



MODIFICATIONS OF OECD COUNTRIES' POSITIONS UNDER THE NATIONAL TREATMENT INSTRUMENT

DECISION ADOPTED BY OECD COUNCIL ON 16 JULY 2009

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Investment Division

**DECISION OF THE COUNCIL
AMENDING OECD COUNTRIES'
POSITION UNDER THE NATIONAL TREATMENT INSTRUMENT**

THE COUNCIL,

Having regard to the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960 and, in particular, to Articles 2 c), 2 d), 3, 5 a) and 12 thereof;

Having regard to the Declaration by Governments of OECD Member countries on International Investment and Multinational Enterprises [C(76)99/Final] as last amended on 27th June 2000 [C/M(2000)17/FINAL], hereinafter called "the Declaration";

Having regard to the Third Revised Decision of the Council on National Treatment C(91)147/FINAL, and the related Recommendations C(86)55(Final), C(87)76(Final), C(88)41(Final), C(88)131(Final) and C(89)76(Final);

Having regard to the Report by the Investment Committee on the Modifications of OECD countries' positions under the Codes of Liberalisation of Capital Movements and of Current Invisible Operations and the National Treatment instrument [C(2009)95];

DECIDES:

that the list of exceptions to National Treatment by OECD countries in Annex A to the Third Revised Decision of the Council on National Treatment read as follows:

AUSTRALIA

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Tran-sectoral: Proposals by foreign persons to establish new businesses in Australia involving total investment of \$A 10 million or more and proposals for the acquisition of existing businesses with total assets valued at A\$100million or more are notifiable. Proposals where the target assets or the planned investment outlays are valued above these thresholds but below \$A200 million will normally be approved without detailed examination. Proposals where the valuation is \$A200 million or more will be approved, unless judged by the Treasurer to be contrary to the national interest. Exceptions to these thresholds are outlined below.

Real estate: Acquisitions of developed non-residential commercial real estate valued at less than \$A 50 million are generally exempt (unless the property is subject to heritage listing, then the exemption threshold is \$A 5 million). There is an authorisation requirement for all other acquisitions of real estate unless exempt by regulation. Approval is normally granted for residential and commercial land for development and for acquisitions of dwellings, direct from a developer "off the plan", either while under construction or completed but never occupied or sold, provided that no more than 50 per cent of the total number of dwellings are sold to foreign investors. Foreign acquisitions of established residential real estate are not normally approved except in cases involving temporary residents who require accommodation for a period in excess of twelve months, subject to resale of the property upon departure. Foreign persons who are entitled to be permanently resident in Australia are not required to seek approval to acquire any form of residential real estate. Foreign acquisition of residential real estate (including condominiums) within a designated Integrated Tourist Resort is exempt from authorisation.

Air transport: Cabotage reserved to Australian based airlines.

Air transport: Foreign investors can generally expect approval to acquire up to 100 per cent of a domestic carrier or establish a new aviation business, unless this is contrary to the national interest. Foreign ownership of Australia's International flag carrier, Qantas, is not to exceed 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 25 per cent of Qantas' equity.

Maritime transport: In order to be registered as an Australian vessel, a ship needs to be majority Australian owned (i.e. an Australian citizen, a body corporate established by or under a law of the Commonwealth or of a State or Territory of Australia).

Airports: In relation to airports offered for sale by the Commonwealth, there is a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports.

Telecommunications: The *Telstra Corporation Act 1991* limits aggregate foreign ownership in Telstra to 35 per cent of the Telstra shares that are not Commonwealth held. The maximum

individual foreign ownership allowed in Telstra is 5 per cent of the Telstra shares that are not Commonwealth held. The Australian Government is required to hold at least 50.1 per cent of the voting shares in Telstra.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

I. Investment by established foreign-controlled enterprises

Victoria

Gaming and Betting: Foreign shareholdings in TABCORP Holdings Limited is restricted to 2.5 per cent for an individual (unless a certificate relating to the person's shareholding is in forces permitting up to 5 per cent) and 40 per cent in aggregate.

Western Australia

Agricultural: Authorisation requirements for transfer of pastoral leases to ensure majority Australian ownership.

Western Australia

Casinos: Foreign ownership of a casino limited to 40 per cent.

Western Australia

Fishing: Foreign ownership in rock lobster processing is limited to 20 per cent; restrictions are placed on non-residents becoming directors or office bearers in corporations undertaking rock lobster processing. Pearling industry licences are restricted to Australian citizens and permanent residents and Australian owned or controlled corporations.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

AUSTRIA

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Cabotage reserved to national airlines.

Maritime transport/fishing: Requirements to obtain the national flag: citizenship, residence in Austria, and more than 50 per cent local ownership, with principal location and full operational control in Austria in all cases of non-financial holding. The flag is required for registration of vessels.

Accountancy: Investment by non-EC residents in accountancy services exceeding 49 per cent.

Legal, engineering and architectural services: Investment by non-EC nationals in legal services and engineering and architectural services exceeding 49 per cent.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

I. *Investment by established foreign-controlled enterprises*

Real estate: Authorisation requirement for acquisition of real estate.

II. *Official aids and subsidies*

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

BELGIUM

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Financial services: Prior authorisation by the Ministry of Finance required for public issues, offers for sale on the security market, listing on stock exchanges and other financial instruments created by a private person, a company or an institution under non-EC control, as well as offers for sale of Belgian securities by a private person, a company or an institution under non-EC control.

Accountancy and legal services: Investment by non-EC nationals in accounting and legal services.

Maritime transport: The King, in line with the practice of major maritime countries, determines the conditions of ship registration (the right to fly the national flag).

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

Public works: Contracts for public works when 25 per cent or more is financed or subsidised by the state or another public authority can only be awarded to the following: (1) private persons, who must be of Belgian nationality or from another EC Member state, and must be established within the EC; (2) companies, which must be organised in conformity with Belgian legislation or that of another EC Member state, and must either have their central administration or principal establishment within the EC or must have their headquarters within the Community, on the condition that their activity has an effective link with the economy of an EC Member state.

Public markets: Restrictions concerning access to public contracts in the area of development co-operation.

V. *Access to local finance*

None.

B. **Exceptions by territorial subdivisions**

None.

CANADA

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Trans-sectoral: A review requirement under the Investment Canada Act applying to acquisitions of large Canadian businesses by foreign investors. For investors from WTO Member countries, the review threshold is \$312 million in 2009. Indirect acquisitions of Canadian businesses by WTO investors are not reviewable. The review threshold for non-WTO member countries is \$5 million for direct acquisitions of Canadian businesses and \$50 million for indirect acquisitions. For all non-Canadian investors, acquisitions of Canadian cultural businesses are also reviewable at these lower thresholds (\$5 and \$50million). The threshold for direct acquisitions by WTO members is also automatically adjusted annually according to a formula in the Act to reflect changes in GDP. Additionally, specific acquisitions or establishments of new businesses in designated types of business activities relating to Canada's cultural heritage or national identity may be reviewed.

Uranium: 51 per cent minimum Canadian ownership requirement in individual uranium mining properties at the stage of first production. Canadian ownership of less than 51 per cent is permitted if the project is in fact Canadian-controlled, as defined in the Investment Canada Act. The Cabinet can grant exemptions to the policy when Canadian partners cannot be found.

Fishing: Enterprises which have more than 49 per cent foreign ownership are not permitted to hold Canadian commercial fishing licences.

Air transport: Only Canadians (citizens, permanent residents or companies incorporated in Canada that are controlled by Canadians and of which at least 75 per cent of the voting interests are owned and controlled by Canadians) may register an aircraft as "Canadian" and obtain Operator Certificates to provide the following commercial air services: (1) domestic air services; (2) scheduled international air services where those services have been reserved to Canadian carriers under air services agreements; (3) non-scheduled international air services where those services have been reserved to Canadian carriers under the Canada Transportation Act; (4) specialty air services.

Maritime activities: To register a ship in Canada, the owner must be: 1) a Canadian citizen or permanent resident; 2) a Canadian corporation; or 3) a foreign corporation, if the ship is not registered elsewhere and either: a Canadian subsidiary, an employee or director in a branch office in Canada, or a Canadian ship management company is acting with respect to all matters relating to the ship.

Broadcasting and cable television: 20 per cent foreign ownership limitation for broadcasting and cable television broadcasting.

Book publishing/distribution: Canadian-controlled joint venture requirement for investment in Canadian-controlled businesses or in the establishment of new businesses. In extraordinary

circumstances an exception to the limitation on the acquisition of an existing Canadian-controlled business by a non-Canadian investor may be considered. Investment in foreign-controlled businesses in Canada is allowed where review determines the investment likely to be of net benefit to Canada.

Film distribution: Canadian-controlled joint venture requirement for investment in Canadian-controlled businesses; investment in foreign-controlled businesses is subject to government discretion; investment to establish new businesses must be directly linked to the importation and distribution of proprietary products (i.e. the importer must own world rights of the film/video or be a major investor in the product).

Telecommunications: Foreign ownership of voting shares of Canadian common carriers is limited to 20 per cent direct and 33⅓ per cent indirect (46.7 per cent combined direct and indirect). Facilities-based telecommunications service suppliers must be controlled by Canadians. There are no restrictions on foreign ownership of non-voting shares.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

Trans-sectoral: Lower federal tax rates apply to a limited amount of the active business income of small Canadian-controlled private corporations. Such corporations may also be eligible for enhanced tax credits for research and development or industrial expenditures.

IV. *Government purchasing*

Consultancy: 51 per cent minimum Canadian ownership required for eligibility for contracts with the Canadian International Development Agency.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

I. *Investment by established foreign-controlled enterprises*

Alberta, British Columbia, Saskatchewan

Trans-sectoral: Foreign ownership restrictions or residency requirements apply to the purchase or lease of Crown land.

Alberta

Real estate: Restrictions on the purchase of privately owned, non-urban real estate for foreign citizens and foreign-controlled corporations.

British Columbia

Forestry: Canadian citizenship or permanent residency is required of all applicants seeking to obtain a woodlot license.

British Columbia

Fishing: Nationality requirement to obtain a fish buyer's license.

British Columbia

Mining: Citizenship requirement to obtain a free miner certificate.

Quebec

Films: Nationality/residency requirements for film distributor's license.

Alberta, Ontario

Financial services: Foreign ownership limitations for trust companies (Alberta and Ontario), and loan companies and mortgage broking (Ontario).

Quebec

Insurance: Foreign ownership limits for licensing.

II. *Official aids and subsidies*

Nova Scotia

Financial services: Farm loans for individuals are restricted to Canadian citizens 19 years of age or older while corporate farm loans are restricted to companies whose majority shareholders are Canadian citizens and residents of the Province. Loans for individual fishermen are restricted to Canadian citizens and residents of the Province. Loans for all other enterprises are provided without restriction provided that business operations are resident in Nova Scotia or employ Nova Scotia workers. Additional financial incentives are available for new businesses or expansions of existing business that create significant employment. All loans are provided at market rates.

Alberta, Saskatchewan

Agriculture: Various income support programmes provide financial assistance to farmers. These programmes include loans or loan guarantees, revenue insurance, crop price stability, and rebates for such items as fuel and fertilisers. Eligibility is generally restricted to Canadian citizens or landed immigrants normally resident in the province.

Quebec

Books, recording industry, video industry: Nationality, residence and foreign ownership requirements for financial aid granted by the government.

Alberta

Financial services: Priority for loans and assistance given to enterprises owned and operated by Canadian citizens resident in the province.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

CZECH REPUBLIC

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: ownership of more than 49 per cent of the capital of a Czech airline company if the investor is not from an EC country.

Gaming: (Lotteries and other Similar Games Act No. 202/1990 as amended).

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

DENMARK

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Cabotage reserved to national carriers.

Air transport: Licence to operate an airline is granted only to companies majority-owned by Danish nationals.

Air transport: An aircraft may not be registered in Denmark unless it is predominantly owned by Danish nationals or by companies or other entities controlled by Danish nationals.

Accountancy services: Investment in accountancy services by non-EC residents and in legal services by non-residents.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

FINLAND

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Air cabotage reserved to national carriers.

Air transport: Government authorisation is required to engage in commercial aviation.

Maritime transport: Cabotage reserved to national flag.

Legal services: EC nationality and residency requirement for investment in a corporation or partnership carrying out the activities “asianajaja” or “advokat”. The exception does not apply to investment in a corporation or partnership supplying other legal services. EC residency requirement for serving as a representative before courts. Other persons may represent clients before courts if, with regard to circumstances, the court considers it appropriate.

Auditing: Investment exceeding 49 per cent in auditing companies by non-EU residents.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

FRANCE

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Legal services:

1. In a SCP [Societe Civile Professionnelle], 100% of partners owning 100% of the shares of the company must be lawyers (“avocats”) admitted to the Bar in France.
2. In a SEL [Societe d’ Exercice Liberal], more than 50% of registered capital and voting rights must be owned by lawyers (“avocats”) admitted to the Bar in France. Ownership of the rest of the registered capital is subject to specific rules and is reserved to certain categories of natural persons or legal entities.

Air transport: Authorisation to engage in activities in this field is granted only when the enterprise is owned entirely or majority controlled by nationals of the European Economic Area or Switzerland.

Maritime transport:

1. In order to be registered in France, ships must either:
 - a) be owned at least 50 per cent by physical persons of the European Economic Area;
 - b) be owned at least 50 per cent by moral persons headquartered in European Economic Area;
 - c) be owned at least 50 per cent by physical persons, as described in (a), and by moral persons, as described in (b).

Authority: Act 2001-43 of 16 January 2001.

2. Maritime cabotage is open to ships flying the flag of EC and the EEA member countries.

Authority: Law 2001-43 of 6 January 2001 and Regulation EC 3577-92 of of 7 December 1992.

Inland waterways:

1. The right to transport goods and persons between two points on the inland waterways covered by the Revised Convention for the Navigation of the Rhine is reserved to vessels owned and operated by either nationals of Contracting States of that Convention or Member States of the EC, or companies based in any of these States, which are majority-owned and controlled by nationals of these States.

2. The right to transport goods or passengers by inland waterway within an EC country (in which the enterprise is not established), between EC countries and in transit through them, is reserved to vessels owned by either nationals of EC countries or companies based in any of the EC countries, which are majority-owned by nationals of these EC countries.

Authority: Revised Convention for the Navigation of the Rhine, Regulation (EEC) N.392/91 of 16 December 1991 and Regulation (EC) N.1356/96 8 July 1996.

Press: Without clauses of national assimilation or reciprocity, foreigners may not acquire, directly or indirectly, more than 20 per cent of the equity capital or voting rights of enterprises that issue press publications in the French language.

Authority: Law 86 of 1 August 1986.

Radio and television: Without a reciprocity clause, nationals of OECD countries that are not members of the EC or the European Economic Area may not hold, directly or indirectly, more than 20 per cent of the equity capital or voting rights of a company licensed to provide terrestrial Hertzian television or radio broadcasting services in the French language.

Authority: Law of 86-1067 of 30 September 1986.

Tourism: National tour guide-interpreter professional card or regional tour guide interpreter professional card may be awarded to nationals of countries not members of the EC or the European Economic Area under condition of a French diploma or of a successful French professional examination granting access to the profession.

Authority: Directive 2005/26/CE of 7 September 2005 and Ordinance 2008-507 of 30 March 2008.

Privatisation: Foreign participation in newly privatised companies may be limited to a variable amount, determined by the government on a case-by-case basis, of the equity offered to the public.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government procurement

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

GERMANY

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Licence to operate an air transport enterprise is granted only to companies majority-controlled by nationals from EEA-countries.

Air transport: Cabotage reserved, in principle, to airlines from EEA-countries.

Maritime transport: Registration in the German Ship Register is reserved to ships owned by EC-nationals or companies controlled by EC-nationals, domiciled in the EC. Flag is required to engage in marine cabotage and fishing within territorial waters.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

Rail transport: Access to public rail infrastructure is reserved to:

- Railway undertakings established in Germany;
- International groupings of railway undertakings; and
- Railway undertakings providing international combined freight transport.

Access is also possible on the basis of reciprocity or governmental agreement.

II. *Official aids and subsidies*

Trans-sectoral: Branches of enterprises that are not established as legally independent companies are excluded from the provision of financial assistance or guarantees in some sectors.

Manufacturing-Shipping: The financial assistance programme to the German shipping industry provides for funds to be granted only to the owners of German flag ships.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

GREECE

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Real estate: Non-EC controlled enterprises are not allowed to acquire land rights in border areas. The prohibition applied to border land acquisition by non-EC enterprises may be waived by means of a decision by the Minister of National Defence.

Mining: Concession required for mining and mineral rights for non-EC controlled enterprises.

Air transport: Ownership in Greek airline companies is limited to 49 per cent of the capital for non-EC controlled enterprises. Cabotage is reserved to national and EC airline companies.

Television and radio: Non-EC foreign-controlled enterprises may hold up to 25 per cent of capital in television (including cable television) operators, and up to 49 per cent of capital in radio operators.

Maritime transport and fishing: Non-EC ownership of Greek flag vessels is limited to 49 per cent. Cabotage is reserved to national and EC flag vessels, including also voyages with legs in foreign ports.

Accountancy: Investment by non-EC nationals in the accountancy sector.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

HUNGARY

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Licences for domestic transport of persons or goods are reserved to undertakings majority-owned and effectively controlled by EC states or nationals.

Authority: Law on commercial aviation.

International waterways: Shipping licences are reserved to EC nationals or enterprises with majority EC ownership.

Authority: Decree 17/1992, Minister of Transport.

II. Official aids and subsidies

Preferential credit facilities and credit guarantees for promoting small enterprises may be reserved to Hungarian nationals and companies with majority Hungarian ownership.

Authority: Government decree No. 59/1992; Act XI of 1993.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

ICELAND

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Trans-sectoral: Authorisation requirement for investment by a single investor exceeding ISK 250 million and for investment in aquaculture, communications, manufacturing other than power intensive industries, trade and services, where total non-resident ownership exceeds 25 per cent. Foreign investment is accepted under reciprocity conditions. Authorisation may be refused if foreign investment is deemed to "seriously reduce competition" or to have an "undesirable effect on the Icelandic Economy".

Trans-sectoral: Investment by foreign states or state-owned enterprises is prohibited unless an authorisation is granted.

Real estate: Foreign investment - other than for direct business use - is restricted, with the exception of acquisitions by limited liability companies in which non-residents do not own more than 20 per cent of the capital and do not hold a majority of the total voting power.

Fishing and whaling: Foreign investment in companies engaged in fishing and in companies applying for a licence to carry out whaling within the Icelandic territorial waters is prohibited.

Primary fish processing: Foreign investment in primary fish processing (i.e. excluding retail packaging and later stages of preparation of fish products for distribution and consumption) is prohibited. No foreign ownership limitations apply to further fish processing.

Natural resources: Foreign ownership of the exploitation rights of hydro and geothermal energy and investment in energy production and distribution by foreign persons is prohibited.

Banking: Foreign investment in Icelandic banks limited to 25 per cent of the capital stock.

Air transport: Foreign investment in air transport companies limited to 49 per cent of capital stock.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

IRELAND

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Air transport: Cabotage is generally reserved to airlines licensed in the state, and direct majority investment in air transport by non-EC states or nationals of non-EC states may be restricted.

Fishing: Registration of fishing vessels requires ownership by citizens or companies from an EC Member State and a license to fish within Irish fishing limits. The acquisition by non-EC nationals of sea fishing vessels registered in Ireland may be restricted.

Land for agricultural purposes: Acquisition by non-EC nationals of land for agricultural purposes may be restricted.

Flour milling activities: Investment in flour milling activities by enterprises controlled by non-EC nationals may be restricted.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

ITALY

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Fishing: Fishing in territorial waters reserved to nationals.

Air transport: Cabotage is reserved to national companies unless international conventions on air transport services state otherwise. Companies from EC countries are authorised to undertake cabotage that represents an extension of an international service.

Air transport: Registration of aircraft is reserved for Italian citizens, the State, Provinces, State authorities and institutions, and companies headquartered in Italy, with at least two-thirds of the share capital owned by Italian citizens. Air transport companies holding licences issued in Italy are subject to the nationality requirements established by Regulation 2407/92, which provides for the control of enterprises by EC States or Community citizens.

Air transport: Non-national airlines are not permitted to establish their own ground handling facilities in airports which are either directly managed by the State or awarded in partial concession to companies with essentially public capital.

Maritime transport: Maritime cabotage as well as maritime services of port areas are reserved for Italian and Community-owned ships. Cabotage between islands remains exclusively reserved to Italian ships.

II. *Official aids and subsidies*

Films: Aids, subsidies and credit facilities are available for Italian film production or co-production with foreign-controlled enterprises from countries with co-production agreements. Credit facilities may also be awarded for the distribution of films by Italian-owned companies. EC companies are assimilated to Italian companies.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

JAPAN

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Land: Reciprocity conditions may apply for the acquisition of land by foreign-controlled enterprises.

Agriculture, forestry, fisheries: Foreign-controlled enterprises may be restricted from engaging in agriculture, forestry, and fisheries.

Mining: Foreign-controlled enterprises may be restricted from engaging in mining.

Oil industry: Foreign-controlled enterprises may be restricted from engaging in oil industry, including development, refining, sales and stockpiling.

Leather and leather products manufacturing: Foreign-controlled enterprises may be restricted from engaging in leather and leather products manufacturing.

Air transport: A license to operate an air transport business may be granted only to enterprises where less than one-third of the voting rights are held by non-Japanese nationals and none of its representatives and less than one-third of members of the board of directors are non-Japanese. Cabotage and other domestic services using aircraft are reserved to national airlines.

Telecommunications: Foreign capital participation, direct and/or indirect, in Nippon Telegraph and Telephone Corporation (NTT) must be less than one-third.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

KOREA

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Agriculture: This business sector is allowed except for the growing of rice and barley. Farming of beef cattle and wholesale of meat should be carried out by enterprises in which only foreign investors hold less than 50 per cent of the share capital.

Fisheries: Inshore and Coastal fishing is allowed to foreign-controlled enterprises with foreign investment ratio less than 50 per cent.

Publishing: Publishing of newspapers issued daily or three or more times per week is permitted to enterprises in which foreign investors hold less than 30 per cent of the share capital. Publishing of magazines and periodicals (containing weekly newspapers) is permitted to foreign-controlled enterprises with foreign investment ratio less than 50 per cent.

News agencies: Foreign investment ratio shall be less than 25 per cent.

Energy: In electric power generation sector, foreign investment ratio must not exceed 30 per cent of the total domestic power generation facilities. In power transmission, distribution and sales sector, foreign investment ratio must be less than 50 per cent, and the number of shares with voting rights owned by foreign nationals must not exceed those owned by the largest domestic shareholder. Processing of nuclear fuel is allowed except for the manufacturing and supplying of nuclear fuel for nuclear power plants.

Maritime Transport: Coastal water passenger and freight transport is allowed only between North and South Korea. In addition, foreign investors must enter into joint ventures with domestic shipping companies, and foreign investment ratio shall be less than 50 per cent.

Air Transport: Air transport is allowed to the foreign enterprises in which foreign investors hold less than 50 per cent of the share capital.

Telecommunications: A foreign government, foreign person, or deemed foreign person may not in the aggregate hold more than 49 per cent of the total voting shares of a facilities-based supplier of public telecommunications services. In addition, with respect to KT, a foreign government, foreign person, or deemed foreign person may not be its largest shareholder, except if they hold less than 5 per cent of its total voting shares. For the purpose of this entry, a juridical person organised under Korean law in which a foreign government or a foreign person is the largest shareholder and holds 15 per cent or more of that juridical person's total voting shares is a "deemed foreign person" unless the juridical person holds less than 1 per cent of the total voting shares of a facilities-based supplier of public telecommunications services.

Banking: Commercial banking and local banking are permitted. However, special banks, National Agricultural Cooperative Federation, National Federation of Fisheries Cooperatives and Livestock Cooperative Federation are excluded. Foreign investment in Securities investment and trust businesses is permitted. Foreign investment in trust fund related businesses is allowed wherein the commercial or special banks conduct businesses in conjunction with their primary business.

Broadcasting: Radio and TV broadcasting are wholly closed. However, program providing broadcasting (excluding the comprehensive programming channels and the specialised news program providers) and cable broadcasting are allowed when foreign investment is 49 per cent or less, and satellite broadcasting is allowed when foreign investment is 33 per cent or less.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

None.

LUXEMBOURG

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport/Land transport: Some restrictions may apply to regular scheduled air transport and public transport.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

MEXICO

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Trans-sectoral: Acquisitions exceeding a total of 49 per cent of the equity of the Mexican enterprise are subject to review if the total value of the assets of the enterprise to be acquired exceeds US\$150 million.

Authority: Foreign Investment Law 1993.

Real estate: Acquisition of land used for agriculture, livestock or forestry purposes is not permitted. However, "T" shares which represent the value of such land may be purchased by foreign-controlled enterprises up to 49 per cent of the value of the land.

Acquisition of land for residential purposes by foreign-controlled enterprises is not permitted.

Authority: Mexican Constitution; Foreign Investment Law 1993; Agrarian Law.

Oil and gas: Only Mexican nationals and Mexican companies with a foreigner exclusion clause may engage in retail trade in gasoline and distribution of liquefied petroleum gas. Participation in the supply of fuels and lubricants for ship, aircraft and railroad equipment may not exceed a total of 49 per cent of equity. Investment in the construction of oil pipelines and other derivative products and oil and gas drilling may be authorised above a total of 49 per cent of equity.

Authority: FIL; Reglementary Law to Article 27 of the Mexican Constitution in the Oil Sector and its Regulations; Regulations on Gas Distribution.

Fishing: Foreign investment is permitted up to 49 per cent in fishing in coastal and fresh waters or in the Exclusive Economic Zone and up to 100 per cent in aquaculture.

Authority: FIL, Fisheries Law.

Financial institutions: investment in financial institutions as follows

- a) investment exceeding 49 per cent of the paid-in capital in insurance companies, general deposit warehouses, bonding companies and foreign exchange firms;¹
- b) ownership of at least 51 per cent needs to be held of the common stock in a subsidiary of the following type: bonding companies, general deposit warehouses, foreign exchange firms, pension funds and managing companies and securities specialists, by non-resident financial institutions of the same general type of activities;
- c) ownership of at least 51 per cent needs to be held of the common stock in a subsidiary of managing companies of investment companies, and of the fixed stock of investment companies, by non-resident financial institutions of the same general type of activities;
- d) ownership of at least 51 per cent needs to be held of the common stock in a subsidiary of the following type: banks, securities firms, insurance companies, leasing companies, factoring companies and limited scope financial institutions (Sofoles), by non-resident financial institutions of the same general type of activities;
- e) ownership of at least 51 per cent and up to a total of 100 per cent needs to be held of the common stock of existing financial institutions;
- f) If the sum of the authorised capital of commercial banks owned and controlled by investors from OECD countries, measured as a percentage of the aggregate net capital of all commercial banks in Mexico, reaches 25 per cent, Mexico may request consultations with the OECD Member countries on the potential adverse effects arising from the presence of commercial banks of the other OECD Member countries in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultation shall be completed expeditiously. In considering the potential adverse effects, the OECD Member countries shall take into account:
 - 1) the threat that the Mexican payments system may be controlled by non-Mexican persons;
 - 2) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange rate policy effectively; and
 - 3) the adequacy of the provisions of the Codes with respect to financial services in protecting the Mexican payments system.
- g) Subsidiaries of foreign financial institutions may not establish branches, subsidiaries or agencies outside Mexico.

¹ Pursuant to the Credit Institutions Law and the General Law of Organizations and Auxiliary Credit Activities of 2006, "multiple-scope financial institutions" may engage in granting credit, financial, leasing and factoring activities without a prior authorization or licensing process. Financial leasing companies, factoring companies, securities advisory companies and managing companies of investment companies having been already in operation in 2006 may continue their operations until 2013, with the previous limit of 49 per cent foreign ownership.

Authority: FIL, Credit Institutions Law; Law for the Regulation of Financial Groups; Stock Market Law; General Law for Credit Organisations and Auxiliary Activities; Federal Bonding Institutions Law; Insurance Institutions General Law; Investment Companies Law.

Air transport and related services: Foreign investment is permitted up to a total of 25 per cent in national air transport, specialised air services and aero taxi services and up to a total of 49 per cent of equity in the administration of air terminals. Full ownership may be authorised in the administration of air terminals.

Authority: Mexican Constitution; General Means of Communication Law; FIL; Law on Nationality.

Maritime transport and related services: Foreign investment is permitted up to a total of 49 per cent of equity in interior navigation and coastal sailing – other than tourist cruises and the exploitation of dredges and other naval devices for ports where foreign investment is permitted up to 100 per cent – in integral port administration and port pilot services for interior navigation; and foreign investment may be authorised up to 100 per cent in foreign commerce shipping and port services pertaining to interior navigation.

Authority: Mexican Constitution; FIL; Law on Navigation; Law of Ports; Law on Nationality.

Radio and television broadcasting: Radio and television broadcasting (excluding cable television) are reserved to Mexican nationals and Mexican companies with a foreigner exclusion clause. Foreign investment through a Mexican corporation is permitted up to 49 per cent of equity in cable television.

Authority: Radio and Television General Law; Regulations of Cable Television; FIL and its Regulations.

Telecommunication services: Foreign investment in the telecommunications sector is permitted up to 49 per cent of equity through a Mexican corporation, except in cellular telephony where foreign investment may be authorised above a total of 49 per cent of equity. Investment in videotext and enhanced packet switching is free.

Authority: Regulations to the FIL.

Newspapers: Foreign investment in newspapers for exclusive internal circulation may not exceed a total of 49 per cent of equity.

Authority: FIL.

Legal services: Investment by foreign nationals in legal services² exceeding 49 per cent of equity, unless an authorisation is granted.

Education services: Investment by foreign nationals in private education services exceeding 49 per cent of equity, unless an authorisation is granted.

²

A professional license in law is required to be a public notary or a commercial public notary. Only a Mexican national by birth may be licensed as a public notary or a commercial public notary. Neither a public notary, nor a commercial public notary may have a business affiliation with any person who is not licensed in the same category of public notary.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

None.

NETHERLANDS

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Generally, nationality and ownership requirements apply for license to operate an airline.

Air transport: Cabotage reserved to airlines from EC-countries.

Maritime transport: National flag is reserved for ships owned by nationals of an EC country, Efta or Switzerland or by companies incorporated under the law of an EC country, one of the countries, islands or territories indicated in article 299, paragraph 2, 5 and 6 under c of the EC-Treaty, Efta or Switzerland, and having their actual place of business in the Netherlands.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

NEW ZEALAND

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Trans-sectoral: A foreign-controlled enterprise already established in New Zealand requires authorisation from the Overseas Investment Commission: 1) to establish a new business where the total expenditure to be incurred exceeds NZ\$ 10 million; 2) for acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand company where either the total consideration payable or the total assets of the business being acquired exceed NZ\$ 10 million; 3) for all acquisition of assets and of share participation exceeding 25 per cent regardless of their value, in specified sensitive sectors (currently broadcasting, commercial fishing, and rural land).

Rural land: Specific provisions pertaining to the acquisition of rural land: foreigners wishing to purchase rural land must demonstrate that the acquisition will give rise to significant benefits to New Zealand. There are no restrictions as to a specific maximum level of allowable foreign ownership.

Fishing: Purchase of fishing quota is restricted to enterprises where 75 per cent or more of the voting rights are held by New Zealand residents.

Air transport: Air New Zealand privatisation includes a 35 per cent foreign ownership limit. The sale of Air New Zealand entailed the establishment of three classes of shares: "A" shares available to New Zealand nationals only; "B" shares limited to 35 per cent of total equity and available to overseas persons; and the "Kiwi" shares held by the New Zealand government. The company's articles of association cannot be amended without the consent of the holders of the "Kiwi" share.

Air transport: Substantial ownership and effective control of international airlines operating scheduled services to/from New Zealand to be vested in the designating country under the respective bilateral agreements or nationals of that country.

Telecommunications: No person who is not a New Zealand national shall have a relevant interest in more than 49.9 per cent of the total voting shares in Telecom Corporation of New Zealand Limited for the time being without, and except in accordance with the terms of, the prior written approval of the Kiwi Shareholder.

II. *Official aids and subsidies*

Audio-visual: Payment of subsidies for production, distribution, exhibition and broadcasting of audio-visual works are limited to New Zealand persons and companies.

III. *Tax obligations*

Trans-sectoral: Branches of foreign companies operating in New Zealand subject to: 1) a higher rate of income tax; 2) non-resident withholding tax imposed on certain classes of payments to non-residents; 3) assessment of taxable income from films, insurance, and shipping.

Mining: Mining income of a non-resident mineral mining operator is taxed at a flat rate being the prevailing non-resident company rate. Non-resident mineral mining operators may not offset mineral mining losses against non-mining income.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

None.

NORWAY

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Fishing: As a general rule, processing, packing or re-loading fish, crustaceans and molluscs or parts and products of these, is not allowed on a foreign-controlled vessel inside the fishing limits or the Norwegian Exclusive Economic Zone.

Authority: Fishing Limit Act of 17/06/66; Economic Zone Act of 17/12/76.

Fishing: To obtain ownership, or part in, registered fishing vessel, a 60 per cent Norwegian ownership is required.

Authority: Regulation of participation in fishing Act of 15/03/99; Fishing Limit Act of 17/06/66.

Air transport: Cabotage reserved to airlines with an EU/EEA licence.

Maritime transport: Ships in the Norwegian Ordinary Ship Register (NOR) have to be owned by EEA citizens or by an EEA company where EEA citizens own at least 60 per cent of the capital. Exemptions from the 60 per cent rule may be granted. There is no such limitation for ships registered in the Norwegian International Ship Register (NIS).

When the ship is registered in NOR and the ship-owning company is a limited liability company, it must be headquartered in the EEA area. The majority of the members of the board, including the chairman, must be EEA citizens resident in the EEA area, having resided in the EEA area the preceding two years.

When the ship is registered in NIS and the ship owning company has more than 40 per cent non-EEA ownership, the ship must be operated by a Norwegian ship-owning company with head office in Norway, or by a Norwegian management company. If the ship is registered directly in the NIS by a foreign company, an EEA representative is required. The representative must be domiciled in Norway and be authorized to receive a lawsuit on behalf of the ship owner.

Authority: Maritime Act of 24/6/1994; NIS Act of 12/6/87.

Maritime transport: Licensing requirement for scheduled maritime transport of persons.

Road transport: In general, cabotage reserved to national hauliers.

Accountancy and legal services: Investment in the accountancy sector exceeding 49 per cent, and in the legal sector, by non-residents.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

None.

POLAND

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Real estate: Foreign-controlled enterprises require authorisation for the acquisition of real estate for other purposes than direct investment and of land reserved for agriculture or forests, or water areas.

Authority: Act on acquisition of real estate by foreign parties (Journal of Acts, 24/1920, Item 202; last amended in 1996).

Air transport: The operation of an airline is reserved to enterprises with a foreign equity participation of 49 per cent or less.

Authority: Aviation Act of 2002 (Journal of Acts 130/2002, Item 1112).

Broadcasting: The transmission of radio and television programmes is reserved to enterprises with a foreign equity participation of 49 per cent or less for enterprises from outside the European Economic Area.

Authority: Act on broadcasting of 1992 (Journal of Acts 101/2001, Item 1114 with amendments).

Gambling and betting: Foreign-controlled enterprises from outside the European Economic Area are not permitted to conduct activity in gambling or betting, including casinos.

Authority: Act on gambling and betting (Journal of Acts 68/1992, item 341).

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

PORTUGAL

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Establishment in regular domestic and international air transport unless through national companies, engaged in this activity on an exclusive basis, which are headquartered in Portugal and where the majority of capital and the management control belong to national entities. These restrictions are applied without prejudice to EC law.

New credit institutions: Creation of a new credit institution or a new financial company owned or controlled by non-EC investors may be restricted.

II. Official aids and subsidies

Film production: Financial assistance and subsidies are awarded to the production of Portuguese films or to co-productions between national producers and producers of countries with a co-production agreement, under certain conditions (composition of social capital and guarantees).

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

SLOVAK REPUBLIC

A. Exceptions at national level

I. Investment by established foreign controlled enterprises

Air Transport: Operation of air transportation is reserved to enterprises with a foreign equity participation not exceeding 49 per cent if an investor is not from an EC country.

Authority: Aviation Act of 1 July 1998.

II. Official Aids and Subsidies

None.

III. Tax obligations

None.

IV. Government Purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

SPAIN

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Legal services: Investment originating in non-EC countries in the legal services sector to deal with EC or Spanish law.

Air transport: Cabotage reserved to national airlines.

Air transport: Enterprises controlled by non-EC residents must obtain government authorisation to acquire majority in air transport companies.

Broadcasting: Foreign participation, direct or indirect, in a radio broadcaster by non-EC companies is subject to authorisation, and, in any event, any individual investor, whether it is national or foreign, may not exceed 25 per cent of the paid up capital.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

SWEDEN

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Accountancy: Investment in the accountancy sector by non-EC-residents exceeding 25 per cent.

Legal services: Investment in a corporation or partnership carrying out the activities of an “advokat” by non-EC residents.³

Air transport: Cabotage reserved to national airlines.

Air transport: Foreign enterprises may be restricted from access to international air routes unless bilateral intergovernmental agreements provide otherwise.

Maritime transport: Cabotage is reserved to vessels flying the national flag.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. Exceptions by territorial subdivisions

None.

³ Unless the Swedish Bar Association grants a waiver, the requirement for EC residency applies for ownership of law firms carrying out business under the title of “advokat”.

SWITZERLAND

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Banking and financial services: Investment by foreign-controlled enterprises which are controlled by nationals or enterprises of countries that are not members of the WTO are subject to reciprocity conditions.

Air transport: The commercial transport of persons and goods by foreign-controlled enterprises is regulated by international agreements. In the absence of these, it is possible to permit foreign enterprises to exploit certain routes for commercial transport and to authorise commercial flights by foreigners outside these routes depending on the compatibility of the service offered with essential Swiss interests and on the granting of reciprocity.

Air transport: The business transport of people or goods between two points in Switzerland is reserved to Swiss companies, in the absence of international agreements providing otherwise.

Air transport: An aircraft may be registered in Switzerland if it is owned by Swiss citizens, or by foreigners resident in Switzerland using an aircraft mainly for travel from Switzerland, or if it is owned by an enterprise under Swiss control. National treatment may nevertheless be accorded to foreign individuals or companies on the basis of international agreements.

Air transport: Non-national airlines are not permitted to establish ground-handling facilities.

Inland waterways: To be registered in Switzerland and to transport persons and goods between two points on the Rhine, a vessel must be owned by a company which is substantially controlled (by at least 66 per cent of capital and vote) by persons domiciled in Switzerland or in a country, according to the Revised Convention for the Navigation on the Rhine of 17th October 1868 or Member States of the EC in which, for the purposes of flying the flag of their state on the Rhine, regulations apply that are equivalent to those applicable to the contracting states to the Revised Act on Rhine shipping.

Maritime transport: An enterprise may register a vessel for the commercial transport of persons or goods or for commercial maritime activities if its head office and real centre of activities is located in Switzerland and if at least the majority of its capital and two thirds of its voting rights are owned by Swiss nationals domiciled in Switzerland and/or by substantially Swiss-owned and Swiss-controlled enterprises with registered office in Switzerland.

Nuclear energy: Authorisation to build and operate a nuclear plant is granted only to corporations, cooperatives and legal persons of public law. A foreign company must have a registered subsidiary in Switzerland. Without prejudice to international obligations, the Federal Council may refuse the authorization to a foreign company if its home state does not grant reciprocity.

Pipelines: An approval of plans for the construction and operation of pipelines to transport liquid or gaseous fuels is required. Foreign-controlled enterprises must have an administrative centre and an operation management in Switzerland and must be organised in a manner that warrants the respect of the applicable Swiss laws and regulations.

Broadcasting: A concession for the diffusion of radio and television programmes can only be granted to companies having their headquarters in Switzerland. Concessions to foreign-controlled companies may be refused if reciprocity is not accorded.

II. *Official aids and subsidies*

Film production: Contributions to the costs of film productions and assistance to quality films are only awarded to films produced by companies headquartered in Switzerland and under the control of Swiss citizens or of permanent residents of Switzerland and for films co-produced with non-residents.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

B. *Exceptions by Territorial Subdivisions*

I. *Investment by established foreign-controlled enterprises*

Tran-sectoral: Acquisition of real estate is subject to authorisation by the relevant cantonal authority when the acquirer does not use the property to operate a permanent establishment.

Air transport: At the airports of Geneva and Zurich, foreign airline companies are not permitted to establish their own ground handling facilities if their share of total traffic is below a certain percentage (4.5 per cent in Geneva and 1.5 per cent in Zurich). Foreign airline companies are not allowed to offer ground handling services to third parties.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.

TURKEY

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Mining: Foreign-controlled enterprises must invest through locally incorporated enterprises.

Air transport: Licences to operate airlines are only granted to companies majority controlled by Turkish nationals.

Maritime transport: Cabotage is reserved to Turkish citizens and/or ships flying the national flag. Ships belonging to legal persons set up in accordance with Turkish laws, with the majority of managerial staff and representatives of Turkish nationality and with the voting majority held by partners of Turkish nationality are accepted as Turkish and have the right to fly the Turkish flag.

Real estate/Retail trade: Foreign-controlled enterprises are prohibited from engaging in real estate trading, except for acquisitions related to their permitted operations.

Primary, secondary and other educational services: Established foreign-controlled enterprises may not set up education institutions unless all students are of foreign nationality. Private universities are founded by law and can only be established by foundations constituted under Civil Code. The majority of administrators of such foundations must be Turkish citizens.

Financial advisory services: Persons of foreign nationality with the required qualifications financial advisory services can work as financial advisors upon the approval by the Prime Minister at the proposal of the Ministry of Finance. Such persons can establish companies for financial advisory services.

Radio and TV broadcasting: Twenty-five per cent foreign ownership limitation for radio and/or TV broadcasting.

Authority: Law No. 3984 on Establishment and Broadcasting of Radios and Televisions.

Fishing: Foreign persons cannot fish within the fishing area defined in the 1st or 4th Articles of the Law on Territorial Waters or in internal waters.

Authority: Law No. 1380 on Marine Products, amended by Article 2 of Law No. 4950 dated 22 July 2003.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

UNITED KINGDOM

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Banking: Reciprocity conditions for foreign-owned institutions, which are U.K. based and which have the capacity in the U.K. to act as an issuing house, to be eligible to lead-manage sterling issues.

Air transport: Rights to operate air transport services beyond the EU are set out in bilateral air services agreements between the UK or EU and third countries. In order to exercise the UK or EU rights under these agreements, an airline must have its principal place of business within the European Community, must have a valid Air Operating Certificate from an EU member state, and must be majority owned by EU nationals. In the case of some UK bilateral agreements, it must be majority owned and controlled by UK nationals.

Maritime transport: In order to obtain the national flag, fishing vessels must be at least 75 per cent owned by British individuals and/or by companies which are at least 75 per cent owned by British citizens in all cases resident and domiciled in the U.K.; vessels must be managed, directed and controlled from within the U.K. Without the national flag, vessels may not fish against the U.K. quotas under the Common Fisheries Policy.

Inland waterways: The right to carry out transport of goods and persons between two points on the inland waterways covered by the Revised Convention for the navigation on the Rhine is reserved to vessels owned by either nationals of Contracting States of that Convention or Member States of the EC, or companies based on the territory of any of these States, which are owned in majority and controlled by nationals of these States.

Radio and television: The following are disqualified from being licensees of the Independent Television Commission and Radio Authority: (1) Individuals who are neither European Community nationals ordinarily resident there nor (whatever nationality) resident in the U.K.; (2) Bodies corporate which are neither formed under the law of an EC country, having their registered head office or principal place of business within the EC, nor incorporated in the U.K.; and (3) Bodies corporate not ordinarily resident in the U.K. or the EC. However, investment by such individual bodies up to, but not including, control will be allowed.

II. *Official aids and subsidies*

None.

III. *Tax obligations*

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

UNITED STATES

A. Exceptions at national level

I. *Investment by established foreign-controlled enterprises*

Fishing: Foreign-controlled enterprises may not engage in certain fishing operations involving coastwise trade. In addition, foreigners may not hold more than a minority of shares comprising ownership in companies owning vessels which operate in US fisheries. Also, corporate organisation requirements pertain to the registration of flag vessels for fishing in the US exclusive economic zone.

Fishing: Foreign-flag vessels may not fish or process fish in the 200 nautical mile US exclusive economic zone except under the terms of a Governing International Fisheries Agreement (GIFA), or other agreement consistent with US law.

Mining, oil and gas: The Mineral Leasing Act (1920) makes public lands available for leasing only to citizens of the United States, associations of such citizens, or corporations organised under the laws of the United States, with respect to acquiring rights of way for oil pipelines, or leases or interests therein for mining coal, oil or certain other minerals. Non-US citizens may, however, own a 100 per cent interest in a US corporation that acquires a right-of-way for oil or gas pipelines across onshore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to US citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries.

Atomic energy production: Aliens and entities owned, controlled or dominated by aliens or foreign governments may not engage in operations involving the utilisation of atomic energy. This restriction applies primarily to nuclear reactors and reprocessing plants extracting plutonium.

Banking: As of August 1989, the Federal Reserve may refuse to designate as a primary dealer a foreign-controlled commercial or investment bank, if the government of the home country of the foreign bank denies national treatment to US-owned banks for government securities operations. Denial of the primary dealer designation means that the Federal Reserve, at its initiative, will no longer deal with that firm in the conduct of monetary policy. The firm, at its initiative can continue unencumbered to purchase US Government securities in government auctions.

Air transport: Cabotage and exercise of US international air route rights are reserved to national airlines controlled by US citizens, and owned 75 per cent or more (voting stock) by US citizens.

Air transport: freight forwarding and charter activities: A reciprocity test on air freight forwarding and air charter activities applies any time a foreign-owned firm seeks authority to provide indirect air transportation either by cross-border or establishment for US-originating traffic. If a favourable determination is made by the Department of Transportation, indefinite registration is granted to the applicant, and subsequent applications of the same applications of the same nationality are routinely approved.

Maritime transport: The Federal Maritime Commission is authorised to take unilateral action when a foreign government, foreign carrier or other persons providing maritime-related services engages in activity that adversely affect US carriers in US ocean-borne trade; creates conditions unfavourable to shipping in the foreign trade; or unduly impairs access by US-flag vessels to trade between foreign ports. Sanctions proposed under these statutes most frequently affect the cross-border provision of services, however sanctions could affect a foreign-owned investment established in the US (e.g. revocation of freight forwarders' licenses, suspension of preferential terminal leases).

Communications: Foreign-controlled enterprises may not hold broadcasting (radio and television), common carrier, aeronautical en route, or aeronautical fixed radio station licenses as provided for in 47 United States Code § 310, unless an authorisation is granted under 47 United States Code § 310(b)(4).

Telecommunications: The Federal Communications Commission (FCC), under delegated authority from the President of the United States with concurrence of the State Department, is authorised to issue licenses to land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country. Under the Submarine Cable Landing Licence Act of 1921, the FCC may withhold or revoke licences if such action will assist, *inter alia*, in securing cable landing rights for US citizens in foreign countries.

II. Official aids and subsidies

Trans-sectoral: Eligibility for Overseas Private Investment Corporation (OPIC) insurance and guarantees for investments in eligible developing countries is limited to entities organised in the US and substantially (more than 50 per cent) beneficially owned by United States citizens, or to foreign entities at least 95 per cent owned by US citizens.

Energy: To receive financial assistance under the Energy Policy Act, a company must show that its participation will be in the economic interests of the United States, as evidenced by investments in the United States in research, development and manufacturing, and be a US-owned company or a company incorporated in the United States whose parent is incorporated in a country which (1) affords to US-owned companies opportunities comparable to those afforded to any other company to participate in such joint ventures; (2) affords US-owned companies local investment opportunities comparable to those afforded any other company; (3) affords adequate and effective intellectual property rights of US-owned firms.

Agriculture: Foreign-controlled US enterprises cannot obtain special government emergency loans for agricultural purposes.

III. Tax obligations

None.

IV. Government purchasing

Technical services contracting: Restrictions on eligibility for consideration by the US Agency for International Development as a contractor.

Air transport: Foreign-controlled carriers cannot compete for Federal Government contract for the international air carriage of persons or property: (1) between the United States and foreign points to the extent service by US carriers is available; and (2) between two foreign points to the extent

service by US carriers is reasonably available. These prohibitions may be waived in instance where reciprocal national treatment has been negotiated on the basis of an exchange of rights or benefits of similar magnitude.

V. *Access to local finance*

None.

B. *Exceptions by territorial subdivisions*

I. *Investment by established foreign-controlled enterprises*

California, Illinois, Iowa, Kansas, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, South Dakota

Limitations on the foreign ownership of agricultural land: The following states, in addition to those noted below, have some sort of restriction on aliens owning land: California, Illinois, Kansas, Nevada, New Hampshire, New Jersey, New York, and North Carolina.

Iowa: A non-resident alien, a foreign government, or business incorporated in a foreign country or majority owned directly or indirectly by non-resident aliens, may not purchase or acquire agricultural land, with certain exceptions. Agricultural land acquired under the exceptions is subject to reporting requirements.

Minnesota: Only US citizens, permanent resident aliens, and business entities whose stock and beneficial ownership are at least 80 per cent held by US citizens or permanent resident aliens may own agricultural land.

Missouri: Non-US citizens and businesses in which non-US citizens own a controlling interest may not own agricultural land unless the non-US citizen is a resident in the US. No corporation, Missouri or out-of-state, may engage in agriculture after 1975.

North Dakota: A non-US or non-Canadian citizen who is not a resident alien in the US may not hold agricultural land.

Pennsylvania: Foreign governments and non-resident non US citizens may not hold more than 100 acres of agricultural land.

South Dakota: Foreign governments and non-resident, non-US citizens may not hold more than 160 acres of agricultural land. No in or out-of-state corporation may own agricultural land.

Guam, Indiana, Oklahoma, South Carolina, Wisconsin, Wyoming Florida, Hawaii, Idaho, Kentucky, Mississippi, Montana, Oregon

These states have some limitation on the ownership of real property and preference in the access to – or ownership of land

1) *Real property: Limitation on the ownership of real property*

Guam: Alien owned businesses may only own or rent land through Guam corporations.

Indiana: Limits amount of land held by aliens. Resident and non-resident aliens may acquire real estate but must dispose of any land over 320 acres within five years of acquiring it, or the excess acreage will escheat to the state.

Oklahoma: Non-US citizens may not own real estate, in the state, with certain exceptions.

South Carolina: Non-US citizens or corporations controlled by non-US citizens may not hold more than 500 000 acres of land.

Wisconsin: Non-US citizens not resident in the US, corporations with more than 20 per cent of their stock owned by them and non-US corporations may not hold more than 640 acres of land.

Wyoming: A non-resident not eligible for citizenship may not hold real property except for personal use and not exceeding one acre.

2) *Preference in the access to/or ownership of land*

Florida: Non-immigrant visa holders do not receive a homestead exemption.

Hawaii: Citizens and residents of Hawaii and US military war veterans receive preference in drawings from residential and agricultural leases of state lands. Residency requirements exist for aliens and stockholders of corporations and associations who wish to rent land in designated agricultural parks.

Idaho: State land may only be sold to US citizens.

Kentucky: Real estate owned by a non-resident alien may be escheated by the State eight years following its acquisition unless: a) the alien becomes a US citizen, b) they have declared their intent to become US citizens; or c) the corporations are organised under state law.

Mississippi: Non-resident aliens may not hold land longer than 20 years before becoming a US citizen except that they may acquire 320 acres for industrial development and 5 acres for residential purposes. Moreover, a non-resident alien may not purchase public land, except that they may purchase 320 acres of public land for industrial purposes and 5 acres for residential purposes.

Montana: State lands may only be sold to US citizens, those who have declared their intent to become US citizens or corporations organised under state law.

Oregon: State lands may only be sold to US citizens or those who have declared their intent to become US citizens.

Montana

Mining: Montana has a reciprocity test for coal leases on state owned land.

Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Maryland, Michigan, Minnesota, Mississippi, N. Carolina, Texas, Virginia, Washington, Wisconsin

Banking: operational restrictions

Alabama, Arkansas, Florida, Georgia, Minnesota, Mississippi, North Carolina, Virginia and Wisconsin effectively prohibit US affiliates of non-US banks from acquiring in-state banks by requiring an acquiring bank to have its "home state" or "principal place of business" in a state of a regional banking pact where the majority of its consolidated deposits are located.

California: Deposit agencies of non-US banks are prohibited from accepting deposits other than from a foreign nation or a person domiciled in a foreign nation. State chartered banks and out-of-state US banks owned by non-US banks are treated differently than other California or US banks in acquisition of a California bank.

Connecticut: Banking corporations organised under the laws of another country cannot maintain an office in the State to solicit deposits or conduct a general banking business.

Delaware: Non-US banks may maintain only one office and may not act in a manner to attract customers from the general public. They may not act as a fiduciary of any sort nor accept deposits from US persons, unless they could do so if operating in the state as a federal agency under the International Banking Act.

Florida: Non-US banks may not establish full service branches or banks. Non-US bank agencies may not accept domestic deposits or act as fiduciary. Out-of-State banks may not establish full service branches.

Illinois: Banking corporations shall be licensed to transact business in the State. Non-US banks organised in a foreign country may have one bank office in the central Chicago business district.

Iowa: Banks organised under the laws of a foreign country or a part of the US not a state or DC may not acquire Iowa banks or bank holding companies.

Maryland: A person who is not a US citizen may not directly or indirectly control state savings and loan associations.

Mississippi: Upon approval and licensing by the State Banking Board, foreign banking corporations shall be limited to transactions that are clearly limited to and are usual in international or foreign business and financing international commerce, shall be unable to exercise fiduciary powers and unable to receive deposits. For a foreign banking corporation the first application fee shall be a minimum of two thousand five hundred dollars (\$2 500) and a maximum of ten thousand dollars (\$10 000), annual licence renewal shall be two hundred fifty dollars (\$250).

North Carolina: A bank or bank holding company within the state can only be acquired by a bank holding company from the South Eastern Region (14 states and DC).

Texas: A foreign bank agency must be located in a county of at least 1.5 million people. Deposits can be accepted and loans made only through the bank, not the agency.

Washington: Non-US bank branches may not have more than one office in the state. Branches are effectively prohibited from accepting initial deposits of less than \$100 000 from US citizens. Non-US banks may not hold real estate other than as a place of business or residence for its employees, incidental to its loan business. Non-US banks may not acquire already established financial institutions, nor shall their officers serve as directors. Non-US bank agencies are effectively limited to international business.

Florida, Illinois, New Jersey, Pennsylvania, Texas, Washington

Banking: Reciprocity conditions

Florida: Establishment of an agency or representative office by non-US Bank is conditioned on reciprocity.

Illinois: Non-US bank corporations cannot be given a certificate of authority to transact business unless Illinois or other US banks are accorded similar privileges in the non-US bank's home country, or pays a special \$50 000 annual "reciprocal fee".

New Jersey: Limits may be placed on the amount of a New Jersey bank that a non-US person owning more than 25 per cent of a non-US bank may acquire. Under special circumstances, a bank holding company organised out-of-state, but non-US owned, may acquire New Jersey banks or bank holding companies on a reciprocal basis.

Pennsylvania: The state banking department may deny to non-US banks permission to operate in the state in the absence of reciprocity for US banks in the country in which the non-US bank is domiciled.

Texas: An agency of a bank organised in a foreign country may be denied a licence to operate in Texas if that country denied Texas banks the ability to operate there, and if denial is in the public interest.

Tennessee, North Carolina, North Dakota

Insurance: licensing

These states do not issue a licence to foreign government owned or controlled insurance companies.

Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Minnesota, Nebraska, New York, Ohio, Oklahoma, Washington, Wisconsin

Insurance: reciprocity provisions.

These states have reciprocity laws enabling insurance Commissioners to retaliate against perceived unfair insurance trade rules in other countries.

Alabama, Arkansas, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Virginia, Wisconsin

Insurance: Surplus fund requirements.

US branches of non-US firms are required to maintain surplus funds in excess of deposits; these "trusteed surplus" funds are usually held in trust by either a state or a US-incorporated trustee such as a local bank or Port-of-Entry State bank.

II. *Official aids and subsidies*

Hawaii, North Carolina

Agriculture: Hawaii, restricts State agricultural loans to Hawaii corporations with at least 75 per cent of each class of stock owned by US citizens who have resided in the state for five years. North Carolina excludes non-US citizens from its Farm Ownership Loan Program.

Florida

Trans-sectoral: Foreign persons may not qualify for Small Business Administration loans.

III. *Tax obligations*

Montana

Trans-sectoral: Small businesses with a non-resident shareholder may not take the Montana small business income tax credit.

IV. *Government purchasing*

None.

V. *Access to local finance*

None.