the listed areas have complementary sub-annexes which define with greater precision the nature of the liberalisation obligations for that particular area, notably in the field of insurance, banking and other financial services.

45. In view of the development of new service industries and the growing internationalisation of economic activity, a major review of the Current Invisibles Code has been under way since the late 1970s. In the early to mid-1980s, new obligations in the insurance sector were introduced and agreement was reached to expand obligations in the area of travel and tourism and audio-visual works. In February 1992, a new section was introduced to cover cross-border banking and financial services operations as well as specific new provisions **on [...]** establishment of branches and agencies of non-resident banking and financial institutions on no less favourable terms than resident institutions.

46. The Current Invisibles Code provides for the free transfer of funds in connection with current international transactions and for the free cross-border provision of services (that is, the delivery of services to residents by non-resident service providers abroad and vice-versa). In the field of insurance, banking and other financial services, the Code extends liberalisation obligations to the provision of services through the establishment of branches and other unincorporated entities of non-resident service providers.

47. The principal obligations of the Codes on inward direct investment and establishment, including in a form other than that of an enterprise incorporated under host country law, are contained in item I/A of the Capital Movements Code. However, the Current Invisibles Code contains more detailed obligations on the establishment and operation of branches and agencies in the financial sector than can be found in the Capital Movements Code. It also includes obligations in regard to the non-insurance financial sector which have no parallel in the Capital Movement Code, such as those concerning operations by individuals (representation, self-employed intermediaries and

membership of associations or self-regulatory bodies) and discrimination by nationality in jurisdiction on membership of associations or self-regulatory bodies.

Chapter IV

AUTHORISED RESTRICTIONS:

Reservations and Derogations to the Codes

48. Reflecting the fact that the goal of full liberalisation is to be achieved progressively over time, Members unable to liberalise immediately are permitted to lodge a *reservation* against specific items of the Codes. Accordingly, under Article 2, a reservation may be lodged at the time a Member adheres to the Codes, whenever specific obligations begin to apply to the Member, or whenever new obligations are added to the Codes. By lodging a reservation, the Member retains the right to maintain restrictions on the operations concerned whilst still remaining covered by the agreement and the right to benefit from liberalisation by other Member countries. Reservations maintained by Member countries are reported under Annex B of each Code, which in turn are updated and published annually.

49. Specific rules and procedures apply to the use of the reservation provisions of the Codes. When a reservation is lodged, the reasons for this action must be notified forthwith to the Organisation, and the Member must submit to a periodic examination of the reservations it maintains. Unless an operation is contained on List B of the Capital Movements Code, a reservation once withdrawn may not be lodged anew **nor can limited reservations be broadened**. The**se "standstill"** provisions thus act with an important *ratchet effect* to preserve the degree of liberalisation already achieved and to promote the progressive roll-back of restrictive measures.

50. The ratchet effect **[...]** is reinforced by efforts to limit **the scope of** reservations over time as Members undertake partial liberalisation. "Precautionary" reservations -- which leave room for restrictive measures to be taken in the future -- are strongly discouraged. **[...]** This procedure is apparent in the distinction made between *full* and ***limited*** reservations. A "full" reservation implies that a given operation cannot be undertaken in any way, whereas a limited reservation is qualified by a "Remark" specifying the [...] circumstances in which an operation may be permitted or restricted.

51. As mentioned above, the ratchet provisions of the Code do not apply to the [...] operations on List B of the Capital Movements Code. For operations on List B, a reservation may be lodged at any time. [...] By allowing Members to re-introduce reservations under List B, Members **are** encouraged to withdraw precautionary reservations maintained for the sole reason of leaving open the opportunity to re-impose restrictions without breaching the standstill provisions of the Code. In revising and expanding the liberalisation obligations of the Code in 1992, care was taken to limit the number of operations included on List B. **Several** existing operations were transferred from List B to List A, **such as the issue of capital market securities and operations in unquoted capital market securities, for instance. Operations presently on List B essentially concern short-term financial operations and non-resident acquisitions of real estate.**

52. However, there may arise a case whereby a Member [...] needs to re-impose restrictions on a List A operation under the Capital Movements Code or certain operations under the Current Invisibles Code.

These cases are covered by the *derogation* procedure. Members in difficulty and requiring a temporary dispensation from their obligation to preserve the freedom of operations not covered by reservations **may derogate with respect to** the items concerned (Article 7). A derogation, however, may only be invoked if a Member can demonstrate that it needs to re-introduce restrictions because of a seriously deteriorating balance-of-payments situation **(Article 7c)** or because measures of liberalisation "result in a serious economic or financial disturbance" **not caused by balance-of-payments difficulties** in the country concerned **(Article 7b)**.[11] In either case, the Member must notify the Organisation forthwith and provide a justification for invoking the derogation procedure. Derogations are expected to be maintained for a limited period only - **specifically for no more than 18 months in the case of an invocation of Article 7c**. **They** are examined by the Organisation to ensure that a liberal regime is restored as soon as possible.

53. The reservation and derogation procedures should not be thought of as weakening the force of the Codes in their promotion of progressive liberalisation. On the contrary, they provide an orderly regime for easing the burden when necessary so that all Members are able, over sometimes difficult periods, to continue to accept the Code obligations. Furthermore, the extent of liberalisation foregone when these safety valves are called into play is contained in various ways. A Member lodging a reservation or invoking a derogation clause continues to benefit from the liberalisation measures taken by other Members: retaliation is not permitted under the Codes. For its part, the Member concerned obtains a dispensation only for the specific operations in respect of which liberalisation has proved difficult and [...] it must submit to the regular examination of restrictions it still maintains.[12]

Chapter V

MONITORING COMPLIANCE:

The CMIT Committee and the Framework of Notification, Examination and Consultation

1. The "CMIT" Committee

54. One of the strengths of the OECD Codes of Liberalisation is the framework it provides for ongoing monitoring of compliance with obligations through a process of notification, examination, and consultation. Responsibility for this process lies with the Committee on Capital Movements and Invisible Transactions, known as the "CMIT". Unique among the standing Committees of the Organisation, the CMIT is composed of persons appointed in their individual capacity by the OECD Council (the highest decision-making body of the Organisation) on the nomination of the Member countries. Accordingly, they act as "independent experts" in the Committee's proceedings and do not commit the Member countries that nominate them.

55. Composition of the CMIT is laid down under Article 18 of the Current Invisibles Code. Under this article, all Member countries can, if they wish, have an expert appointed on their proposal as a member of the CMIT. Representatives of Member countries choosing not to nominate an expert may attend as observers, and representatives of the International Monetary Fund and the European Free Trade Association (EFTA) regularly attend. A representative of the Commission of the European Communities also attends meetings of the CMIT and participates in its work. The CMIT may also invite other persons to attend its meetings and has confirmed its intention to allow members of the Committee to be accompanied at meetings by persons able to speak on their behalf when matters requiring special expertise are under discussion. In recent years, officials from certain non-Member countries have been invited to attend country examinations by the CMIT as *observers*.

2. Notification

56. The availability of reliable information is essential to the effective functioning of the Codes and contributes to the goal of facilitating international operations. Therefore, under Article 11 of both Codes, OECD Members are required to notify the Organisation of all measures having a bearing on the Codes and of any modification of those measures. In particular, under Articles 12 and 13 of both Codes, restrictions giving rise to reservations or derogations respectively shall be notified to the Organisation, and Member countries should state their reasons for maintaining such restrictions. Supporting this notification obligation, the CMIT systematically reviews new policy developments affecting capital movements and current invisible operations on the basis of press reports and other sources of information.

3. Examination

57. Along with the general notification obligations, Articles 12 and 13 also require that the Organisation (through the CMIT) regularly examine reservations or derogations lodged by each Member country. These examinations serve to heighten awareness of the need for liberalisation and provide a practical mechanism through which to promote it. In this process, the performance of each Member country is judged by its peers. Examinations do not involve negotiations in the sense of an exchange of concessions. Since liberalisation is considered to be in a country's own interest, it is not appropriate that it should agree to liberalise only if other Members do likewise. Moreover, examinations go beyond the explicit reservations to the Codes. For the sake of *transparency*, monopolies and concessions are taken into account in the reviews carried out under the Capital Movements Code, as are any known instances of private practices having a bearing on the Code.

58. The examination process differs for each of the Codes. Examinations under the Current Invisibles Code are generally conducted by service area, the reservations of all Member countries being considered at the same time. Under the Capital Movements Code, however, examinations deal with all the reservations of each Member country in turn. This difference of approach is due mainly to the nature of the restrictions underlying Member country reservations under each Code. Under the Current Invisibles Code, the restrictive measures maintained by a Member are often unrelated and concentrated in a limited number of service sectors (e.g. audio-visual works, insurance, maritime transport). By contrast, Member country reservations under the various items of the Capital Movements Code are often closely related to the country's specific macro-economic and exchange control policy framework and are therefore best considered as a whole. In the future, however, it is intended to couple regular country reviews of reservations on the new banking and financial services provisions of the Current Invisibles Code with country examinations under the Capital Movements Code.

59. In 1992, a combination of these two approaches was introduced to examine measures and practices concerning inward direct investment and establishment. Under this new procedure, all measures of this nature falling under the Codes and under the National Treatment instrument[13] are subject to examination country by country. These examinations are conducted by a specially constituted Joint Working Group comprising members of the CMIT and of the Committee on International Investment and Multinational Enterprises (the "CIME"), whose reports are reviewed by the two parent Committees before transmission to the Council.

60. In the course of an examination, the nature and purpose of remaining restrictions are clarified and discussed, and the Member countries concerned are encouraged to modify their reservations to reflect current policies and practices. Efforts are also made to identify operations that could be freed from restrictions, particularly where this could be done without compromising the objectives of the authorities concerned. This process usually leads to formal invitations to the Member to withdraw or limit other reservations to the Codes.

4. Recommendations and Decisions

61. Examinations conclude with a report to the Council which is composed of Ambassadors representing all the Member countries with the power to commit their countries.[14] The Council can act in two ways: first, insofar as Members are ready to withdraw or amend their reservations to the Codes, the Council adopts a *Decision* to give legal effect to their changed position; second, where the CMIT has identified areas where it believes that further progress towards liberalisation could be made, the Council makes appropriate *Recommendations* to the Members concerned. Experience shows that the Council generally approves the proposals submitted to it by the CMIT and the CIME.

62. Unlike Decisions, Council Recommendations do not put any obligation on the Member countries concerned to act in the manner prescribed. Nevertheless, they are made by the highest decision-making body of the Organisation and represent the culmination of a process in which the Member countries addressed have participated at every step. It can be seen as a positive advantage that, under the rules of the Organisation, Recommendations by the Council cannot be adopted against the wishes of the Members directly concerned. Experience shows that recommendations are often an effective encouragement to the country concerned; if necessary, however, the matters in question are given particular attention in subsequent examinations. High priority is given to the early termination of any derogations.

5. Publications

63. Further encouragement to liberalisation is provided by making certain results of the examination process publicly available. While CMIT proceedings and reports are kept confidential, Council Decisions affecting the Codes are released promptly. Moreover, the Codes themselves -- notably the position of Member countries as updated by Council decisions -- are updated and published annually. In addition, the CMIT publishes general surveys of the restrictive measures applied by all the Member countries in a particular field of capital movements or current invisible operations. In recent years, studies of this kind have been made on portfolio operations[15], financial operations[16] and inward direct investment.[17] **Since 1992,** as part of the **new** procedures for examining measures toward inward foreign direct investment and establishment, individual country examinations concerning these measures are **[...]** published on a regular basis.[18]

6. Working groups

64. In response to new demands and changing circumstances, the operating procedures of the CMIT have been adapted and complemented in various ways. Given the volume of work and the technical complexity involved in updating the Codes, *ad hoc* working groups have been established for this purpose, each group tackling a specific service sector. Quite often, the group is formed in partnership with another Committee of the OECD having expertise in the sector concerned, such as insurance, banking and financial services, travel and tourism, and maritime transport. The task of these groups is to survey the obstacles to international trade and investment in the sector concerned and to propose improvements in the relevant provisions of the Codes. As already noted, a Joint Working Group of the CMIT and the CIME undertakes regular country examinations of foreign direct investment policies.

NOTES AND REFERENCES

1. The Codes are available in published form and are periodically updated. The most recent editions are *Code of Liberalisation of Current Invisible Operations*, October 1993, and *Code of Liberalisation of Capital Movements*, October 1993.

2. "Invisible" is the general term applied to all exchanges in which no merchandise is involved. Within this group there are current and capital operations and most of these consist of a transaction between two parties and a related transfer of money. The OECD has not attempted to give theoretical definitions of current and capital operations and distinguishes them by reference to lists (see chapter III).

3. For an overview and economic analysis of the experience of OECD countries with capital control liberalisation, see OECD (1990), *Liberalisation of Capital Movements and Financial Services in the OECD Area*, and OECD (1993), *Exchange Control Policy*.

4. The last introduction to the Codes was published in June 1987.

5. Liberalisation is concerned with economic and financial operations between "residents" and "non-residents" of any given country and with the transfer of assets when a change takes place from resident to non-resident status. These terms are basic concepts of exchange control and are not related to nationality. Under the OECD Codes, national authorities retain discretion to decide whether from their point of view an individual or an institution is resident or non-resident. Generally, individuals who live permanently in a country, and institutions located in that country, are considered by the authorities to be residents. Where this requirement is not met, exchange regulations refer to various criteria for determining residence, notably the duration of the stay abroad and the extent to which the centre of interest remains in that country or is shifted. Thus, individuals who are abroad as members of diplomatic or consular staffs or of armed forces, as travellers or students, or when undergoing medical treatment, generally remain residents of their home country. Branches and subsidiaries of institutions are normally considered to be residents of the country in which they operate because it is the main centre of their activities and they are held to be an integral part of the local economy. Individuals and institutions not recognised as residents are considered to be non-residents.

6. See *Liberalisation of Current Invisible Operations and Capital Movements by the OEEC*, OEEC, 1961, page 17.

7. This includes stamp duties, taxes on the issue, transfer, purchase and sale of securities, banking taxes, taxes on cheques and taxes levied on specific legal transactions such as valuation of contracts and the sale of immovable property. Taxes of a general nature, such as income taxes, capital gains taxes, withholding taxes, etc., are not included as the application of such taxes to international operations is not generally intended to discourage international capital movement operations per se, but to ensure that income derived from them is not treated more favourably than income derived from purely domestic operations.

8. While the OECD Codes address the issues that arise for non-resident investors seeking to establish themselves in an OECD country, the treatment of already-established enterprises is a matter for the National Treatment instrument which forms part of the *OECD Declaration on International Investment and Multinational Enterprises of 1976*. Under this instrument, the Member countries have agreed that they should -- with certain exceptions -- apply "national treatment" to foreign-owned or -controlled firms operating within their territories; that is, provide a standard of treatment that is no less favourable than that accorded to similarly situated domestic firms. It is the responsibility of the Committee on International Investment and Multinational Enterprises (CIME) to verify the application of the National Treatment instrument. See *National Treatment for Foreign-Controlled Enterprises*, OECD, 1993.

9. This interpretation was made without prejudice to the provisions of items C/1 and C/5 concerning maritime transport as interpreted by Note 1 of the Current Invisibles Code.

10. A detailed explanation of the recent expansion to the Code obligations is contained in *Liberalisation of Capital Movements and Financial Services in the OECD Area*, OECD, 1990; and two articles in the *OECD Observer*: Robert Ley, "Liberating Capital Movements", August-September 1989, and Pierre Poret, "Liberalising Capital Movements", June-July 1992.

11. A Member may also derogate from its Code obligations under a clause providing that if its "economic and financial situation justifies such a course, a Member need not take the whole of the measures of liberalisation" provided for under the Codes (Article 7 a). This form of general derogation was used in the past by several countries -- Greece, Iceland, Spain, Turkey and Portugal (with respect to its overseas territories) -- to obtain dispensation from the duty to liberalise in respect of all the operations on the liberalisation lists of the Codes. Once surrendered, however, this form of dispensation cannot be used again.

12. There is a further incentive to full compliance with the Code obligations. A Member that considers it has been prejudiced by the failure of another Member to fulfil its duties under the Codes has the right to refer its complaint to the Organisation. To date, however, this procedure has never been used in a formal sense, although in practice the Committee on Capital Movements and Invisible Transactions has from time to time dealt with problems of this kind at the request of its members.

13. See Note 7 above for a discussion of the National Treatment Instrument.

14. Before their consideration by the OECD Council, all reports and proposals by the CMIT made in accordance with the provisions of either of the Codes of Liberalisation are reviewed by the Payments Committee, where delegates speak on behalf of the Member countries they represent. The Payments Committee may forward to the Council any comments on the CMIT reports and proposals that it considers necessary (Article 20 of the Capital Movements Code and Article 21 of the Current Invisibles Code).

15. *Controls on International Capital Movements: Experience with Controls on International Portfolio Operations in Shares and Bonds*, OECD, 1981.

16. *Controls on International Capital Movements: Experience with Controls on International Financial Credits, Loans and Deposits*, OECD, 1982.

17. *International Direct Investment: Policies and Trends in the 1980s*, OECD, 1992.

18. These reports are published in the series "OECD Reviews on Foreign Direct Investment". The first two reports -- on Sweden and New Zealand -- were published in 1993.

Annex 1

OPERATIONS COVERED BY THE CODE OF LIBERALISATION OF CAPITAL MOVEMENTS

This annex lists the operations covered by the Capital Movements Code, including accompanying remarks, as they appear in Annex A to the Code. It also contains *supplementary explanatory notes*. Those relating to items IV-XII, **XV** and XVI were prepared by the CMIT Committee to assist Member countries in proposing reservations they may need to lodge with respect to the enlarged obligations of the Revised Code and do not affect the formal obligations under the Code. Other explanatory notes are derived mainly from entries in the Council minutes and reports by the CMIT Committee endorsed by the Council.

I. DIRECT INVESTMENT

Investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof:

A. In the country concerned by non-residents by means of:

1. Creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;

2. Participation in a new or existing enterprise;

3. A loan of five years or longer.

B. Abroad by residents by means of:

1. Creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise;

2. Participation in a new or existing enterprise;

3. A loan of five years or longer.

Remarks: Transactions and transfers under A and B shall be free unless:

i) an investment is of a purely financial character designed only to gain for the investor indirect access to the money or financial market of another country; or

ii) in view of the amount involved or of other factors, a specific transaction or transfer would have an exceptionally detrimental effect on the interests of the Member concerned.

The authorities of Members shall not maintain or introduce:

Regulations or practices applying to the granting of licences, concessions, or similar authorisations, including conditions or requirements attaching to such authorisations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident (as compared to resident) investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents.

Supplementary explanatory notes:

1. *The definition of what constitutes the "effective influence or the management" of an enterprise, which could be based on the degree of foreign participation, the level or the size of the investment in an enterprise or any other criteria, is left to the consideration of each Member country under its law.*

2. *Non-residents shall have the right to choose their form of establishment, e.g. by a branch, agency or subsidiary. Incorporation requirements shall therefore be regarded as restrictions under the Code even if they apply to both residents and non-residents since they require the non-resident investor already engaged in such activities abroad to establish a second incorporated entity in the country concerned.*

3. *In the case of branches, a distinction should be made between "direct" branches of non-resident enterprises and "indirect" branches, i.e. branches of already established foreign-controlled enterprises. The investment activities of "direct" branches fall under the purview of the Code, while those of "indirect" branches are subject to the National Treatment instrument (see note 7 to the main text).*

4. *When the laws and regulations concerning foreign investment distinguish between residents and non-residents or between nationals and foreigners, the Code requires that such measures and practices be covered by a reservation (or a derogation) to the extent they raise -- or have the intent or the effect of raising -- special barriers to non-resident (as compared to resident) investors.*

5. *Measures requiring external financing of inward direct investment are excluded from the scope of item I/A, it being understood that restrictive measures in this area are to be considered as restrictions under item IX/B (outward financial credits) or under other relevant items of the Code.*

6. *Reciprocity measures and other discriminatory practices recorded in Annex E of the Capital Movements Code have a different status from that of restrictions against which reservations can be lodged in accordance with Article 2 of the Code. These are defined as "measures and practices allowing residents of another Member country to invest or establish in the Member country concerned under terms similar to those applied by the other Member country to investors resident in the Member country concerned and/or involving discrimination among investors originating in various OECD Member countries" (other than the exceptions to the principle of non-discrimination referred to in Article 10 of the Code). The measures and practices covered by Annex E of the Code shall be progressively abolished without, in so doing, extending the scope of restrictions on inward direct investment or establishment.*

7. *Regulations which limit the right of foreign individuals to settle or work in a Member State are beyond the scope of the Capital Movements Code. This has been interpreted so far as excluding the right of individuals to take up or pursue activities as self-employed persons.*

8. *Nationality and/or residency requirements of directors, management or employees can have an inhibiting effect on new investment, though perhaps not a decisive effect in the majority of cases. An examination of the intention and the specific effects of such measures is required to determine whether or not the measure is to be considered to fall within the liberalisation obligations of item I/A.*

9. *Laws, regulations or other measures which establish either public monopolies or government-sanctioned private monopolies (or combinations of the two) restricting whole sectors do not fall under the liberalisation obligations of item I/A. These measures are nevertheless considered during the periodic country examinations of foreign direct investment policy. A Member country putting an end to a monopoly situation, for instance in the context of deregulation of a sector and/or privatisation, without allowing inward direct investment by non-residents under the same conditions as investment by residents, would need to lodge a reservation under item I/A if* ***[...]*** *the resale of equity holdings by the initial purchasers* ***to non-residents is restricted****.*

10. *Liberalisation obligations do not generally apply to subsidies or conditions attached thereto nor to the levying of taxes, duties and other charges. They could nevertheless be regarded as internal arrangements having the effect of frustrating measures of liberalisation within the meaning of Article 16 of the Codes. In such cases, the Organisation may make suitable suggestions with regard to the removal or modification of such arrangements.*

II. LIQUIDATION OF DIRECT INVESTMENT

A. Abroad by residents.

B. In the country concerned by non-residents.

Supplementary explanatory notes:

1. *Direct investment is defined as in Section I.*

2. *The transfer of principal, including capital gains, shall be free.*

III. OPERATIONS IN REAL ESTATE

A. Operations in the country concerned by non-residents:

1. Building or purchase

2. Sale.

B. Operations abroad by residents:

1. Building or purchase

2. Sale.

Supplementary explanatory note:

1. Section III covers operations in real estate other than those falling under Section I or Section II. It includes, inter alia:

a) The building or purchase of real estate not associated with a participation in, or creation or extension of, an enterprise;

b) Investment of a purely financial character in real estate which is of no direct use for the business activity of the company investing in the country concerned;

c) The sale of real estate not resulting from liquidation of direct investment.

IV. OPERATIONS IN SECURITIES ON CAPITAL MARKETS

A. Admission of domestic securities on a foreign capital market:

1. Issue through placing or public sale of	a) shares or other securities of a participating nature;
2. Introduction on a recognised foreign security market of	b) bonds or other debt securities (original maturity of one year or more).

B. Admission of foreign securities on the domestic capital market:

1. Issue through placing or public sale of	a) shares or other securities of a participating nature;
2. Introduction on a recognised domestic security market of	b) bonds or other debt securities (original maturity of one year or more).

C. Operations in the country concerned by non-residents:

1. Purchase 2. Sale	a) shares or other securities of a participating nature; b) bonds and other debt securities (original maturity of one year or more).

D. Operations abroad by residents:

1. Purchase 2. Sale	a) shares or other securities of a participating nature; b) bonds and other debt securities (original maturity of one year or more).

Remarks: The liberalisation obligations under B1 and B2 are subject to the regulations of the security markets concerned.

The authorities of Members shall not maintain or introduce restrictions which discriminate against foreign securities.

Members may:

a) with regard to transactions and transfers under A, B, C and D, require that:

i) such transactions and transfers must be carried out through authorised resident agents;

ii) in connection with such transactions and transfers, residents may hold funds and securities only through the intermediary of such agents; and

iii) purchases and sales may be contracted only on a spot basis;

b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;

c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities by, or on behalf of, the residents of other Members.

Supplementary explanatory notes:

1. Section IV covers all operations in securities, including shares (and other securities of a participating nature), bonds and other debt securities with a minimum maturity of one year at issue.

2. *The term "securities" includes those (domestic or foreign) that are issued or to be issued -- including those issued simultaneously -- on more than one market, and regardless of the currency of denomination or settlement, including composite currencies such as ECUs and SDRs. "Domestic" securities are those issued or to be issued by a resident. "Foreign" securities are those issued or to be issued by a non-resident.*

3. *"Other debt securities" include, inter alia, "notes" and "debentures".*

4. *"Admission" means (1) the public offering or private placement on a primary market (including registration with the competent authorities, advertising to the public, issuing prospectuses or otherwise marketing the securities in question), and (2) listing or otherwise obtaining approval, if necessary, for offering securities on a secondary market.*

5. *The liberalisation obligations on the admission of foreign securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations -- including any "queuing" system or any waiting period applying to the resale of securities -- may not discriminate against foreign securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

6. *"Purchase" and "sale" apply to operations in securities both (1) when they take place on a recognised security exchange or other recognised market ("quoted" securities) and (2) when they occur in some other manner authorised for transactions between residents ("unquoted" securities). The purchase and sale items cover the purchase and sale by residents of OECD Member countries of all securities that are legally marketable in the country concerned, regardless of whether the securities themselves are of OECD origin or where they have been traded.*

7. *Security dealing on a "spot" basis means dealing with payment and delivery to be made immediately after the transaction is concluded, or on the next periodic settlement date of the stock exchange if the transaction takes place on such an exchange.*

8. *Establishment restrictions with consequences for portfolio operations throughout the Code should be reflected in a single reservation on item IV/C1 (purchase, by non-residents, of securities in the country concerned).*

9. *Member countries should inform the Organisation of any limitation on the purchase by institutional investors of foreign securities or domestic securities denominated in foreign currency, even if the limitation is based on prudential concerns. However, only restrictions affecting investment abroad by institutions for collective investment should be reflected in reservations for the time being.*

V. OPERATIONS ON MONEY MARKETS

A. Admission of domestic securities and other instruments on a foreign money market:

1. Issue through placing or public sale.

2. Introduction on a recognised foreign money market.

B. Admission of foreign securities and other instruments on the domestic money market:

1. Issue through placing or public sale.

2. Introduction on a recognised domestic money market.

C. Operations in the country concerned by non-residents:

1. Purchase of money market securities.

2. Sale of money market securities.

3. Lending through other money market instruments.

4. Borrowing through other money market instruments.

D. Operations abroad by residents:

1. Purchase of money market securities.

2. Sale of money market securities.

3. Lending through other money market instruments.

4. Borrowing through other money market instruments.

Remarks: The liberalisation obligations under B1 and B2 are subject to the regulations of the security markets concerned.

The authorities of Members shall not maintain or introduce restrictions which discriminate against foreign money market securities or other money market instruments.

Members may:

a) with regard to transactions and transfers under A, B, C and D, require that:

i) such transactions and transfers must be carried out through authorised resident agents;

ii) in connection with such transactions and transfers, residents may hold funds, securities and other instruments only through the intermediary of such agents; and

iii) purchases and sales may be contracted only on a spot basis;

b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;

c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities, by or on behalf of, the residents of other Members.

Supplementary explanatory notes:

1. *Section V covers all operations on money markets, including those involving securities (with a maturity at issue of less than one year) and other money market instruments.*

2. *Securities and other instruments issued or traded on money markets include those that are issued on more than one market and regardless of the currency of denomination or settlement, including composite currencies such as ECUs and SDRs. "Domestic securities and other instruments" are those issued by a resident. "Foreign securities and other instruments" are those issued by a non-resident.*

3. *Examples of "money market securities" are Treasury Bills and other short-term government paper, as well as negotiable (and non-negotiable) certificates of deposit, banker's acceptances and commercial paper. Examples of "other money market instruments" include inter-bank deposits (in domestic or foreign currency), repurchase agreements and US federal funds which are short-term transferable obligations not usually regarded as "securities".*

4. *The terms "admission", "purchase" and "sale" and "dealing on a spot basis" have the same meaning as under Section IV.*

5. *The terms "lending through" (items C3 and D3) and "borrowing through" (items C4 and D4) apply to operations in "other money market instruments", such as repurchase agreements which are not bought and sold like securities.*

6. *The liberalisation obligations on the admission of foreign securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations -- including any "queuing" system -- may not discriminate against foreign securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

7. *Member countries should inform the Organisation of any limitation on the purchase by institutional investors of foreign securities or domestic securities denominated in foreign currency, even if the limitation is based on prudential concerns. However, only restrictions affecting investment abroad by institutions for collective investment should be reflected in reservations for the time being.*

VI. OTHER OPERATIONS IN NEGOTIABLE INSTRUMENTS AND NON-SECURITISED CLAIMS

A. Admission of domestic instruments and claims on a foreign financial market:

1. Issue through placing or public sale.

2. Introduction on a recognised foreign financial market.

B. Admission of foreign instruments and claims on a domestic financial market:

1. Issue through placing or public sale.

2. Introduction on a recognised domestic financial market.

C. Operations in the country concerned by non-residents.

1. Purchase.

2. Sale.

3. Exchange for other assets.

D. Operations abroad by residents:

1. Purchase.

2. Sale.

3. Exchange for other assets.

Remarks: The liberalisation obligations under B1 and B2 are subject to the regulations of the financial markets concerned.

The authorities of Members shall not maintain or introduce restrictions which discriminate against foreign negotiable instruments or non-securitised claims.

Members may:

a) with regard to transactions and transfers under A, B, C and D, require that:

   i) such transactions and transfers must be carried out through authorised resident agents; and

   ii) in connection with such transactions and transfers, residents may hold funds, negotiable instruments and non-securitised claims only through the intermediary of such agents;

b) with regard to transactions and transfers under C2 and C3, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;

c) with regard to transactions and transfers under D1 and D3, regulate on their territory any promotional activities by, or on behalf of, the residents of other Members.

Supplementary explanatory notes:

1. *Section VI covers operations not included in Sections IV, V, VII and XII. It covers, inter alia:*

   a) *Rights, warrants, financial options (e.g. stock options) and financial futures, whether or not traded on a recognised exchange (but not foreign exchange options and futures which are covered by Section XII);*

   b) *Secondary market operations in other financial claims, including sovereign loans, mortgage loans, commercial credits, negotiable instruments originating as loans (e.g. certificates of indebtedness), receivables and discounted bills of trade;*

   c) *Swaps of bonds and other debt securities, collective investment securities, credits and loans, interest rate swaps, debt/equity swaps, equity/equity swaps, foreign currency swaps and swaps involving any of the instruments mentioned in a) and b) above;*

   d) *All forward operations (other than forward operations in foreign exchange which are covered by Section XII);*

   e) *Any other operations in negotiable instruments and non-securitised claims not covered by other Sections of the Code.*

2. *Other operations in negotiable instruments and non-securitised claims include those (domestic or foreign) that are issued on more than one market, and regardless of maturity and the currency of denomination or settlement, including composite currencies such as ECUs and SDRs. "Domestic instruments and claims" are those issued by a resident. "Foreign instruments and claims" are those issued by a non-resident.*

3. *Although most operations under Section VI relate to already-issued instruments, the terms "admission", "purchase" and "sale" have the same meaning as in Sections IV and V.*

4. *The term "exchange" (items C3 and D3) is used to describe "swap" operations.*

5. *The liberalisation obligations on the admission of foreign negotiable instruments and non-securitised claims on the domestic market are subject to the regulations of the financial market concerned. However, those regulations -- including any "queuing" system -- may not discriminate against foreign negotiable instruments and non-securitised claims if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

6. *Member countries should inform the Organisation of any limitation on the purchase or exchange by institutional investors of foreign negotiable instruments and non-securitised claims or of domestic negotiable instruments or non-securitised claims denominated in foreign currency, even if the limitation is based on prudential concerns. However, only restrictions affecting investment abroad by institutions for collective investment should be reflected in reservations for the time being.*

VII. OPERATIONS IN COLLECTIVE INVESTMENT SECURITIES

A. Admission of domestic collective investment securities on a foreign securities market:

1. Issue through placing or public sale.

2. Introduction on a recognised foreign securities market.

B. Admission of foreign collective investment securities on the domestic securities market:

1. Issue through placing or public sale.

2. Introduction on a recognised domestic securities market.

C. Operations in the country concerned by non-residents:

1. Purchase.

2. Sale.

D. Operations abroad by residents:

1. Purchase.

2. Sale.

Remarks: The liberalisation obligations under B1 and B2 are subject to the regulations of the security markets concerned.

The authorities of Members shall not maintain or introduce restrictions which discriminate against foreign collective investment securities.

Members may:

a) with regard to transactions and transfers under A, B, C and D, require that:

i) such transactions and transfers must be carried out through authorised resident agents;

ii) in connection with such transactions and transfers, residents may hold funds and securities only through the intermediary of such agents; and

iii) purchases and sales may be contracted only on a spot basis;

b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not

discriminate against institutions for collective investment organised under the laws of any other Member;

c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities of foreign institutions for collective investment.

Supplementary explanatory notes:

1. *"Collective investment securities" mean the share certificates, registry entries or other evidence of investor interest in an institution for collective investment which, irrespective of legal form, is organised for the purpose of managing investments in securities or in other assets, applies the principle of risk-spreading, issues its own securities to the public on demand either continuously or at frequent intervals and is required on the request of the holder to redeem such securities, directly or indirectly, within a specified period and at their net asset value.*

2. *The term "collective investment securities" includes those (domestic or foreign) that are issued in more than one market, and regardless of the currency of denomination or settlement as well as of the composition of the fund. "Domestic" collective investment securities are those issued or to be issued by a resident. "Foreign" collective investment securities are those issued or to be issued by a non-resident.*

3. *The coverage of Section VII concerns the issues both of "closed-end" funds as well as the direct sale of new units of, or share certificates in, "open-end" funds qualifying as institutions for collective investment as defined in Article 21 of the Code.*

4. *Section VII extends to collective investment securities sold by institutions investing partly or wholly in short-term securities or in negotiable instruments and non-securitised claims such as those covered by Section VI. General restrictions concerning operations in instruments covered within Sections V and VI and already reflected in reservations under these sections need not be reflected in reservations under Section VII.*

5. *Although most operations under Section VII relate to purchases and sales arranged directly with the collective investment institutions issuing the securities concerned, the terms "admission", "purchase" and "sale" have the same meaning as in Sections IV, V and VI.*

6. *The term "on a spot basis" has the same meaning as under Sections IV and V.*

7. *The liberalisation obligations on the admission of foreign collective investment securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations -- including any "queuing" system -- may not discriminate against foreign collective investment securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

8. *Member countries should inform the Organisation of any limitation on the purchase by institutional investors of foreign collective investment securities or domestic collective investment securities denominated in foreign exchange, even if the limitation is based on prudential concerns. However, only restrictions affecting investment abroad by institutions for collective investment should be reflected in reservations for the time being.*

VIII. CREDITS DIRECTLY LINKED WITH INTERNATIONAL COMMERCIAL TRANSACTIONS OR WITH THE RENDERING OF INTERNATIONAL SERVICES

i) In cases where a resident participates in the underlying commercial or service transaction.

ii) In cases where no resident participates in the underlying commercial or service transaction.

A. Credits granted by non-residents to residents.

B. Credits granted by residents to non-residents.

Remark: Transactions and transfers under VIII(ii)/B shall be free if the creditor is an enterprise permitted to extend credits and loans on its national market.

Supplementary explanatory notes:

1. *Section VIII covers commercial credits and quasi-banking operations. Quasi-banking operations, such as "forfeiting", "leasing" and "factoring", refer to operations linked to the international movement of goods and services. Where no such link exists, these operations fall under Section XI (financial credits and loans).*

2. *Commercial credits of all maturities, including credits of more than five years, regardless of the currency of denomination or settlement, including currency composite units of account such as ECUs or SDRs, are covered.*

3. *All measures affecting the terms on which commercial credits may be contracted and settled would be considered as restrictions under Section VIII. Members are expected to allow the contracting parties freely to establish the terms of commercial credit contracts, and freely to amend those terms by agreement between themselves. A foreign financing requirement for commercial credits granted by non-residents to residents is considered to be a restriction under the Code. However, if operators choose to transform an existing contract in such a way that in its new form it would constitute an unauthorised operation in the country concerned, the authorities would be at liberty to prevent the transformation provided they maintain a reservation under the Code to cover the unauthorised operation.*

IX. FINANCIAL CREDITS AND LOANS

A. Credits and loans granted by non-residents to residents.

B. Credits and loans granted by residents to non-residents.

Remarks: Transactions and transfers under IX/A shall be free if the debtor is an enterprise.

Transactions and transfers under IX/B shall be free if the creditor is an enterprise permitted to extend credits and loans on its national market.

Supplementary explanatory notes:

1. *Section IX covers credits and loans other than those related to direct investment (Sections I and II) international trade in goods and services (Section VIII) and personal loans (Section XIV).*

2. *Quasi-banking operations, such as "forfeiting", "leasing" and "factoring" are covered by Section IX to the extent that they are not directly linked to the international movement of goods or services. (An example of a non-linked operation is the financing of a leasing contract between two residents where the finance is provided by a non-resident leasing company).*

3. *Credits and loans granted by non-residents to resident individuals are not subject to liberalisation obligations.*

4. *Subject to the "remarks" to item IX and the possibility of requiring that the transfer of funds be made through an authorised resident agent, Members are expected to allow credit and loan operations to be arranged directly between residents and non-residents.*

5. *Financial credits and loans are to be permitted regardless of maturity and of the amount involved.*

6. *Financial credits and loans may be underwritten or sold in more than one market, and denominated or drawn down in domestic currency or in any foreign currency or combination of foreign and domestic currencies, including composite currencies such as ECUs and SDRs.*

7. *The contracting parties shall have the same freedom to establish terms and subsequently to vary them as applies under Section VIII (see note 3 to that Section).*

8. ***Members may regulate the net external positions of domestic financial institutions dealing in foreign exchange.***

X. SURETIES, GUARANTEES AND FINANCIAL BACK-UP FACILITIES

i) In cases directly related to international trade or international current invisible operations, or in cases related to international capital movement operations in which a resident participates;

ii) In cases not directly related to international trade, international current invisible operations or international capital movement operations, or where no resident participates in the underlying international operation concerned.

A. Sureties and guarantees:

1. By non-residents in favour of residents.

2. By residents in favour of non-residents.

B. Financial back-up facilities:

1. By non-residents in favour of residents.

2. By residents in favour of non-residents.

Remark: Transactions and transfers under X(i)A and B shall be free if they are directly related to international trade, international current invisible operations or international capital movement operations in which a resident participates and which do not require authorisation or have been authorised by the Member concerned.

Supplementary explanatory notes:

1. *Section X covers sureties and guarantees pledged as security for payment or performance of a contract, sometimes undertaken by a third party. Those related to international trade in goods and services include warranties or avals, performance bonds, and stand-by letters of credit.*

2. *Section X also covers "financial back-up facilities", i.e. credit facilities used as a guarantee for independent financial operations. Examples of such facilities include stand-by letters of credit associated with a new issue of commercial paper, where the issuer's ultimate repayment (to the investors) is guaranteed; and revolving underwriting facilities (RUFs) where a credit institution may guarantee (for the issuer) an issue of short-term securities in the market at agreed terms and conditions. New issues of securities would only give rise to reservations under the Sections of the Code dealing with the underlying operations.*

3. *These operations shall be permitted in domestic currency, in any foreign currency and in any combination of domestic and foreign currencies, including composite currencies such as ECUs and SDRs.*

XI. OPERATION OF DEPOSIT ACCOUNTS

A. Operation by non-residents of accounts with resident institutions:

1. In domestic currency.

2. In foreign currency.

B. Operation by residents of accounts with non-resident institutions:

1. In domestic currency.

2. In foreign currency.

Remark: Transactions and transfers under XI/A shall be free provided the deposit accounts are operated with financial institutions authorised to accept deposits.

Supplementary explanatory notes:

1. *Section XI covers the opening and operation of checking and savings accounts and other accounts not covered elsewhere under the Code. (Investment and securities accounts are covered by Sections IV and V, inter-bank deposits and certificates of deposit under Section V, and accounts needed to complete a commercial or financial credit or loan under Sections VIII and IX respectively.)*

2. *"Deposit" shall mean a sum of money paid on terms: a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by the person making it or receiving it or by his order, and b) which are not referable to the provision of property or services or to the giving of security.*

3. *Members may maintain screening procedures to prevent evasion of their laws or regulations, including tax provisions.*

4. *Members may not, however, limit the amount placed in a deposit account, limit the purposes to which a deposit account may be put or limit the period in which deposits may be held in such accounts by residents or non-residents.*

XII. OPERATIONS IN FOREIGN EXCHANGE

A. In the country concerned by non-residents:

1. Purchase of domestic currency with foreign currency;

2. Sale of domestic currency for foreign currency;

3. Exchange of foreign currencies.

B. Abroad by residents:

1. Purchase of foreign currency with domestic currency;

2. Sale of foreign currency for domestic currency;

3. Exchange of foreign currencies.

Remark: Transactions and transfers under XII/A and B shall be free provided the operations are carried out through authorised resident agents.

Supplementary explanatory notes:

1. *Items XII/A1, A2, B1 and B2 cover operations involving the exchange of domestic currency for foreign currency, whereas items XII/A3 and B3 cover operations involving the exchange of foreign currencies, including currency composite units of accounts such as ECUs.*

2. *Section XII covers operations in foreign exchange not linked to any underlying current or capital transaction and not covered elsewhere in the Code. It thus includes: forward cover operations for commercial, service or capital transactions, trading operations in the spot and forward markets for foreign exchange, and currency options and futures.*

3. ***[...]*** *Any requirements concerning the repatriation and surrender of foreign exchange earned through exports, and any limits on the periods for the acquisition of foreign exchange required for import payments* ***are considered restrictions and need to be reflected in reservations under Section XII****.*

4. *The liberalisation of operations covered by Section XII does not imply the liberalisation of all other operations. If any other operations under the Code are covered by a reservation, the Member concerned may restrict access to foreign exchange for the execution or completion of the operations in question, even if it has no reservation on Section XII of the Code.*

XIII. LIFE ASSURANCE

Capital transfers arising under life assurance contracts:

A. Transfers of capital and annuities certain due to resident beneficiaries from non-resident insurers.

B. Transfers of capital and annuities certain due to non-resident beneficiaries from resident insurers.

Remark: Transfers under A and B shall be free also in the case of contracts under which the persons from whom premiums are due or the beneficiaries to whom disbursements are due were residents of the same country as the insurer at the time of the conclusion of the contract but have changed their residence since.

Supplementary explanatory notes:

1. *The section covers transfers of capital and annuities certain in connection with life insurance contracts regardless of the amount involved or the guarantee period. Other transfers (e.g. premiums, pensions, annuities other than annuities certain) are governed by the Code of Liberalisation of Current Invisible Operations.*

2. *The term "capital" refers to a lump sum which consists in the single payment instead of a series of payments (e.g. death benefit option in which a beneficiary receives the death benefit as a single sum).*

3. *"Annuities certain" means annuities guaranteeing a given number of income payments either to the annuitant if he is alive to receive them or to any beneficiary designated by the insured and payable upon the annuitant death or when the endowment matures.*

4. *Anyone can be named beneficiary, independently of the country of residence of the annuitant or of the beneficiary.*

XIV. PERSONAL CAPITAL MOVEMENTS

A. Family loans.

B. Gifts and endowments.

C. Dowries.

D. Inheritances and legacies.

Remark: Transfers under D shall be free provided that the deceased was resident and the beneficiary non-resident at the time of the deceased's death.

E. Settlement of debts in their country of origin by immigrants.

F. Emigrants' assets.

Remark: Transfers under F shall be free upon emigration irrespective of the nationality of the emigrant.

G. Gaming.

H. Savings of non-resident workers.

Supplementary explanatory notes:

1. *Section XIV covers transfers initiated on behalf of private persons and intended to benefit another private person, regardless of the existence of kinship, or a non-profit organisation, including a charitable or religious body.*

2. *Personal capital movements include transactions of property to which a promise of return to the owner with payment of interest is attached (loans, settlement of debts in their country of origin by immigrants), or transfers free of charge to the beneficiary (gifts and endowments, dowries, inheritances and legacies, emigrants' assets, gaming, savings of non-resident workers).*

3. *Any limitation on the transferred amount or to the kind of payments attached thereto should be reflected in reservations.*

XV. PHYSICAL MOVEMENT OF CAPITAL ASSETS

A. Securities and other documents of title to capital assets:

1. Import.

2. Export.

B. Means of Payment:

1. Import.

2. Export.

Remark: In the case of residents the obligation to permit an export applies only to the export of foreign securities and then only on a temporary basis for administrative purposes.

Supplementary explanatory notes:

1. *Section XV covers physical movements of all capital assets, including gold. Operations in gold certificates, gold futures and the like are regarded as comparable to similar operations in the markets for silver and other commodities and are thus excluded from the Code.*

2. *The liberalisation obligations under Section XV extend only to operations otherwise unrestricted throughout the Code.*

XVI. DISPOSAL OF NON-RESIDENT-OWNED BLOCKED FUNDS

A. Transfer of blocked funds.

B. Use of blocked funds in the country concerned:

1. For operations of a capital nature;

2. For current operations.

C. Cession of blocked funds between non-residents.

Supplementary explanatory note:

The obligation to liberalise blocked funds is unqualified.

Annex 2

OPERATIONS COVERED BY THE CODE OF LIBERALISATION OF CURRENT INVISIBLE OPERATIONS[1]

This annex reproduces Annex A to the Current Invisibles Code. It also contains *supplementary explanatory notes* to items E1-7 which were prepared by the CMIT Committee to assist Member countries in proposing reservations they may need to lodge with respect to the enlarged obligations of the Revised Code. Unlike the "Remarks", these "explanatory notes" do not form part of the Code obligations.

A. BUSINESS AND INDUSTRY

A/1. Repair and assembly.

A/2. Processing, finishing, processing of work under contract and other services of the same nature.

Remark: In cases where goods are involved, liberalisation applies only if the importation of the goods concerned is liberalised by the Member ordering such processing, finishing, etc.

A/3. Technical assistance (assistance relating to the production and distribution of goods and services at all stages, given over a period limited according to the specific purpose of such assistance, and including e.g. advice or visits by experts, preparation of plans and blueprints, supervision of manufacture, market research, training of personnel). See also Note 3, page 55.

A/4. Contracting (construction and maintenance of buildings, roads, bridges, ports, etc., carried out by specialised firms, and, generally, at fixed prices after open tender).

A/5. Authors' royalties. Patents, designs, trade marks and inventions (the assignment and licensing of patent rights, designs, trade marks and inventions, whether or not legally protected, and transfers arising out of such assignment or licensing). See also Note 3, page 55.

A/6. Salaries and wages (of frontier or seasonal workers and of other non-residents).

Remark: Free transfer to the country of residence of the recipient. The amounts to be transferred shall be the net salaries and wages, i.e. after deduction of living expenses, taxes, social insurance contributions or premiums, if any.

A/7. Participation by subsidiary companies and branches in overhead expenses of parent companies situated abroad and vice versa (i.e. overhead expenses other than those included under A/3 and A/5). See also Note 3, page 55.

B. FOREIGN TRADE

B/1. Commission and brokerage.

Profit arising out of transit operations or sale of transshipment.

Representation expenses.

B/2. Differences, margins and deposits due in respect of operations on commodity terminal markets in conformity with normal commercial practice.

B/3. Charges for documentation of all kinds incurred on their own account by authorised dealers in foreign exchange.

B/4. Warehousing and storage, customs clearance.

B/5. Transit charges.

B/6. Customs duties and fees.

C. TRANSPORT

C/1. Maritime freights (including chartering, harbour expenses, disbursements for fishing vessels, etc.)[1].

Remark: See Note 1, page 55.

C/2. Inland waterway freights, including chartering.

C/3. Road transport: passengers and freights, including chartering.

C/4. Air transport: passengers and freights, including chartering.

Payment by passengers of international air tickets and excess luggage charges; payment of international air freight charges and chartered flights.

Remark: Without prejudice to the provisions of Annex III.

Receipts from the sale of international air tickets, excess luggage charges, international air freight charges, and chartered flights.

Remark: The transfer of these receipts to the head office of the air transport company concerned shall be free.

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1. This item does not cover transport between two ports of the same State. Where such transport is open to foreign flags, transfers shall be free.

C/5. For all means of maritime transport: harbour services (including bunkering and provisioning, maintenance, repairs, expenses for crews, etc.).

Remark: In the case of repairs, current maintenance, voyage and emergency repairs[1] *(see also C/6). (See Note 1, page 55.)*

For all means of inland waterway transport: harbour services (including bunkering and provisioning, maintenance and minor repairs of equipment, expenses for crews, etc.).

Remark: In the case of repairs, current maintenance repairs only (see also C/6).

For all means of commercial road transport: road services (including fuel, oil, minor repairs, garaging, expenses for drivers and crews, etc.).

For all means of air transport: operating costs and general overheads, including repairs to aircraft and to air transport equipment.

Remark: Including all charges in connection with the delivery of oil and petrol to air transport companies which are incurred in the currency of the State where the delivery takes place.

C/6. Repair of ships.

Remark: Transactions other than those covered by C/5 (i.e. classification, conversion and other major repairs)[2] to the extent to which they do not constitute visible trade.

Repairs of means of transport other than ships and aircraft.

Remark: Transactions other than those covered by C/5 to the extent to which they do not constitute visible trade.

D. INSURANCE

D/1. Social security and social insurance.

Remarks:

1. Free transfer of:

   a) contributions of premiums in respect of social security or social insurance payable in another Member State;

   b) social security and social insurance benefits payable to an insured person or beneficiary residing in another Member State or, for their account, to a social security or social insurance authority in that other State.

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1. For definition of terms employed here and in the Remarks against C/6, see Note 2, page 53.
2. For definition of terms employed here and in the Remarks against C/5, see Note 2, page 53.

2. If the transfer relates to an insurance considered as social insurance by only one of the Members concerned, the provisions according the more liberal treatment shall apply.

3. Social insurance transactions carried out by private insurers shall also be subject to the provisions of Parts III and IV of Annex I.

	Transactions[1] and transfers in connection with direct insurance (other than social security and social insurance).	) Remark: Direct insurance transactions between) insurers in one Member State and insured in another) Member State, and transfers of premiums and) contributions between insured insurers in two) different Member States. Transfers by insurers
D/2.	Insurance relating to goods in international trade.	) in one Member State of settlements and benefits) paid or to be paid in another Member State, and) transfers of sums necessary for the enforcement
D/3.	Life assurance.	) of claims arising under an insurance contract.) Within the limits specified in Part I of
D/4.	All other insurance.	) Annex I.

D/5. Transactions and transfers in connection with re-insurance and retrocession.

Remark: The provisions of Part II of Annex I shall also apply.

D/6. Conditions for establishment and operation of branches and agencies of foreign insurers.

Remarks:

1. Authorisation within the limits specified in Part III of Annex I for insurers of other Member States to establish themselves and to transact business.

2. Transfers between branches and agents of such authorised insurers and their head offices: within the limits specified in Part IV of Annex I.

E. BANKING AND FINANCIAL SERVICES

General remarks:

1. Regarding operations in the country concerned, Members may take measures for the maintenance of fair and orderly markets and sound institutions and for the protection of investors or other users of banking or financial services, provided those measures do not discriminate against non-resident providers of such services.

2. Regarding operations abroad, Members may regulate on their territory the promotional activities of non-resident providers of such services.

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1. Transaction shall be deemed to mean the conclusion of a direct insurance contract by a person in one Member State with an insurer in another Member State.

3. Transactions and transfers concerning capital movements in connection with operations covered by Section E of this Code are governed by the Code of Liberalisation of Capital Movements.

E/1. Payment services:

Payment instruments (including the issuance and use of cheques, travellers' cheques, cash cards and credit cards, other than for credit).

Fund transfer services [including transfer of funds by mail, telephone, telex, telegraph, telefax, electronic connection or money transfer (giro)].

Remark: Transactions and transfers for travel and tourism are governed by item G of this Code.

Supplementary explanatory notes:

1. *The term "cash cards and credit cards" refers mainly to cards that are issued by a financial institution and may be used to pay for goods and services, or to obtain cash or foreign exchange from a financial institution or an automated teller machine (ATM). In some cases, the use of the card will result in a direct or immediate charge to the holder's account with a financial institution. In other cases, settlement may take place at the end of a short period (e.g. each month-end), or more extended credit may be available. Depending on their particular characteristics -- and the country in which they are issued -- these cards may also be referred to as "debit cards" or "charge cards". (To the extent that credit cards are used to obtain credit, the operation in question would be a capital movement operation and would thus not be covered by the Current Invisibles Code.)*

2. *Requirements that international funds transfers take place through authorised resident agents with a view to strengthening the effectiveness of exchange controls, reducing tax evasion or gathering statistics is permitted under Article 6 of the Current Invisibles Code. However, resident and non-resident operators should be free to choose the technique by which they make international transfers (i.e. telex, telefax, money transfer, etc.), even if the transfer is effected through an authorised resident agent.*

E/2. Banking and investment services (for securities, collective investment securities, other negotiable instruments and non-securitised claims, credits and loans, sureties, guarantees and financial back-up facilities, liquid funds and foreign exchange).

Underwriting (syndication and distribution of new financial assets).

Broker/dealer services (intermediation and market-making in the purchase, sale or exchange of financial assets, including liquid funds and foreign exchange).

Financial market information, communications and execution systems.

Supplementary explanatory notes:

1. *"Underwriting" covers the syndication or distribution of new financial assets of all kinds, other than assets issued by Member governments. This item covers both public issues and*

private placements, in either domestic or foreign currency. The operations in question include all levels of management or participation in new issues, including the so-called "lead manager" and "co-lead manager" functions. Lead manager activities include sales to selling group members, stabilisation, over-allotment and group sales.

2. *"Broker/dealer services" refers to all forms of intermediation on secondary markets for financial assets, including both those where the intermediary acts exclusively on behalf of a third party and those where he may buy, sell and hold assets for a time on his own account. This item concerns all kinds of assets (including securities and non-securitised claims), both government and private obligations, in domestic or foreign currency, and all forms of exchange (purchase, sale or swap).*

3. *For securities or other assets issued by governments, the intermediary function* ***(underwriting and broker/dealer services)*** *in the primary market must be considered to be performed on the account of the government, thereby falling outside the Code. In the secondary market, however, brokers or dealers in government-issued securities or other assets will generally be operating on their own account or on the account of non-governmental clients;* ***these operations, therefore, fall within the scope of the Code****.*

4. *Obligations on financial market information, communications and execution systems apply only to the access to such systems, not to their provision.*

E/3. Settlement, clearing and custodial and depository services (for securities, collective investment securities, other negotiable instruments and non-securitised claims, liquid funds and foreign exchange).

Settlement and clearing systems.

Custodial and depository services.

Remark: Members may require that non-residents participate in a domestic settlement and clearing system only through a branch or subsidiary established in the territory of the Member concerned.

Supplementary explanatory notes:

1. *Obligations on settlement and clearing systems apply only to the access to such systems, not to their provision.*

2. *Custodial or depository services include the safekeeping of assets, registration of change of ownership in the form of book-entries or depository receipts, and the administration of interest and principal payments due on securities.*

3. *There are no obligations with respect to the provision of depository systems, either by non-residents in the country concerned or by residents abroad. Cross-border access, both by non-residents in the country concerned and by residents abroad to depository systems, shall be free.*

E/4. Asset management.

Cash management.

Portfolio management.

Pension fund management.

Safekeeping of assets.

Trust services.

E/5. Advisory and agency services.

Credit reference and analysis.

Investment research and advice (including securities rating agencies).

Mergers, acquisitions, restructurings, management buyouts, venture capital.

Supplementary explanatory note:

Operations concerning mergers, acquisitions, etc. mainly cover the provision of financial expertise and practical assistance (advice, representation, legal and accounting work) associated with the re-organisation of limited liability companies and the arrangement of venture capital. Any lending or equity participation would be a matter for the Capital Movements Code.

E/6. Fees, commissions and other charges.

Remark: Transfers under item E/6 shall be free provided the underlying transaction is not subject to authorisation or has been authorised by the authorities of the Member concerned.

Supplementary explanatory note:

Wherever an international banking or financial service operation has been authorised or can be performed without authorisation, the international transfer of funds in payment of fees, commissions or other charges shall be permitted under the relevant item of the Current Invisibles Code. Item E/6 makes provision for the liberalisation of such transfers in connection with services not mentioned in the Current Invisibles Code but effectively liberalised under the Capital Movements Code because of their close link with capital movement operations. Examples include charges for keeping bank accounts, making unsyndicated loans, arranging guarantees or commercial credits, and forfeiting, factoring and leasing.

E/7. Conditions for establishment and operation of branches, agencies, etc. of non-resident investors in the banking and financial services sector.
See Annex II to Annex A.

F. INCOME FROM CAPITAL

F/1. Profits from business activity.

F/2. Dividends and shares in profits.

F/3. Interest (including interest on debentures, mortgages, etc.)

F/4. Rent.

Remark: Does not apply to income deriving from capital acquired otherwise than in conformity with the laws covering the acquisition of capital.

G. TRAVEL AND TOURISM

Remark: This section covers all international travel as well as stays abroad for purposes other than immigration, such as pleasure, recreation, holiday, sport, business, visits to relatives or friends, missions, meetings, conferences or for reasons of health, education or religion.

No restrictions shall be imposed by Member countries on expenditure by residents for purposes of international tourism or other international travel. For the settlement of such expenditure, no restrictions shall be placed on transfers abroad by or on behalf of travellers or on the use abroad of cash cards or credit cards, in accordance with the provisions of Annex IV. Travellers shall, moreover, be automatically permitted to acquire, export and import domestic and foreign bank-notes and to use travellers' cheques abroad in accordance with the provisions of Annex IV; additional amounts in travellers' cheques and/or foreign bank-notes shall be allowed on presentation of justification. Lastly, travellers shall be permitted to undertake foreign exchange transactions according to the provisions of Annex IV.

H. FILMS

H/1. Exportation, importation, distribution and use of printed films and other recordings -- whatever the means of reproduction -- for private or cinema exhibition, or for television broadcasts[1].

Remark: The provisions of Annex IV shall also apply. Members shall grant any authorisation required for transactions which they had authorised on 1 January 1959, in virtue of regulations or international agreements in force on that date.

1. The provisions of this item do not apply to Canada, which accordingly has neither obligations nor rights thereunder [OECD/C(61)89 of 12th December 1961 and C(63)154/FINAL of 3rd March 1964].

J. PERSONAL INCOME AND EXPENDITURE

J/1. Pensions and other income of a similar nature.

Remark: In favour of persons who, after having spent their life in a Member State other than their State of origin, establish themselves in any other Member State including their own.

J/2. Maintenance payments resulting from a legal obligation or from a decision of a court and financial assistance in cases of hardship.

J/3. Immigrants' remittances.

Remarks: Free periodic transfer to the Member State of which the person demanding the transfer is a national, of salaries, fees, wages, and other current remuneration, after deduction of living expenses, taxes, and social insurance.

No less favourable treatment shall be accorded to demands for the transfer of earnings of self-employed persons or members of the liberal professions.

J/4. Current maintenance and repair of private property abroad.

J/5. Transfer of minor amounts abroad.

J/6. Subscriptions to newspapers, periodicals, books, musical publications.

Newspapers, periodicals, books, musical publications and records.

) Remark: To the extent to which
) transactions in connection with
) these items do not constitute
) visible trade.

J/7. Sports prizes and racing earnings.

Remark: In accordance with the laws of the Members concerned.

K. PUBLIC INCOME AND EXPENDITURE[1]

K/1. Taxes.

K/2. Government expenditure (transfer of amounts due by governments to non-residents and in connection with official representation abroad and contributions to international organisations).

K/3. Settlements in connection with public transport and postal, telegraphic and telephone services.

K/4. Consular receipts.

1. The items in this section apply to transfers only.

L. GENERAL

L/1. Advertising by all media.

L/2. Court expenses.

L/3. Damages.

L/4. Fines.

L/5. Membership of associations, clubs and other organisations.

L/6. Professional services (including services of accountants, artists, consultants, doctors, engineers, experts, lawyers, etc.).

L/7. Refunds in the case of cancellation of contracts and refunds of uncalled-for payments.

L/8. Registration of patents and trade marks.

NOTES

Note 1. The provisions of C/1 "Maritime freights, including chartering, harbour expenses, disbursements for fishing vessels, etc.", of C/5, first sub-paragraph "For all means of maritime transport: harbour services (including bunkering and provisioning, maintenance, repairs, expenses for crews, etc.)", and of the other items that have a direct or indirect bearing on international maritime transport, are intended to give residents of one Member State the unrestricted opportunity to avail themselves of, and pay for, all services in connection with international maritime transport which are offered by residents of any other Member State. As the shipping policy of the governments of the Members is based on the principle of free circulation of shipping in international trade in free and fair competition, it follows that the freedom of transactions and transfers in connection with maritime transport should not be hampered by measures in the field of exchange control, by legislative provisions in favour of the national flag, by arrangements made by governmental or semi-governmental organisations giving preferential treatment to national flag ships, by preferential shipping clauses in trade agreements, by the operation of import and export licensing systems so as to influence the flag of the carrying ship, or by discriminatory port regulations or taxation measures -- the aim always being that liberal and competitive commercial and shipping practices and procedures should be followed in international trade and normal commercial considerations should alone determine the method and flag of shipment.

The second sentence of this Note does not apply to the United States.

Note 2. The following are the definitions of the terms employed in the Remarks against C/5 (Maritime transport) and C/6 (Repair of ships) which have been adopted by the Council:

Current maintenance: work which may conveniently be undertaken during a vessel's stay in port, which will contribute towards her general upkeep and efficiency, without being immediately necessary for her continued operation.

Voyage repairs: work which is required during a voyage, due to the normal risks of the sea (e.g. weather damage) to enable the vessel to complete the voyage.

Emergency repairs: similar to voyage repairs, but due to less normal causes, such as sudden machinery breakdown or collisions.

Classification: the special work required to pass the survey which the Classification Society holds on each ship every four years.

Conversion: the major operation of altering the size of a ship or the type, e.g. from steamer to motorship, from passenger/cargo to cargo ship, or from coal-burner to oil burner.

Note 3. According to the type of knowledge and/or the nature of the contract, "know-how" and manufacturing processes fall under any of the three headings of A/3, A/5 and A/7.

Annex I to Annex A
of the Code of Liberalisation of Current Invisible Operations

INSURANCE

PART I

D/2. Insurance relating to goods in international trade.

1. The conclusion of insurance contracts relating to goods in international trade:

   a) Between a proposer in a Member State and a foreign insurer not established in the country of residence of the proposer;

   b) Between a proposer in a Member State and a foreign insurer established in the country of residence of the proposer, such contract being entered into:

      i) From the head office of the foreign insurer;

      ii) From a place of business of such insurer situated in a Member State other than the country of residence of the proposer;

   shall be free, subject to the right of Member States to regulate the activities of the insurer himself or of a third party in seeking insurance business.

   The transfers required for the execution of such contracts or for the exercise of rights arising therefrom shall be free.

D/3. Life assurance.

2. Transactions and transfers relating to life assurance, except group assurance, between a proposer in a Member State and a foreign insurer not established in the country of residence of the proposer shall be free, subject to the right of Member States to regulate the activities of the insurer himself or of a third party in seeking insurance business.

3. Under existing contracts:

a) Transfers of premiums[1] due to non-resident insurers from residents shall be free;

b) Transfers of pensions and annuities other than annuities certain[1] due to non-resident beneficiaries from resident insurers shall be free.

) Such transfers shall be free also in the case of contracts under which the persons from whom premiums are due or the beneficiaries to whom disbursements are due were residents of the same country as the insurer at the time of the conclusion of the contract but have changed their residence since.

4. Member States in which premiums paid are allowed, totally or partially, as a deduction for tax purposes shall grant the same benefits whether the contract has been concluded with an insurer established on their territory or abroad.

D/4. All other insurance.

5. Transactions and transfers between a proposer in a Member State and a foreign insurer not established in the country of residence of the proposer, relating to insurance other than that covered under items D/2 and D/3, except group insurance and insurance which is compulsory in the country of residence of the proposer shall be free, subject to the right of Member States to regulate the activities of the insurer himself or of a third party in seeking insurance business.

6. Transactions and transfers shall be free whenever it is not possible to cover a risk in the Member country in which it exists.

7. Member States in which premiums paid are allowed, totally or partially, as a deduction for tax purposes shall grant the same benefits whether the contract has been concluded with an insurer established on their territory or abroad.

1. Transfers of capital and annuities certain in connection with life assurance contracts are governed by the Code of Liberalisation of Capital Movements (List A, item XII).

8. *a)* Transfers of amounts due in respect of indemnities to be settled abroad and paid or payable in execution of in insurance contract by an insurer acting on his own behalf or on behalf of his client shall be free[1];

   b) Transfers of costs, subsidiary expenses or sums necessary for the exercise of any rights arising out of an insurance contract shall be free;

   c) Without prejudice to cases which are settled individually, each Member shall authorise insurers or their agents who are established in its territory and who settle claims under reciprocal arrangements to offset the payments made on each side and to transfer the balance thereof.

1. The following transfers in particular are included under this item (the list is not exhaustive, but includes the most frequent cases of transfer of insurance indemnities):
   - -- Transfers of indemnities payable by reason of the insured's liability;
   - -- Transfers of indemnities to cover physical damage to a ship, aircraft, motor vehicle or any other means of transport;
   - -- Transfers of indemnities under baggage insurance;
   - -- Transfers in payment of benefits covered by accident insurance (including individual insurances) or sickness insurance;
   - -- Transfers to fulfil commitments arising from marine insurance not covered by the above paragraphs (provisional or final contributions in respect of general average, paid by the insurer on behalf of the ship's owner or the consignee of the goods or his agent, the transfer of interest on any bank security substituted for a provisional contribution, transfer of interest in respect of provisional contributions, the transfer of remuneration of assistance and salvage, etc.).

PART II

D/5. Reinsurance and retrocession.

1. Accounts relating to reinsurance operations, including the constitution and adjustment of guarantee deposits held by the ceding insurers, as well as accounts relating to cash losses, may be drawn up in the currency of the direct insurance contract, in the national currency of the ceding insurer or in the national currency of the acceptor, according to the provisions of the reinsurance treaty or agreement.

2. The settlement of balances resulting from the account referred to in paragraph 1 shall be authorised. Settlement may be made either by a set-off of any reciprocal credits of the ceding insurer and the reinsurer or (as agreed between the parties):

   a) By transfer to the country of residence of the creditor; or

   b) By payment through a bank account opened in accordance with the provisions of paragraph 3 below; or

   c) By transfer to another Member State to the credit of a bank account opened in accordance with the provisions of paragraph 3 below if the contract stipulates that payment should be made in that Member's currency.

3. Reinsurers shall be authorised to open accounts in banks established in Member States. These accounts may be credited with the amounts due to their holders arising out of reinsurance operations which are to be settled in accordance with the provisions of paragraph 2 *b)* and *c)*. They may be debited, at the choice of their holders, with the amounts due under any settlement in connection with reinsurance operations if it is made in accordance with the provisions of paragraph 2 *b)* and *c)* and complies with normal practice. The balances of such accounts may also be transferred to the country of residence of the reinsurer holding the account in question.

4. The provisions of paragraphs 1 to 3 shall apply also to retrocession operations.

PART III

D/6. Conditions for establishment and operation of branches and agencies of foreign insurers.

GENERAL

1. All statutory and administrative controls of insurance shall ensure equivalent treatment for national insurers and insurers from other Member States so that the latter shall not be liable to heavier burdens than those imposed on national insurers.

AUTHORISATIONS

2. Where the establishment of insurers in a Member State is made subject to authorisation:

   a) That Member shall accord insurers from other Member States treatment equivalent to that applied to national insurers;

   b) The competent authorities shall make available to each insurer from another Member State applying for authorisation a written statement setting out fully and precisely the documents and information that the applicant insurer must supply for the purpose of obtaining authorisation, and shall endeavour to simplify and accelerate as appropriate the procedures to be followed prior to the lodging of an application;

   c) Where in addition to legal, financial, accounting and technical requirements (e.g. requirements concerning the form of the undertaking, qualification of directors or managers, reinsurance arrangements, etc.) the grant of authorisation is also subject to other criteria and in particular is also subject to economic criteria such as the needs of the national insurance market, the competent authorities shall inform applicant insurers of such criteria at the time of their application, and shall apply these criteria in the same way to national insurers as to insurers from other Member States;

   d) The competent authorities shall decide on each application for authorisation by an insurer from another Member State not later than six months from the date on which that application has been completed in all particulars and shall without further delay notify their decision to that insurer;

   e) Where the competent authorities ask an insurer from another Member State for modifications to a completed application for authorisation, they shall inform that insurer

of the reasons for seeking such modifications and shall do so under the same conditions as for a national insurer;

f) Where an application for authorisation by an insurer from another Member State is refused, the competent authorities shall advise that insurer of the reasons for their decision, and shall do so under the same conditions as for a national insurer;

g) Where authorisation is refused, or where the competent authorities have not dealt with an application upon the expiry of the period of six months provided for under paragraph d) above, insurers from other Member States shall have the same right of appeal as national insurers.

REPRESENTATIVES

3. An insurer from one Member State operating in another Member State may appoint on his representative any person who is domiciled and actually resident in that other State, irrespective of his nationality.

FINANCIAL GUARANTEES[1]

Common provisions

4. Present and future statutory and administrative controls of insurance in each Member State shall keep to as low a figure as possible the amounts required from insurers from other Member States as financial guarantees in order to prevent the dispersal of the insurers' assets, insofar as this is compatible with the protection of policy holders and other claimants. Guarantee deposits shall have no other aim than such protection.

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1. For the purposes of this Code, the term "financial guarantee" includes the assets constituting respectively the fixed or initial deposit, the adjustable deposit and the variable deposit, and also the technical reserves and any reserve of another description required under the respective national laws, insofar as the assets constituting such reserves are required to be kept in the country in which the insurer is carrying on business:

-- the fixed or initial deposit is the amount which an insurer must constitute and lodge with a prescribed institution in the country in which he is operating, prior to any operation in one or more branches of insurance;
-- the adjustable deposit is a deposit which is adjusted according to the amount of business written by the insurer and is not allowed to count towards his technical reserves;
-- the variable deposit is a deposit which is adjusted according to the amount of business written by the insurer but is allowed to count towards his technical reserves;
-- the technical reserves are the amounts which the insurer sets aside to cover his liabilities under contracts of insurance.

Provisions concerning fixed or initial deposits and adjustable deposits

5. A Member which requires fixed or initial deposits and/or adjustable deposits both from national insurers and from insurers from other Member States operating in its territory shall:

   a) Accord to insurers from other Member States the same treatment as that applied to national insurers with respect to the amount and the calculation of such deposits as well as to the eligibility of fixed or initial deposits to count towards the covering of technical reserves;

   b) Allow, at its discretion, any such deposit to be constituted by one or more of the following means, viz.;

      i) Up to the amount of the required deposit:

         -- A guarantee by an approved bank whose head office is situated in that Member State; or

         -- A guarantee by an approved insurer whose head office is situated in that Member State, established by the lodging of a policy; or

         -- The lodging of securities by an approved bank or approved insurer whose head office is situated in that Member State and who has declared that the securities are lodged in the name and for the account of the insurer concerned;

      ii) Up to at least 50 per cent of the required deposit:

         -- The lodging of currency of the State in which the insurer's head office is situated and/or of securities expressed in the currency of that State, provided either that such securities are negotiable in the State in which the insurer is operating or that the authorities of the State in which the head office of the insurer is situated undertake to authorise the transfer of the proceeds of the sale of such securities if the latter should have to be sold in that State. Securities and currency which are to be used to constitute such guarantees shall first be approved by the insurance supervisory authorities of the State in which the insurer is operating; they shall remain under the control of those authorities, according to the rules governing the constitution and utilisation of similar national assets.

6. A Member which requires from insurers from other Member States operating in its territory fixed or initial deposits and/or adjustable deposits which are not required from national insurers shall allow, at its discretion, such deposits to be replaced as to not less than 50 per cent by:

   a) A guarantee by an approved bank whose head office is situated in that Member State; or

   b) A guarantee by an approved insurer whose head office is situated in that country, established by the lodging of a policy

   unless it allows fixed or initial deposits to count subsequently towards the covering of technical reserves or of any other guarantee required from insurers from other Member States operating in its territory.

Provisions concerning variable deposits and technical reserves

7. A Member which requires variable deposits both from national insurers and from insurers from other Member States operating in its territory shall apply to the latter the same treatment as to national insurers with respect to the calculation of such deposits and their eligibility to count towards the covering of technical reserves.

8. Where a Member requires from insurers from other member States operating in its territory variable deposits or the deposit of technical reserves which it does not require from national insurers, such requirements shall not have the effect of making the mode of calculating such reserves and/or deposits more burdensome than the customary rules for calculating the reserves of national insurers.

CONTROLLED INVESTMENTS AND DEPOSITS

General provisions

9. Each member State shall subject national insurers and insurers from other Member States operating in its territory to identical rules for the choice and valuation of their investments and for the adjustment of any depreciation in the value thereof, subject, where appropriate, to the provisions of paragraph 5 *b) ii)* above.

10. Where a Member requires the same deposit of investment both from national insurers and from insurers from other Member States operating in its territory, it shall subject both kinds of insurers to identical rules with respect to the manner in which the deposit is to be lodged.

11. Where a Member requires a deposit of investments from insurers from other Member States only, the requirements as to the choice and the valuation of the investments deposited shall not be more burdensome for such insurers than those applicable to national insurers.

12. Where a Member requires insurers from other Member States operating in its territory to deposit investments to cover the technical reserves and does not impose the same obligation on national insurers, in calculating such deposits the following shall be deducted:

    a) In the case of classes of business other than life assurance, marriage and birth assurance, and capital redemption business, cash in hand or at banks and premiums or subscriptions (net of taxes, duties and commissions) which have been outstanding for not more than three months, up to an amount equal to 30 per cent of the unearned premiums reserve;

    b) In the case of life assurance, marriage and birth assurance, and capital redemption business:

        i) Cash in hand or at banks, up to an amount equal to one-twelfth of the premium income in the last financial year; and

        ii) Up to 90 per cent of premiums or subscriptions (net of taxes, duties and commissions) which have been outstanding for not more than three months.

Acceptable investments

13. Each Member shall endeavour to allow insurers from other Member States operating in its territory the greatest possible choice for their investments.

14. In addition to investments expressly designated therein, the national laws and regulations of each Member for the supervision of insurance should provide that technical reserves and deposits may be constituted by insurers from other Member States by means of any other investment which are admitted by the competent authorities of the Member concerned on such conditions as the latter may determine.

15. Each Member shall allow insurers from other Member States operating in its territory to use immovable property situated therein or mortgages on such property, up to an amount equal to not less than 25 per cent of the technical reserves and variable deposits after excluding, where appropriate, any part thereof which may be constituted by means of fixed or initial deposits.

Change of investments

16. If at any time between prescribed periodic adjustments an insurer from one Member State operating in another Member State which requires the deposit of technical reserves can prove to the insurance supervisory authorities of the latter that the sums deposited exceed those required to constitute such technical reserves, the supervisory authorities shall authorise without delay the release of any sums deposited in excess.

17. Each member shall allow insurers from other Member States operating in its territory to change their investments with a minimum of formalities.

    a) In particular, the prior replacement by other investments shall not be required where;

        i) With the prior authorisation of the insurance supervisory authorities, deposited securities are withdrawn from deposit and replaced within one and the same duly authorised institution; and

        ii) Securities are replaced by immovable property which the insurers wish to acquire, or by mortgages on immovable property, provided that the replacement takes place within a short time.

    b) In all other cases where the prior replacement cannot be dispensed with, the insurance supervisory authorities shall allow such replacement of investments to take place with the least delay, and shall keep all charges incumbent on the insurers to the minimum, without, however, in any way diminishing the protection afforded to the policy holders and other claimants.

PART IV

D/6. Conditions for establishment and operation of branches and agencies of foreign insurers (transfers).

1. The transfer of all amounts which the statutory or administrative controls governing insurance do not require to be kept in the country shall be free.

2. The insurers from a Member State who execute direct insurance transactions in another Member State through one or more branches or through agents shall be authorised, insofar as such insurers, their branches or agents have no adequate funds available in that country, to transfer to that country such amounts as they require to continue to meet the legal liabilities and/or contractual obligations arising from such transactions.

3. In accordance with item F/1 of the List of Current Invisible Operations, the transfer of profits arising out of direct insurance operations shall be free. Profits shall be understood to mean the surplus available after providing for liabilities in respect of all legal and/or contractual obligations.

Annex II to Annex A
of the Code of Liberalisation of Current Invisible Operations

CONDITIONS FOR THE ESTABLISHMENT AND OPERATION OF BRANCHES, AGENCIES, ETC OF NON-RESIDENT INVESTORS IN THE BANKING AND FINANCIAL SERVICES SECTOR

GENERAL

1. Laws, regulations and administrative practices shall ensure equivalent treatment of domestic enterprises and of branches or agencies of non-resident enterprises operating in the field of banking or financial services (including securities dealing) so that the establishment of branches and agencies of non-resident enterprises shall not be subject to more burdensome requirements than those applying to domestic enterprises.

AUTHORISATIONS

2. Where the establishment of banks, credit institutions, securities firms, or other financial enterprises is made subject to authorisations:

a) The competent authorities shall make available to each non-resident enterprise applying for authorisation a written statement setting out fully and precisely the documents and information that the applicant must supply for the purpose of obtaining authorisation, and shall ensure that any procedures to be followed prior to the lodging of an application are straightforward and expeditious;

b) Where in addition to legal, financial, accounting and technical requirements (e.g. requirements concerning the form of the undertaking, qualifications of directors or managers, etc) authorisation is also subject to other criteria, the competent authorities shall inform applicant enterprises of such criteria at the time of their application and shall apply these criteria in the same way to both domestic and non-resident enterprises;

c) The competent authorities shall decide on each application for authorisation from a non-resident enterprise not later than six months from the date of which the application has been completed in all particulars and shall without further delay notify the enterprise of their decisions;

d) Where the competent authorities ask a non-resident enterprise for modifications to a completed application for authorisation, they shall inform the enterprise of the reasons for seeking such modifications and shall do so under the same conditions as for a domestic enterprise;

e) Where an application for authorisation by a non-resident enterprise is refused, the competent authorities shall advise the enterprise of the reasons for their decision and shall do so under the same conditions as for a domestic enterprise;

f) Where authorisation is refused, or where the competent authorities have not dealt with an application upon the expiry of the period of six months provided for under sub-paragraph c) above, non-resident enterprises shall have the same right of appeal as domestic enterprises.

REPRESENTATION

3. An enterprise from one Member country operating in another Member country may appoint as its representative any competent person who is domiciled and actually resident in that other country, irrespective of his nationality.

REPRESENTATIVE OFFICES

4. *a)* An enterprise from one Member country may establish a representative office in another Member country, subject to advance notification to the other Member country;

b) A representative office shall be permitted to promote business on behalf of its parent enterprise.

Supplementary explanatory note:

For the establishment of a representative office, the authorities of Members may require that they be given advance notification but they may not maintain an authorisation procedure. By the same token, the activities of a representative office may be limited to promoting business on behalf of its parent enterprise.

SELF-EMPLOYED INTERMEDIARIES

5. Members shall impose no restrictions upon the nationality of persons authorised to act as intermediaries in banking and financial services activities, to operate in any segment of the markets relating to those activities or to become members of institutions such as professional associations, securities or other exchanges or markets, self-regulatory bodies of securities or other market intermediaries.

MEMBERSHIP OF ASSOCIATIONS OR REGULATORY BODIES

6. Members shall be responsible for assuring that discrimination by nationality is not practised in their jurisdiction as to conditions for membership in any private professional association, self-regulatory body, securities exchange or market, or other private association, membership in which it is necessary to

engage in banking or financial services on an equal basis with domestic enterprises or natural persons, or which confers particular privileges or advantages in providing such services.

Supplementary explanatory note:

This obligation goes beyond the usual requirement that Members avoid discriminatory measures in the actions taken by the authorities: in this case, Members are called upon to ensure that the actions of non-official bodies also conform to the standard of non-discriminatory treatment.

PRUDENTIAL CONSIDERATIONS

7. Domestic laws, regulations and administrative practices needed to assure the soundness of the financial system or to protect depositors, savers and other claimants shall not prevent the establishment of branches or agencies of non-resident enterprises on terms and conditions equivalent to those applying to domestic enterprises operating in the field of banking or financial services.

Supplementary explanatory notes:

1. *This comprehensive obligation covers a variety of measures including -- but not restricted to -- those most commonly practised at the present time, namely minimum capital requirements, legally binding financial guarantees provided by parent enterprises and asset pledges which are sometimes required of the branches and agencies of foreign financial institutions.*

2. ***Member countries are required to permit access by branches of non-resident financial institutions to central bank refinancing facilities available in the normal course of ordinary business on the same conditions as resident financial institutions. The obligations do not extend to access by branches of non-residents to lender-of-last-resort facilities.***

FINANCIAL REQUIREMENTS FOR ESTABLISHMENT

8. *a)* Where financial requirements of any kind are imposed for the establishment of a branch or agency of a non-resident enterprise to engage in banking or financial services, the total amount of such financial requirements shall be no more than that required of a domestic enterprise to engage in similar activities.

b) Any financial requirement may be met by payment in the currency of the host country.

c) Any financial requirement may be applied to more than one branch or agency of a non-resident enterprise, but the total of the financial requirements to be furnished by all the branches and agencies of the same non-resident enterprise shall be no more than that required of a domestic enterprise to engage in similar activities.

d) Whenever a ratio or other measure is used for prudential or other purposes, for example, for assessing the liquidity, solvency or foreign exchange position of a branch or agency of a non-resident enterprise, full account shall be taken of the total amount of any financial requirements that have been met in the establishment of such branches or agencies and of any

financial contribution of the same nature that has been provided in excess of such requirements.

e) Whenever a ratio measure is used for prudential or other purposes, the ratio applied to the branches or agencies of non-resident enterprises shall be no less favourable than that applied to domestic enterprises, and shall not differ in any way other than in the replacement of paid-up capital for domestic enterprises by the total amount of any financial requirements that have been met in the establishment of branches or agencies of non-resident enterprises and of any financial contribution of the same nature that has been provided in excess of such requirements.

f) Any other measures used for prudential or other purposes shall be no less favourable to the branches and agencies of non-resident enterprises than to domestic enterprises.

Supplementary explanatory notes:

1. *As the definition of minimum capital requirements, financial guarantees, asset pledges, etc. may vary from country to country and over time, the term "financial requirements" is used to refer to all such measures.*

2. ***Where financial requirements take the form of minimum capital requirements, and where additional financial guarantees are also required, the total amount of financial requirements referred to in paragraph 8b) is meant to include both the minimum capital requirements and the financial guarantees provided when the latter are of legally-binding nature.***

Annex III to Annex A
of the Code of Liberalisation of Current Invisible Operations

AIR TRANSPORT

C/4. Air transport; passengers and freights, including chartering.

Payment by passengers of international air tickets and excess luggage charges; payment of international air freight charges and chartered flights.

Remark: Each Member shall authorise residents of other Member States and its own residents to use its national currency to make the necessary payments on their own account within its own territory in respect of this item.

Annex IV to Annex A
of the Code of Liberalisation of Current Invisible Operations

INTERNATIONAL MOVEMENT OF BANK-NOTES AND TRAVELLERS' CHEQUES, EXCHANGE OF MEANS OF PAYMENT BY TRAVELLERS AND USE OF CASH CARDS AND CREDIT CARDS ABROAD

1. Import of domestic bank-notes

When entering a Member State, non-resident travellers shall be automatically permitted to import at least the equivalent of 1 250 units of account in that Member's bank-notes. Resident travellers returning to their country of residence shall be automatically permitted to import bank-notes of that State up to the total amount exported on their departure therefrom, or lawfully acquired during their stay abroad.

2. Export of domestic bank-notes

When leaving a Member State, resident and non-resident travellers shall be automatically permitted to export at least the equivalent of 150 units of account per person per journey in that Member's bank-notes. No justification shall be required concerning such export.

3. Import of travellers' cheques and foreign bank-notes

When entering a Member State, resident and non-resident travellers shall be automatically permitted to import foreign bank-notes and travellers' cheques regardless of the currency in which they are denominated. This provision does not imply an obligation for the authorities of Member States to provide for the purchase or exchange of travellers' cheques and foreign bank-notes so imported beyond that contained in paragraph 5 below.

4. Export of travellers' cheques and foreign bank-notes

a) Residents

When leaving a Member State, resident travellers shall be automatically permitted to acquire and to export in a proportion left to the traveller the equivalent of at least 1 250 units of account per person per journey in travellers' cheques, regardless of the currency in which they are denominated, and in foreign bank-notes. No request for justification shall be made concerning such acquisition and export. Under this provision, foreign exchange dealers shall be free, within the limits of their national regulations, to obtain

foreign bank-notes and to sell them to travellers. The present provision does not imply any obligation for the authorities themselves to provide such travellers' cheques or foreign bank-notes either directly to the travellers or to foreign exchange dealers.

b) Non-residents

When leaving a Member State, non-resident travellers shall be automatically permitted to export travellers' cheques, regardless of the currency in which they are denominated, and foreign bank-notes up to the equivalent of the total previously imported or lawfully acquired during their stay.

5. Exchange of means of payment: non-residents

Exchange into Member States' currencies.

Non-resident travellers shall be permitted to exchange into means of payment in the currency of any foreign Member State:

i) Means of payment in the currency of another foreign Member State which can be shown to have been lawfully imported; and

ii) Domestic bank-notes which can be shown to have been acquired against such means of payment in the currency of another foreign Member State during their stay.

Under this provision foreign exchange dealers shall be free, within the limits of their national regulations, to exchange the means of payment in question. The provision does not imply any obligation for the authorities themselves to provide such means of payment either directly to the travellers or to foreign exchange dealers.

6. Use of cash cards and credit abroad

The principle of the free use of cash cards and credit cards abroad provided for under Section G of the Code does not imply any obligation for the agencies issuing cash cards or credit cards to amend the rules governing the use of such cards for the settlement of expenditure relating to travel or stays abroad or for obtaining cash abroad.

Annex V to Annex A
of the Code of Liberalisation of Current Invisible Operations

FILMS

Aid to production

1. For cultural reasons, systems of aid to the production of printed films for cinema exhibition may be maintained provided that they do not significantly distort international competition in export markets.

Screen quotas for printed films for cinema exhibition

2. For full-length films made or dubbed in the language of the importing country, internal quantitative regulations may be maintained in the form of screen quotas requiring the exhibition of films of domestic origin during a specific minimum proportion of the total screen time actually utilised over a specified period of not less than one year[1].

3. Original versions of feature films produced in other Member States in a language foreign to that of the importing country shall be:

i) excluded from the calculation of the screen quota for domestic films; or

ii) admitted for exhibition in specialised cinemas which, as a general rule, are not obliged to observe the screen quotas; or

iii) admitted for exhibition in cinemas other than those mentioned in ii) under a global screen quota instead of a screen quota applying to individual cinemas.

4. Short information or documentary films produced in other Member States shall gradually be excluded from the calculation of the screen quota for domestic films.

Freedom from duties, deposits or taxes

5. Printed films shall not be subject to any duties, deposits, or taxes which discriminate against imported films.

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1. Any screen quotas as defined in this provision shall be calculated on the basis of screen time per cinema per year or the equivalent thereof. With the exception of screen time reserved for films of domestic origin, screen times shall not be allocated formally or in effect among sources of supply.

6. Short information or documentary films produced in other Member States shall enjoy certain of the benefits if any, granted to domestic films in this category (e.g. substantial prize awards according to merit, or tax relief on showing).

7. Provided they are intended solely for non-commercial exhibition and are imported by organisations approved by the competent authorities of the country concerned for the purpose of importing such films free from import duties and import taxes, the following categories of films produced in other Member States shall be free from those duties and taxes:

a) newsreels, at least for two copies of each subject;

b) educational, scientific or cultural film recognised as such by:

i) the importing and the exporting country;

ii) or the Fédération Internationale des Archives du Film (FIAF);

c) tourist publicity films, provided they comply with the conditions laid down in Articles 13 *c)* and 14 of the Annex to the Decision of the Council dated 20th February, 1968, concerning administrative facilities in favour of international tourism [C(68)32]. (See Note over page).

Co-production

8. The regulations defining domestically produced films shall be such that any film produced under an international co-production arrangement shall automatically enjoy, in all the Member States that are parties thereto, treatment as favourable as that given to domestically produced films.

NOTES

Tourist publicity films. Conditions for import free of import duties and import taxes, laid down in Council Decision C(68)32. [See paragraph 7 *c)* of Annex V.]

1. Article 13 *c)* of the annex to the Decision of the Council of 20th February, 1968, concerning the importation of tourist publicity documents and articles [C(68)32], lays down that, subject to the conditions laid down in Article 14 of the Annex to the Decision, the following articles (inter alia) shall be admitted temporarily free of import duties and import taxes, without entering into a bond in respect of those duties and taxes, or depositing those duties and taxes, when imported from one of the States chiefly for the purpose of encouraging the public to visit that State, *inter alia* to attend cultural, touristic, sporting, religious or professional meetings or demonstrations held in that State:

Documentary films, records, tape recordings and other sound recordings intended for use in performances at which no charge is made, but excluding those whose subjects lend themselves to commercial advertising and those which are on general sale in the State of importation.

2. Article 14 of the Annex to the Council Decision lays down the facilities provided in Article 13 shall be granted on the following conditions:

a) the articles must be dispatched either by an official tourist agency or by a national tourist publicity agency affiliated therewith. Proof shall be furnished by presenting to the customs authorities of the State of import a declaration made out in accordance with the model in Appendix 1 of the Decision, by the dispatching agency. A list of official national tourist agencies in member States is given in Appendix II of the Decision;

b) the articles must be imported for, and on the responsibility of, either the accredited representative of the official national tourist agency of the State of dispatch, or of the correspondent appointed by the aforesaid agency and approved by the customs authorities of the importing State. The responsibility of the accredited representative or the approved correspondent includes, in particular, the payment of the import duties and taxes which will be chargeable if the conditions laid down in the Decision are not fulfilled;

c) the articles imported must be re-exported without alteration by the importing agency. If the articles granted temporary free admission are destroyed in accordance with the conditions laid down by the customs authorities, the importer shall nevertheless be freed from the obligation to re-export.

3. Finally, Article 14 provides that the privilege of temporary free admission shall be granted for a period of eighteen months from the date of importation or for such further period as the customs authorities may in special circumstances allow.

Annex 3

THE PRECURSORS OF THE OECD CODES: A BRIEF HISTORY

Early Postwar Years

During the period following the Second World War, international trade was seriously hampered not only by high tariffs and quantitative restrictions on the import of goods but also by extensive restrictions on the convertibility of national currencies. Payments between countries were generally governed by bilateral agreements, and exchange controls favoured transactions with "soft" rather than "hard" currency countries. The need to roll back restrictions and discriminatory arrangements of this kind was recognised in the multilateral efforts that led to the International Monetary Fund Agreement and the General Agreement on Tariffs and Trade. The precursors of the OECD Codes of Liberalisation of Current Invisible Operations and of Capital Movements grew out of this same need.

The post-war effort to promote the liberalisation of trade and payments among European countries began with the formation in April 1948 of the Organisation for European Economic Co-operation (OEEC). The founder members of the OEEC were Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and United Kingdom. Also participating in the work of the Organisation were Canada and the United States as "associate members" and Spain and Yugoslavia as countries with "special status".

The Charter of the OEEC was very broad. The seventeen member states pledged themselves "to combine their economic strength and to join together to make the fullest collective use of their individual capacities and potentialities". They also agreed to submit to regular examinations of their internal economic policies, including those concerning the development of industrial and agricultural productivity.

Besides these general undertakings, the OEEC members agreed on specific arrangements aimed at freeing payments between each other from the constraints of bilateral agreements. The Intra-European Payments Agreements of 1948 and 1949 were followed in August 1950 by the establishment of the European Payments Union and a new era was opened. For the first time, the member countries committed themselves to a fully multilateral payments system, bolstered by financing arrangements that could be called upon in times of balance-of-payments difficulty. This achievement was accompanied by real progress in the gradual removal of barriers to trade and current invisible operations.

Liberalisation Instruments of the OEEC

The first steps in translating the OEEC philosophy into practice were taken as early as July 1949 when the member countries agreed that quantitative restrictions on trade between each other should be gradually abolished and that, as far as possible, corresponding actions should be taken in the field of tourism and other services. Over the following year, as the proportion of quota-free trade in goods ("visible" trade) was raised to 60 per cent and then to 75 per cent, important progress was also made in the liberalisation of current "invisible" operations. In January 1950, it was agreed to abolish all restrictions on current "invisible" operations connected with the import of goods freed from quotas, to relax restrictions on other operations to the extent that the balance-of-payments position allowed, and to avoid imposing any new restrictions on current operations. Just four months later, the members agreed on a firm provision for liberalising 32 items of invisible transactions and transfers, while fourteen other items were listed for treatment in as liberal a manner as possible. The "Code of Liberalisation of Trade", established in 1950, was extended in July 1951 to include services and other current "invisible" operations, notably those directly related to economic activity or international trade, or arising out of income from work or capital. During the rest of the 1950s, the resulting "Code of Liberalisation" was strengthened in various ways as the basic principles incorporated in the present OECD Codes were developed and refined.

The effort to liberalise capital movements began later and proceeded more gradually than that for current invisible operations. In the early post-war period, the OEEC member countries did not feel they could accept obligations to liberalise capital movements, particularly those involving capital exports. In 1955, however, an agreement was reached on a Recommendation that included limited provisions dealing with several specific matters such as the use of non-resident-owned blocked funds and the re-transfer of the proceeds of liquidated direct investments.

A more decisive step was taken in December 1957 when the Organisation agreed on firm obligations requiring member countries to allow all transfers in connection with the making and the liquidation of inward direct investments. In 1959, a Code of Liberalisation of Capital Movements was adopted. The new Code was modelled on the earlier Code dealing with current invisible operations although its obligations were less demanding. OEEC Members were not required to commit themselves to the objective of complete freedom of capital movements and the scope of the specific operations to be liberalised at that time was quite narrow.

Adoption of the OECD Codes of Liberalisation

The OECD was formed in September 1961, succeeding the OEEC. In addition to the seventeen former members of the OEEC, the original membership of the OECD included Canada, Spain and the United States. The Commissions of the European Economic Community and of the European Atomic Energy Community as well as of the High Authority of the European Coal and Steel community also took part in the work of the Organisation by virtue of Supplementary Protocol No. 1 to the Convention (those Commissions were merged into a single Commission of the European Communities on 1 July 1967).

The Member countries of the new Organisation agreed to "pursue their efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital movements". This solemn undertaking, which was expressed in the OECD Convention, was given life and form for services and capital movements in the twin Codes of Liberalisation of Current Invisible Operations and of Capital Movements that were adopted shortly afterwards on 18th December 1961.

Annex 4

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