



# **National Treatment for Foreign-Controlled Enterprises**

**INCLUDING ADHERING COUNTRY EXCEPTIONS TO NATIONAL TREATMENT**

*July 2009*

*OECD member and other countries adhering to the Declaration on International Investment and Multinational Enterprises have declared that enterprises from adhering countries should be accorded National Treatment in their territory. This means that, in like situations, enterprises controlled by nationals of another adhering country should be treated by the host government no less favourably than domestic enterprises. This report describes the main features of the OECD National Treatment instrument and contains a complete survey of adhering governments' measures relating to National Treatment as of July 2009.*

## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14th December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

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## INTRODUCTION

"National Treatment" is the commitment by a country to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like situations. This commitment is enshrined in the Declaration on International Investment and Multinational Enterprises, adopted in 1976 by the Governments of the OECD Member countries. It is supported by follow-up procedures in an arrangement known as the OECD National Treatment instrument.

The National Treatment instrument's follow-up procedures, which are designed to encourage the fullest possible application of National Treatment by adhering countries, are set out in an OECD Council Decision of December 1991. The text of this Decision is reproduced in the present document, including the full list of exceptions to National Treatment by country, accepted by the Council as of July 2008.

This update of the lists of exceptions notified under the National Treatment Instrument is part of a continuing effort by the Investment Committee to promote the importance of policy transparency for international investment.<sup>1</sup> Transparency is also one of the principal means for monitoring the implementation of the NTI and ensuring its consistent application across adhering countries. This work complements an update of the list of member country reservations under the OECD Code of Liberalisation of Capital Movements which concerns restrictions to the entry of investment.

Countries which have adhered to the Declaration on International Investment and Multinational Enterprises, as well as the related Decisions and Recommendations by the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and eleven non-member economies: Argentina (22 April 1997), Brazil (14 November 1997), Chile (3 October 1997), Egypt (11 July 2007), Estonia (20 September 2001), Israel (19 September 2002), Latvia (9 January 2004), Lithuania (20 September 2001), Peru (25 July 2008), Romania (20 April 2005) and Slovenia (22 January 2002).

Further information on the OECD's National Treatment instrument can be found on the OECD website at the following address: [www.oecd.org/daf/investment/instruments](http://www.oecd.org/daf/investment/instruments).

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<sup>1</sup> See "Public sector Transparency and International Investment Policy" [www.oecd.org/dataoecd/45/22/2506884.pdf](http://www.oecd.org/dataoecd/45/22/2506884.pdf) and "Framework for Investment Policy Transparency" [www.oecd.org/dataoecd/36/42/18546790.pdf](http://www.oecd.org/dataoecd/36/42/18546790.pdf).

## **THIRD REVISED DECISION OF THE COUNCIL ON NATIONAL TREATMENT\***

### **Article 1**

#### **NOTIFICATION**

- a. Members<sup>2</sup> shall notify the Organisation of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment. All exceptions shall be set out in Annex A to this Decision.
- b. Members shall notify the Organisation within 60 days of their introduction of any modifications of the measures covered in paragraph (a).
- c. The Organisation shall consider the notifications submitted to it in accordance with the provisions of paragraphs (a) and (b) with a view to determining whether each Member is meeting its commitments under the Declaration.

### **Article 2**

#### **EXAMINATION**

- a. The Organisation shall examine each exception lodged by a Member and other measures notified under Article 1 at intervals to be determined by the Organisation. These intervals shall, however, be not more than three years, unless the Council decides otherwise.
- b. Each Member shall notify the Organisation prior to the periodic examination called for in paragraph (a), whether it desires to maintain any exception lodged by it under Article 1 and if so, state its reasons therefore.
- c. The examinations provided for in paragraph (a) shall be directed at making suitable proposals designed to assist Members to withdraw their exceptions.
- d. The examinations provided for in paragraph (a) shall be country reviews in which all of the exceptions lodged by a Member are covered in the same examination.
- e. Notwithstanding paragraph (d), the examinations provided for in paragraph (a) may focus on specific types or groups of measures of particular concern, as and when determined by the Organisation.

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\* C(91)147/FINAL and C(2004)3.

2. For the purposes of this Decision, "Members" means all parties to the Decision.

### **Article 3**

#### **REFERENCE TO THE ORGANISATION**

- a. If a Member considers that another Member has, contrary to its undertakings with regard to National Treatment, retained, introduced or reintroduced measures and if it considers itself to be prejudiced thereby, it may refer to the Organisation.
- b. The fact that the case is under consideration by the Organisation shall not preclude the Member which has referred to the Organisation from entering into bilateral discussion on the matter with the other Member concerned.

### **Article 4**

#### **INVESTMENT COMMITTEE: GENERAL TASKS**

- a. The Investment Committee (hereinafter called "the Committee") shall consider all questions concerning the interpretation or implementation of the provisions of the Declaration or of Acts of the Council relating to National Treatment and shall report its conclusions thereon to the Council.
- b. The Committee shall submit to the Council any appropriate proposals in connection with its tasks as defined in paragraph (a) and, in particular, with the abolishing of measures constituting exceptions to National Treatment.

## **Article 5**

### **INVESTMENT COMMITTEE: SPECIAL TASKS**

- a. The Committee shall:
- i) consider, in conformity with paragraphs (a) and (b) of Article 2, each exception notified to the Organisation and make, where appropriate, suitable proposals to assist Members to withdraw their exceptions;
  - ii) consider, in accordance with Article 1, the notifications submitted to the Organisation;
  - iii) consider references submitted to the Organisation in accordance with the provisions of Article 3;
  - iv) act as a forum for consultations, at the request of a Member, in respect of any matter related to the Declaration and its implementation.
- b. The Committee may periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters related to National Treatment and shall take account of such views in its reports to the Council.

## **Article 6**

### **REVIEW OF THE DECISION**

This Decision shall be reviewed within three years.\*

## **Article 7**

### **PARTICIPATION BY THE EUROPEAN ECONOMIC COMMUNITY**

The present Decision, as well as any further Decision amending it, shall be open for accession by the European Economic Community. Such accession shall be notified to the Secretary-General of the Organisation.

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\* In February 1995, the Council agreed that no change of the Decision was necessary.

## **ANNEX I**

### **DECISION OF THE COUNCIL AMENDING ANNEX A TO THE THIRD REVISED DECISION OF THE COUNCIL ON NATIONAL TREATMENT**

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 Updating of Country Exceptions under the National Treatment Instrument [C(2004)147];

DECIDES that Annex A to the Third Revised Decision of the Council on National Treatment be replaced by the following list of exceptions to National Treatment by Adherent Countries to the Declaration on International Investment and Multinational Enterprises:

## ARGENTINA

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Radio and television:* Operating licences are granted only to Argentine individuals or Argentina-owned companies. Special authorisations may be granted on the basis of bilateral treaties.

Authority: Broadcasting Law No. 22285

*Road transport:* International road transport is reserved to companies controlled by Argentine citizens.

Authority: Under-secretariat for Transport Resolution No. 263/90

#### II. *Official aids and subsidies*

*Films:* Financial assistance including subsidies for production and participation in international festivals is granted only to Argentine productions or co-productions.

Authority: Law No. 17741 as amended by Law No. 24377.

#### III. *Tax obligations*

None.

#### IV. *Government purchasing*

In case of strictly equal prices and offers, Argentine-controlled companies will be preferred. Preference shall be given to offers of goods of Argentine origin under equal price conditions.

Authority: Decree No. 2284/91 of 1991 as confirmed by Law No. 24307; Law No. 25.551/2001.

#### V. *Access to local finance*

None.

### B. Exceptions by territorial subdivisions

None.

## 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 force 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.

## BRAZIL

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Banking:* Article 52 of the Transitional Constitutional Provisions of 1988 allows the Federal government to issue an authorisation for the establishment of foreign financial institutions or to allow any increase in foreign participation in the capital of Brazilian institutions, as well as the participation in privatisation of State owned financial institutions.

Authority: Article 192 of the Federal constitution (to be regulated by Congress) Article 52 of the Transitional Constitutional Provisions of 1988

*Telecommunications:* A licence is required to operate all telecommunication services. Criteria used to grant licences include the applicant's technical and financial capacity and, in certain cases, pricing policies and the amount offered for the license. In cellular telephone (band B frequency), satellite and value-added services, foreign interests are allowed to own all of a firm's non-voting shares (up to two-thirds of the total capital) and to control up to 49 per cent of the voting capital. In the latter case, restriction on foreign ownership remain for three years after the legislation comes into force in 1997.

Authority: Law N°9,472 of 16 July 1997)

*Radio, television and publishing:* Foreign participation is limited to native-born Brazilians or persons who have been naturalised citizens for at least ten years. The purchase of technical assistance from foreign enterprises or entities is also forbidden.

Authority: Article 222 of the Federal Constitution and Decree law 236/67

*Cable television:* The concession to exploit this service is only granted to Brazilian firms. At least 51 per cent of the voting capital must be in the hands of native-born Brazilians or persons who have been naturalised citizens for at least ten years or *must* belong to firms whose headquarters are in Brazil and whose control is under native-born Brazilians or persons who have naturalised citizens for at least ten years

Authority: Law N° 8977 of 6 January 1995

*Air transport:* Direct *participation* of foreign capital in air transport is restricted. Some foreign companies not established in the territory have been authorised to detain a minority stake, up to 20 per cent in some air national companies

Authority: Article 21 of the Federal Constitution, Brazilian Air Code and Law N° 7565 of 19 December 1986

*Airports and air traffic services:* Foreign enterprises may not administer or operate airports nor provide navigation and air traffic services

Authority: Brazilian Air Code

*Road Transport:* Foreign participation is limited to 20 per cent of the voting capital with respect to companies established in Brazil *after* 7 November 1990. Restrictions also apply to all foreign-controlled companies with respect to the raise of capital subscriptions.

Authority: Law 6,813 of 10 July 1980 updated by Law 7,092 of 19 April 1983 and regulated by Law 99,471 of 24 August 1980.

*Fishing:* Exploitation of internal waters, areas within the territorial sea and some other activities are reserved to native-born *Brazilians* or persons who have naturalised citizens or must be undertaken by firms registered in Brazil. Foreign vessels need authorisation from the Ministry of Agriculture to develop fishing activities.

Authority: Decree n°68.459 of 19 April 1971

*Rural Properties:* The foreign legal person or individual must be a resident in the territory and the purchase or renting of the rural property must be no greater than a quarter of the total area of the municipality ('município') to which the property belongs. This restriction is more flexible when the foreigner is married to a Brazilian citizen or has Brazilian descendants. Specific authorisations are needed according to the size of the property to be purchased or rented by foreigners.

Authority: Law 5709 of 7 October 1971, regulated by the Decree 74965 of 26 November 1974

*Health care:* Direct and indirect participation of foreign capital or enterprises in the sector is forbidden, except in those cases established in law.

Authority: Article 199 of the Federal constitution

*Security services and transport of valuables:* Foreign participation is forbidden.

Authority: Law 7102/83 and Administrative measure 91/92

**II. *Official aids and subsidies***

None.

**III. *Tax obligations***

None.

**IV. *Government purchasing***

None.

**V. *Access to local finance***

The access of foreign companies to the national financial system may be restricted by the Central Bank in case of balance of payments disequilibrium.

The purchase of public financial institutions is restricted to finance enterprises whose central control belongs to individuals who are not residents in Brazil, except in the following cases:

- a) the funds were collected abroad;
- b) a special authorisation from the Ministry of Planning and Budget can be requested based on national interest (in the case of companies which are not yet established in Brazil);
- c) the enterprises that operate in sectors and geographical regions which were considered a priority by a President's decree (in the case of companies already established in Brazil).

Authority: Law 4728/65 of 14 July 1965; Law 4131, Articles 37, 38 and 39.

**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 33 $\frac{1}{3}$  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.

## CHILE

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Trans-sectoral:* Foreign investment capital cannot be re-exported until one year after the date of entry.

Authority: Chapter XIV of the Compendium of Foreign Exchange Regulations and Decree Law 600.

*Road transport:* International road transport is reserved to companies controlled by citizens of the Latin-American Integration Association (ALADI).

Authority: Accord on International Land Transport signed by ALADI Members -- Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay.

*Shipping:* Ownership of Chilean flag vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. Cabotage and tugging activities performed in Chilean ports are reserved to Chilean flag vessels.

Authority: Decree Law 3059, Official Gazette 22 December 1979; Supreme Decree 24, Official Gazette 10 March 1966; Decree Law 2222, Official Gazette 31 May 1978.

*Fishing:* Ownership of Chilean fishing vessels is limited to Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile. An owner of a fishing vessel registered in Chile prior to 30 June 1990 is not subject to the nationality requirement, however. Fishing vessels specifically authorised by the maritime authorities, pursuant to powers conferred by law in cases of reciprocity granted to Chilean vessels by other States, may be exempted from the above-mentioned requirements on equivalent terms provided to Chilean vessels by that State.

Resident enterprises constituted by foreign non-residents are not permitted to engage in small-scale fishing.

Authority: Law 18892, Official Gazette 22 December 1992, Decree Law 2222, Official Gazette 31 May 1978.

*Air transport:* Only Chilean individuals or Chilean majority-owned corporations with principal domicile and real effective seat in Chile may register an aircraft in Chile.

Authority: Law 18916, Official Gazette 8 February 1990; Decree Law 2564, Official Gazette 22 June 1979.

*Mining:* Exploration and exploitation of hydrocarbons, lithium, uranium and offshore minerals and those located in strategically important areas can only be undertaken by private

investors through administrative concessions or operating contracts under the conditions established for each case by Presidential decree.

Authority: Political Constitution of the Republic of Chile; Constitutional Organic Law 19.097, of Mining Concessions; Law 18.248, Official Gazette 14 October 1983; Mining Code; Law 16.319, Official Gazette 23 October 1965, creating the Chilean Commission of Nuclear Energy.

*Publishing:* The owner of a magazine, a daily or weekly domestic newspaper or a national news agency must be Chilean with domicile and residency in Chile. If the owner is a corporation or a joint ownership, it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or Chilean juridical persons (based on 85 per cent Chilean capital ownership). In addition, the director and the acting director must be Chilean with domicile and residency in Chile. The exceptions to these rules are technical and scientific publications, any publishing in a foreign language and magazines of an international character printed in Chile and distributed in Chile and abroad.

Authority: Law 16643, Official Gazette 4 September 1967, “Law on abuse of publicity”.

*Broadcasting:* The owner and director or acting director of a concession for radio stations must be Chilean with domicile and residency in Chile. If the holder of the concession is a corporation or a joint ownership (*comunidad*), it is considered Chilean if 85 per cent of the equity capital or joint ownership rights are held by Chilean individuals or juridical persons (defined again as 85 per cent Chilean capital ownership). The president, directors, managers, administrators and legal representatives of the corporation owning a commercial television station must be Chileans. In addition, the director or acting director must have domicile and residency in Chile.

Authority: Law 16643, Official Gazette 4 September 1967.

## **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.

## 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.

## EGYPT

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Land and Real Estate:* Foreign investors can acquire land and real estate for business purposes except in Sinai and border land zones without prior approval.

Authority: Law 94 of 2005

*Construction:* Foreign investment is only allowed in the form of joint-venture companies in which foreign equity shall not exceed 49%. In addition, foreign participation in electrical wiring and other building completion and finishing work is restricted to projects valued at over \$10 million.

Authority: Law 104 of 1992

*Maritime Transport:* Foreign investment is only allowed in the form of joint-venture companies in which foreign equity does not exceed 49%. For supporting services foreign equity should not exceed 75%. A prerequisite for a ship to fly the Egyptian flag is ownership by an Egyptian company and registry with the Egyptian ship register. Ninety-five per cent of crew must be Egyptian nationals whose salaries must be not less than 90% of the total paid up wages. For supporting services 25% of employees must be Egyptian nationals

Authority: Maritime Law 1 of 1998

*Air Transport:* Foreign investment in air transport is allowed up to 49% in companies involved in regular international and domestic flights (for both passenger and cargo services). Foreign investment up to 100% is permitted in ancillary services including maintenance and repair of aircraft, selling and marketing of air services and computer reservation systems.

Authority: Ministry of Aviation, Law 502 of 2005

*Courier services:* Authorisation for foreign investment in courier services is required from the Egyptian National Postal Organisation (Law 121/1982). Authorisations are granted on the basis of an economic needs test until 31 December 2009.

Authority: Egyptian National Postal Organisation (Law 121/1982)

*Commercial Agents:* Registration in the Register of Commercial Agents and Intermediaries is a condition for engagement in these activities and only Egyptian nationals and fully owned and managed Egyptian companies may be inscribed in the Register. Furthermore, only Egyptian nationals and fully Egyptian owned and managed companies may engage in imports into Egypt on condition of being registered in the Register of Importers.

Authority: Commercial Law 17 of 1999.

**II. *Official aids and subsidies***

None.

**III. *Tax obligations***

None (Corporate Income Tax Law 7 of 2005).

**IV. *Government purchasing***

Preference is given to domestic providers if their bids do not exceed the lowest foreign bid by 15% (Tender Regulation Law 89 of 1998).

**V. *Access to local finance***

None.

**B. *Exceptions by territorial subdivisions***

None.

## ESTONIA

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Real estate:* Ownership of land can be transferred to foreigners and foreign legal persons with the permission of the relevant county governor. On islands (except for the 4 biggest islands) and 19 local government units mostly bordering on Russia acquisition of land and real estate is forbidden for foreigners, foreign legal persons and foreign states.

Authority: Restrictions on Transfer of Immovable Property Ownership to Aliens, Foreign States and Legal Persons Act.

*Securities services:* Foreign capital in the assets of security undertakings may be restricted.

Authority: Article 6 of the Security Services Act (RT I 1993, 75, 1100; 1995, 62, 1056; 1996, 49, 953).

*Air transport and related services:* Licence to operate an air transport enterprise is granted only to companies majority-owned by the Estonian state, a local government and/or Estonian citizens.

Authority: Article 40 of Aviation Act (RT 1 1999, 26, 376).

*Maritime transport and related services:* Cabotage is reserved to sea-going vessels flying the national flag of the Republic of Estonia unless an approval is granted. Ships under the flag of an EU Member State are allowed to carry out cabotage on a reciprocal basis. The national flag of the Republic of Estonia may be flown by sea-going vessels owned by Estonian citizens, sea-going vessels in common ownership if the greater share of vessel is owned by Estonian co-owners; sea-going vessels which are the object of shared succession if the greater share of the succession is owned by Estonian citizens or Estonian legal persons which have inherited the sea-going vessel in common.

Authority: Merchant Shipping Code, Ship Flag and Registers of Ships Act.

#### 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.

## ISRAEL

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Land and real estate:* Acquisitions of rights to use land and real estate by foreign nationals or companies controlled by foreign nationals are subject to the prior approval of the Israel Land Administration Council.<sup>3</sup>

Authority: Israel Land Law (1960) and Israel Land Administration decision number 342.

*Air Transport:* The licensing of an airline as an Israeli airline is conditional upon the holding of at least two thirds of the capital by Israeli nationals.

Cabotage operations may only be conducted by Israeli airlines.

Authority: Aviation Law (1927); Licensing of Aviation Services Law (1963)

*Maritime Transport:* Cabotage operations are limited to Israeli vessels or to foreign licensed vessels from countries having reciprocity with Israel.

Authority: Ministry of Transport; legislation pending.

*Domestic Fixed Line Operator:* The control of a domestic licensed communications company must be held by an Israeli individual or a corporation incorporated in Israel in which an Israeli individual holds at least a 20 per cent interest.

*Radio and Mobile Telephone Services:* Satellite Broadcasting - At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel.

*International Communications Services:* At least 26 per cent of the control in a licensee must be held by nationals who are residents of Israel. A foreign operator may hold up to 49 per cent of the control of a licensee.

*Cable Broadcasting:*

- a) At least 26 per cent of the control in the licensee must be held by nationals who are residents of Israel;
- b) A license shall not be granted to an applicant in which a foreign government holds shares, but the Minister of Communications may authorise an indirect holding in the licensee of up to 10 per cent by such a corporation.

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3. The legal regime regarding land and real estate rights is currently under reform.

*Commercial Television and Regional Radio:* At least 51 per cent of the control in the concession must be held by nationals who are residents of Israel.

Authority: Bezeq (communication) Law (1982); Second Authority for Television and Radio Law (1990).

*Electricity:* An applicant for a license to transmit, distribute or produce a substantial part of electricity may be required to fulfil the following conditions:

- a) The control of the licensee shall be held by a national who is a resident of Israel;
- b) The maximum proportion of control in the licensee to be held, directly or indirectly, by a non-resident of Israel, is subject to a determination by the Minister of National Infrastructures.

Authority: Electricity Economy Law (1996).

*Education Services:* Co-operation between an affiliate of a foreign university and equivalent Israeli institutions is subject to the approval of the Council for Higher Education.

Authority: The Council for Higher Education Law (1959).

## **II. *Official aids and subsidies***

*Films, education, religion, academic research, arts and sports:*

- a) The Government may set conditions for granting state aid in the above-mentioned sectors.
- b) The State does not contribute to the budget of an affiliate or branch of a foreign institution of higher education operating in Israel.

Authority: The Film Law (1999); Foundation of Budget Law (1985); The Council for Higher Education Law (1959).

## **III. *Tax obligations***

None.

## **IV. *Government purchasing***

None.

## **V. *Access to local finance***

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.

## LATVIA\*

### *I. Investment by established foreign-controlled enterprises*

*Real estate:* Land may be freely acquired by:

- Latvian citizens and the citizens of other EU Member States;
- State and self-governments and its enterprises;
- Enterprises registered in the Republic of Latvia or other EU Member State:
  - where more than half of the fixed capital is owned by Latvian citizens, other citizens of EU Member States, Latvian State or self-government, separately or by several of these subjects together;
  - where more than half of fixed capital is owned by natural or legal persons from the countries with which Latvia has signed and ratified an international agreement on the promotion and protection of investments by 31 December 1996 or agreements concluded after that date, provided that the agreement provides for reciprocal rights to land acquisition;
- public joint-stock companies listed on the stock exchange.

There is a transition period for citizens of EU Member States intending to acquire agricultural land until 1 May 2011.

Other natural and legal persons (not mentioned above) can obtain land, except territories in Latvia's border area, dune areas of the Baltic Sea and the Riga gulf and protected areas of other public waters, land of state reserves, land usable for agriculture and forestry, in accordance with the spatial plan of the territory, land of deposits of mineral resources of State importance.

Authority: Law on Land Privatisation in Rural Regions (Official Journal No.32 of 20.08.1992) and Law on Land Reform in Towns and Cities of Republic of Latvia (Official Journal No.14 of 13.12.1991).

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\* The position under certain items has been recently modified under the responsibility of the Secretariat upon official notification by the government concerned, pending final endorsement by the OECD Council.

*Air transport:* Licence to operate an airline is granted to companies majority-owned by Latvian and European Union nationals. Traffic rights are allocated in accordance with bilateral and multilateral agreements.

Authority: Law on Aviation (Official Journal No. 123 of 20.10.1994).

*Gambling and lotteries:* The license for conducting activity in gambling and lotteries is issued to enterprises with foreign equity participation of 49 per cent or less, except that of the EU member states and the EU candidate states.

Authority: Law on Gambling and Lotteries (Official Journal No.76 of 02.07.1994).

*Security operations:* Security guard undertakings (companies) are entitled to receive a license to perform security guard activities in which foreign investors, except for investors from EU Member States and states of the European Economic Area (EEA), have not (directly or indirectly) acquired a controlling interest.

Authority: Law on Security Operations (Official Journal No337/338 of 11.11.1998).

**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.

## LITHUANIA

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Land:* Acquisition into ownership of land, internal waters and forests is permitted to foreign-controlled enterprises meeting the criteria of European and transatlantic integration embarked on by Lithuania.

The criteria of European and transatlantic integration embarked on by Lithuania are met by foreign legal persons as well as other foreign organisations set up in:

- a) the European Union member states or states parties to the Europe (Association) Agreement concluded with the European Communities and their member states;
- b) Member states of the Organisation for Economic Co-operation and Development, North Atlantic Treaty Organisation and states parties to the European Economic Area Agreement.

Authority: The Constitutional Law of the Republic of Lithuania on the Implementation of paragraph 3 of Article 47 of the Constitution of the Republic of Lithuania No. IX-1381 (adoption 20 March 2003, entry into force 1 May 2004).

*Air transport:* The operation of an airline by enterprises with foreign equity participation requires a licence from the Lithuanian government and is based on reciprocity. The air carrier must have its principle place of business in Lithuania and be effectively controlled by the state of Lithuania an/or nationals of Lithuania. Exceptions may be granted by international agreements of the Republic of Lithuania.

Authority: Law on Aviation No.VIII-2066 (17 October 2000).

*Maritime and inland waterway transport:* Only ships and vessels with Lithuanian state flag and registered in Lithuania or any European Union member state flag are allowed to provide maritime waterway cabotage and inland cabotage services.

Authority: Law on Merchant Shipping No.I-1513 (12 September 1996): Inland Waters Transport Code No.I-1534 (24 September 1996)

*Fisheries:* Access to Lithuania's waters is only possible for vessels with Lithuanian or any European Union member state flag or for foreign country vessels on the basis of international agreement.

Authority: Law on Fisheries No. VIII-1756 (27 July 2000)

**II. Official aids and subsidies**

*Health Services:* Entry into the market is subject to authorisation by Lithuanian health authorities. Foreign private establishments may not be entitled to receive financial support from public resources, including usage of public medical insurance funds.

Authority: Law on Health System No.I-552 (1994); Law on Health Care Institutions No. I-1367 (1996).

*State Subsidies:* Foreign legal persons in any sector of the economy may be limited to receive state subsidies. Producers and exporters of some goods and services of Lithuanian origin are supported by legal acts or onetime decisions by the Government.

Authority: Various legislative acts on appropriate sectors of the economy. Government Resolution No.1490 on Approval of Regulations of the Export Promotion Fund (30 December 1997).

**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;<sup>4</sup>
- 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.

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<sup>4</sup>

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 services<sup>5</sup> exceeding 49 per cent of equity, unless an authorisation is granted.

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<sup>5</sup> 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.

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

**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 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.

## PERU

### A. Exceptions at national level

#### I. *Investment by established foreign-controlled enterprises*

*Land and real estate:* Foreign enterprises and Peruvian enterprises owned in whole or in part by foreign nationals are not authorised to acquire directly or indirectly land or water (including a mines, forest land or energy sources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in cases of expressly declared public necessity.

Reference: Peru's Constitution, Article 71; Legal Framework for Private Investment Growth (Legislative Decree No. 757), Article 13.

*Broadcasting:* Only Peruvian nationals or corporations organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer free-to-air radio communications. Foreign nationals may not own more than 40% of the total shares or equity in such a corporation and must be owners or shareholders in a radio or television broadcast enterprise in their country of origin. No foreign national may receive or hold an authorisation or a license directly or through a sole ownership.

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a corporation, that corporation may not hold a broadcasting authorization in a zone bordering that foreign national's country of origin, except in a case of public necessity authorized by the Council of Ministers. This restriction does not apply to corporations with foreign equity which have two or more current authorizations, as long as they are of the same frequency band.

Reference: Law on Radio and Television (Law No. 28278, 16 July 2004), Article 24; Regulations on Radio and Television (Supreme Decree No. 005-2005-MTC), Article 20.

*Air transport:* Investment in national commercial aviation services is reserved to Peruvian natural persons and corporations.

At least 51% of capital must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. This limitation shall not apply to the enterprises constituted under law No. 24882, which may maintain the ownership percentages set in such law (70% of foreign ownership). Six months after the company is authorized to provide commercial air transportation services, foreign nationals or foreign citizens may own up to 70 percent of the company's capital.

Reference: Civil Air Transport Law (Law N° 27261, 10 May 2000), Article 79. Regulations on Civil Air transport Law (Supreme Decree N° 050-2001-MTC, 26 December 2001), Article 159, 160 and VI Complementary Provision.

*Water transport:* Only companies with majority of Peruvian ownership (51% of the paid-in capital owned by Peruvian citizens) may supply maritime cabotage services, including transport by lakes and rivers.

Authority: Law on National Merchant Navy Reactivation and Promotion (Law No. 28583, 22 July 2005), Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6; Regulation No. 26620 (Supreme Decree No. 028 DE/MGP, 25 May 2001), Article I-010106, sub-section a). Supreme Decree No. 056-2000-MTC, 31 December 2000; Ministerial Resolution No. 259-2003-MTC/02, 4 April 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.

## 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.

## ROMANIA

### **A. Exceptions at national level**

#### ***I. Investment by established foreign-controlled enterprises***

*Air Transport:* An operating air carrier license may be granted only to companies established in Romania and controlled by Romanian nationals or the State.

*Authority:* Government Ordinance No. 19/1997 on Air Code, approved by Law No. 130/2000 (published in M.O. No. 45/26.01.2001) and Minister Order No. 578/1998 approving the Regulation on Granting of Air Operating Licence (published in M.O. No. 257/4.06.1999).

#### ***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.

## 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.

## SLOVENIA

### **A. Exceptions at national level**

#### ***I. Investment by established foreign-controlled enterprises***

*Air transport:* Registration of an aircraft is only possible for aircraft owned by Slovenian nationals or companies controlled by them. Granting of an operating or AOC license for performing airline services is provided only to companies controlled by Slovenian nationals or to carriers complying with EC regulations on ownership and control (including principle place of business and activity, and majority-owned by EC Member States/nationals).

Authority: Aviation Act (OG RS 18/010; Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA))

*Lotteries:* It is prohibited for foreign investors to organise lotteries in Slovenia.

Authority: Law on gambling (OG RS 27/95)

#### ***II. Official aids and subsidies***

None.

#### ***III. Tax obligations***

None.

#### ***IV. Government purchasing***

None.

#### ***V. Access to local finance***

None. (under preparation)

### **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.<sup>6</sup>

*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.

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<sup>6</sup> 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 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.