



Organisation for Economic Co-operation and Development

Publication sponsored by
the Japanese Government

INSURANCE AND PRIVATE PENSIONS
COMPENDIUM
FOR EMERGING ECONOMIES

Book 1
Part 1:6)a

LIBERALISATION OF INTERNATIONAL INSURANCE
OPERATIONS
Cross-border Trade and Establishment of Foreign Branches

Hisaya Ishii

1999

This report is part of the OECD Insurance and Private Pensions Compendium, available on the OECD Web site at www.oecd.org/daf/insurance-pensions/ The Compendium brings together a wide range of policy issues, comparative surveys and reports on insurance and private pensions activities. Book 1 deals with insurance issues and Book 2 is devoted to Private Pensions. The Compendium seeks to facilitate an exchange of experience on market developments and promote "best practices" in the regulation and supervision of insurance and private pensions activities in emerging economies. The views expressed in these documents do not necessarily reflect those of the OECD, or the governments of its Members or non-Member economies.

**Insurance and Private Pensions Unit
Financial Affairs Division
Directorate for Financial, Fiscal and Enterprise Affairs**

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INTRODUCTION

Since the Second World War, great progress has been achieved in the liberalisation of international trade in both goods and services, with the particular emphasis on the latter field during the recent decades. In this context, in 1983, the previous study on “International Trade in Services: Insurance - Identification and Analysis of Obstacles -” was carried out by the Committee on Capital Movements and Invisible Transactions and the Insurance Committee in order to study and assess the obstacles to international insurance operations.

The complete update of the 1983 study is in line with the Insurance Committee’s medium-term priorities, particularly those related to the liberalisation of international insurance operations. It is also consistent with the work undertaken by the Joint Working Group on Insurance Services of both the Committee on Capital Movements and Invisible Transactions and the Insurance Committee. This new study also contains the update of the 1982 responses from Member countries related to the questionnaire on obstacles to the establishment of branches or agencies of foreign insurers and underlying motivations, and the analysis of the updated responses.

It should be pointed out that some of regulatory and supervisory measures identified and analysed in the current study could be indeed justified as being based on prudential consideration which is necessitated in order to ensure that the protection of policyholders’ interests - the ultimate objective of insurance supervision - could be achieved. Nevertheless there might be in some cases the possibilities to reduce further or eliminate the scope and degree of discriminatory elements.

Selected major findings of the current study could be summarised as follows. The following order does not intend to rank the obstacles based on their respective importance or seriousness.

- i. Liberalisation has considerably progressed in recent years. In EU/EEA member countries, the implementation of the EU Third Insurance Directives has enabled in principle all classes of insurance to be placed on a cross-border basis, more precisely under the freedom to provide services, within these countries. The reinsurance market is in general widely liberalised within Member countries, reflecting the international nature of this business. The cross-border trade of MAT (Marine, Aviation and Transport) also seems to be well recognised by most Member countries.
- ii. In several Member countries, cross-border trade is allowed for all classes of insurance, provided the resident proposer initiates the transaction. In most Member countries, resident proposers can enter into an insurance contract with an insurer neither established nor authorised in their respective countries, provided it is not possible to cover the risk in their respective countries. In most Member countries, cross-border trade is allowed even if the insurer concerned is also established and authorised in respective countries for the same classes of insurance.
- iii. However there still remain a number of restrictions, even related to the most liberalised items of the Code of Liberalisation of Current Invisible Operations (hereafter “the Invisible Code”) such as the item D/5 (Reinsurance and retrocession) and the item D/6 (Conditions for establishment and operation of branches and agencies of foreign insurers), regardless of whether these restrictions are expressed in reservations of Member countries concerned to the relevant items of the Invisible Code.

- iv. In many Member countries, the State itself plays an important role as a provider of insurance services in addition to those covered by the item D/1 (Social security and social insurance). In several Member countries, the State provides also major classes of insurance such as life, fire and motor. Moreover, the scope and degree of the State insurance operations is far from identical among Member countries. Even if the State provision of insurance services is not connected with the monopolistic status, it could have a considerable economic implication on liberalisation of international insurance operations. In this respect, the existence of State-owned insurance companies in several Member countries should be pointed out as well.
- v. The State could appear also as a purchaser of insurance services. In most Member countries, however, the State in principle retains its own risks, and at least generally tenders out in exceptional cases where it takes up insurance with private insurers. In several Member countries where the government takes up insurance with private insurers, the government in principle tenders out and sets up guidance describing circumstances under which tenders are exceptionally not issued.
- vi. In the majority of OECD Member countries, there exist special regulations which restrict or exclude the possibility of concluding group insurance contracts and/or compulsory insurance contracts with non-established insurers, both of which are currently excluded from the scope of the item D/4 (All other insurance).
- vii. The admissibility of insurance intermediaries such as insurance brokers and insurance agents in respect of cross-border transactions varies from one Member country to another, reflecting the variety of legislation on insurance intermediaries among Member countries. In some OECD Member countries, the admissibility or non-admissibility of resident insurance intermediaries in respect of cross-border transactions depends on which of a proposer or an insurer initiates the transaction. In most OECD Member countries, when non-established insurers are (not) allowed to offer insurance contracts to cover residents by using the services of insurance intermediaries resident in respective countries, they are (not) allowed to do so also through direct means such as advertising in the domestic press, canvassing by letters, etc.
- viii. The treatment of international co-insurance also varies from one Member country to another. Even within EU/EEA countries, the Co-insurance Directive does not apply to co-insurance contracts with non-EU/EEA insurers, which leaves the member countries to regulate this issue in different ways.
- ix. Apart from the establishment of branches or agencies within EU/EEA countries by insurers with their head offices in other EU/EEA countries, the establishment of branches or agencies by foreign insurers necessitate, in many OECD Member countries, specific requirements and documents. Some examples are as follows; deposits or financial guarantees, legal form in a home country, types of business conducted in a home country, business record in a home country, official certification of the supervisory authority in a home country, tax representative etc.
- x. More specifically, with a few exceptions, most Member countries have provisions regarding deposits from foreign insurers wishing to establish branches. However, insurers from EU/EEA countries wishing to establish branches in other EU/EEA countries do no longer need to constitute and maintain deposits and solvency margins in their respective host countries. A few Member countries require that the legal form of an applicant is comparable to the legal forms admitted in these respective countries. There are, however, some other Member countries which accept legal forms which are not admitted in their own countries. The types of business which branches of foreign insurers are allowed to conduct in host countries are, probably commonly in Member

countries, restricted to those which the foreign insurers are allowed to conduct in their respective home countries.

- xi. In respect of licensing for branches or agencies of foreign insurers, no Member countries have reported the application of the Market Needs Test to examine whether there is a need for any additional insurer in the national market.
- xii. In respect of licensing for branches or agencies of foreign insurers, no average time-lag between the lodging of applications and the final decisions by the licensing authorities, which exceeds six months (a deadline stipulated in the item D/6 of the Invisible Code), has been reported. No meaningful difference between the frequency of the refusals for domestic concerns and that for foreign concerns has been reported. Likewise, no meaningful difference between the frequency of the refusals of the first applications and that of the refusals of applications for extension to other classes of business has been reported.
- xiii. Under certain circumstances, the legal provisions, which in themselves might not belong to the insurance legislation in a narrower sense, could be considered as obstacles to international insurance operations, and could make the existing freedom theoretical only. This kind of situations could be found in particular in the following areas; contract law, taxation , work permit etc. Several examples are as follows. More than one third of OECD Member countries have reported the existence of fiscal advantages normally granted to policyholders, but not granted in the case of cross-border insurance contracts, such as allowing premiums as a deduction for income tax purposes. Compared with work permits for managerial posts, work permits for supervisory and clerical posts are more difficult to obtain. A few Member countries have reported that general agents of branches of non-EU/EEA insurers are required to have good capability of their respective national languages.

SUMMARY

PART I : GENERAL ISSUES AND CROSS-BORDER TRADE

I. General Issues

Supervised Classes of Direct Insurance

With a few exceptions, Member countries supervise all classes of private direct insurance. The exceptions concern specific institutions and, less often, specific sectors.

Classes of Direct Insurance operated by the State

Apart from social security, the classes of insurance operated by the State are usually specifically defined. The following categories of insurance are often provided by the State; workers' compensation insurance, export credit insurance and insurance specifically related to political risks or war.

In some Member countries, however, major classes of insurance such as life, fire and motor are also provided by the State. In some Member countries, state-owned insurance companies or public insurance companies operate in competition with private insurance companies.

Domestic Retention/Compulsory Cessions and Pools

Some Member countries have reported the restrictions which necessitate domestic retention. Not all of these restrictions are expressed in reservations of Member countries concerned to the item D/5 (Reinsurance and retrocession) of the Invisible Code.

II. Restrictions concerning the Placing of Contracts

Admissibility of Cross-border Transactions

Liberalisation in this respect has considerably progressed in recent years. In EU/EEA member countries, the implementation of the EU Third Insurance Directives has enabled in principle all classes of insurance to be placed on a cross-border basis, more precisely under the freedom to provide services, within these countries. The reinsurance market is in general widely liberalised within Member countries, reflecting the international nature of this business. The cross-border trade of MAT (Marine, Aviation and Transport) also seems to be well recognised by most Member countries.

In some Member countries, cross-border trade is allowed for all classes of insurance, provided the resident proposer initiates the transaction. In most Member countries, resident proposers can enter into an insurance contract with an insurer neither established nor authorised in their respective countries, at least when it is not possible to cover the risk in their respective countries. In most Member countries, cross-border trade is allowed even if the insurer concerned is also established and authorised in respective countries for the same classes of insurance.

Insurance Intermediation

In more than one third of Member countries, resident proposers can enter into an insurance contract with an insurer neither established nor authorised in respective countries by using the service of an insurance intermediary such as an insurance broker or an insurance agent which are resident in those respective countries.

In most Member countries, when non-established insurers are (not) allowed to offer insurance contracts to cover residents in respective countries by using the services of insurance intermediaries resident in respective countries, they are (not) allowed to do so also through direct means such as advertising in the domestic press, canvassing by letter, etc.

Group Insurance and Compulsory Insurance

In some Member countries, there exist special regulations which restrict or exclude the possibility of concluding group insurance contracts with non-established insurers. In the majority of Member countries, there exist special regulations which restrict or exclude the possibility of concluding compulsory insurance contracts with non-established insurers.

Restriction on Volume of Business

In most Member countries, for the classes of insurance for which cross-border transactions are allowed, there is no restriction on the volume of insurance business.

International Co-insurance

The treatment of international co-insurance varies from one Member country to another. Even within EU/EEA countries, the Co-insurance Directive does not apply to co-insurance contracts with non-EU/EEA insurers, which leaves the member countries to regulate this issue in different ways.

III. Other Conditions applying to Transactions

Contract Law

In most Member countries, the parties who enter into insurance contracts covering risks situated in a Member country must comply with the compulsory provisions such as those related to general good, public order etc. stipulated by the contract law of that country, even if the parties are allowed to make their own choice of the applicable contract law. As for risks situated outside a Member country, the parties are

usually allowed to make their own choice of the contract law even with regard to the compulsory provisions.

Domestic Regulations of a General Nature

In general, the parties of insurance contracts are subject to domestic regulations of a general nature such as those on consumer protection.

Jurisdiction of Civil Court

If the parties to insurance contracts have not chosen the domestic contract law of a Member country, this in general does not mean that they are no longer entitled to bring dispute before the civil courts of that country.

Premium Tax, Stamp Duty or Other Charges

In most Member countries, insurance contracts written in the domestic market in general are subject to at least one of the following fiscal charges; premium tax, stamp duty or other charges payable by the proposer. In most of these countries, insurance contracts concluded with insurers neither established nor authorised in these countries are not subject to higher rates of premium tax or other fiscal charges.

Fiscal Treatment

More than one third of Member countries have reported the existence of fiscal advantages which are granted to the proposer when a contract is concluded with an insurer established in these respective countries, however not granted when concluded with an insurer neither established nor authorised in these respective countries, such as allowing premiums as a deduction for income tax purposes.

Foreign Currency

In most Member countries, insurance contracts can be expressed in foreign currency.

Foreign Exchange Control

No Member countries have reported foreign exchange controls in respect of insurance transactions which involve foreign exchange (payment of premiums, payment of indemnities, remittance of insurance company's earnings to non-resident shareholders, etc.).

Underwriting Association

In nearly half of Member countries, insurers neither established nor authorised within those respective countries are not entitled to be a member of underwriting associations. Out of those countries, five countries have confirmed that non-established insurers can nonetheless write a significant volume of insurance business.

Deposits with Direct Insurers by Foreign Reinsurers

In most Member countries, foreign reinsurers are by law not required to deposit funds with the direct insurers they reinsure to satisfy domestic solvency requirements imposed on the latter with regard to the representation of technical reserves.

Resident Accounts by Foreign Reinsurers

In several Member countries, non-resident reinsurers may open resident accounts. Some Member countries regard this issue as not relevant, because of the lifting of exchange control.

PART II: CONDITIONS OF ESTABLISHMENT OF BRANCHES OR AGENCIES OF FOREIGN INSURERS

I. Admissibility of Establishment of Branches or Agencies of Foreign Insurers

The establishment of branches or agencies is admissible in most Member countries with a few restrictions. Not all of these restrictions are expressed in reservations of Member countries concerned to the item D/6 (Conditions for establishment and operation of branches and agencies of foreign insurers) of the Invisible Code.

II. Administrative and Procedural Aspects of Licensing

Supervisory Authority responsible for Licensing

In most Member countries, the same authority is responsible for granting licences to domestic concerns as well as branches and agencies of foreign insurers, and responsible for granting a licence as well as an authorisation for extension of activities to other classes.

Pre-application Procedures

Pre-application procedures, whichever formal or informal, can be observed in many Member countries. Contacts with the insurance supervisory authority prior to the formal application are reported to have proved useful and helpful for potential applicants.

Licensing Requirements

Apart from the establishment of branches within EU/EEA countries by insurers with their head offices in other EU/EEA countries, the establishment of branches by foreign insurers necessitate, in many OECD Member countries, specific requirements and documents.

a. Reciprocity

Some Member countries have reciprocity provisions. Under the GATS, however, these provisions are not applied to GATS members.

b. Deposits or Financial Guarantees

With a few exceptions, most Member countries have provisions regarding deposits from foreign insurers wishing to establish branches. Insurers from EU/EEA countries wishing to establish branches in other EU/EEA countries do no longer need to constitute and maintain deposits and solvency margins in their respective host countries.

c. Legal Form in a Home Country

A few Member countries require that the legal form of an applicant is comparable to the legal forms admitted in these respective countries. There are, however, some other Member countries which accept legal forms which are not admitted in their own countries.

d. Types of Business conducted in a Home Country

The types of business which branches of foreign insurers are allowed to conduct in host countries are, probably commonly in Member countries, restricted to those which the foreign insurers are allowed to conduct in their respective home countries.

e. Business Record in a Home Country

A business record over the past three years is required at least in some Member countries. There are, however, other Member countries which require a more than three years' period of time since an applicant's incorporation in its home country.

f. Official Certification of the Supervisory Authority in a Home Country

A few Member countries have reported that an applicant has to submit the official certification of the supervisory authority in its home country.

g. Tax Representative

A Member country has reported that foreign insurers having a branch, agency or any sort of base of operations in this country are required, prior to conducting any business in this country, to obtain the Ministry of Finance's approval of a tax representative who shall pledge to the State that the annual tax on contracts will be paid.

III. Other Issues on Licensing

Market Needs Test

No Member countries have reported the application of the Market Needs Test to examine whether there is a need for any additional insurer in the national market.

Domestication

In a few Member countries, the domestication is to some extent encouraged, although the branch operation is possible.

Refusals of Applications

The following reasons for the refusals of the first applications as well as those for the extension to other classes of business are mentioned; incomplete applications, unsatisfactory financial capability, unsatisfactory business plan, inappropriate qualification of the management, inadequate business character and concerns for shareholders.

No meaningful difference between the frequency of the refusals for domestic concerns and that for foreign concerns has been reported. Likewise, no meaningful difference between the frequency of the refusals of the first applications and that of the refusals of applications for extension to other classes of business has been reported.

Time-lags between Lodging of Applications and Decisions by the Authorities

No average time-lag between the lodging of applications and the final decisions by the licensing authorities, which exceeds six months (a deadline stipulated in the item D/6 of the Invisible Code), has been reported. No meaningful difference between the frequency of the delays for domestic concerns and that for foreign concerns has been reported.

Appeals Procedures

In many Member countries with a few exceptions, there are appeals procedures for license denials, and the same procedures apply to domestic and foreign insurers.

Compulsory Classes of Insurance

In most Member countries, foreign insurers are not precluded from writing compulsory classes of insurance.

IV. Valuation, Localisation and Lodging of Assets

Valuation of Assets

No difference of valuation methods of assets for domestic and foreign insurers has been reported.

Localisation of Assets

In the context of EU Directives, "localisation of assets" means the existence of assets, whether movable or immovable, within the EU/EEA.

Lodging of Assets

In many Member countries, only assets representing deposits are required to be lodged.

V. Transfers

In most Member countries, transfers of profits, surplus assets and reinsurance balances are not subject to control or authorisation by the insurance supervisory authorities. Transfers should be understood to be indirectly subject to the normal solvency control.

VI. Staff

Work Permit

Many EU/EEA countries have reported that only non-EU/EEA citizens are required to obtain work permits. Compared with work permits for managerial posts, work permits for supervisory and clerical posts are in general more difficult to obtain.

General Agent

In several EU/EEA countries, general agents of insurers with their head office within the EU/EEA do not need to be domiciled in these respective countries, whereas general agents of insurers with their head office outside the EU/EEA must be resident in these respective countries.

Language Capability

A few Member countries have reported that general agents of branches of non-EU/EEA insurers are required to have good capability of their respective national languages.

VII. Underwriting Associations

In some Member countries, there are underwriting associations, whereby a high proportion of contracts in one or more classes of insurance are placed with members of these associations. Most of these countries have reported that the same conditions of membership apply to domestic and foreign insurers.

VIII. Taxation

In some Member countries, there are differences in taxation treatment between domestic and foreign insurers.

IX. Government Procurement

In most Member countries, the government in principle retains its own risks. Many of these countries have reported that the government at least generally tenders out in exceptional cases where it takes up insurance with private insurers.

SELECTED COMPARATIVE TABLES

Table I
CLASSES OF INSURANCE OPERATED BY THE STATE (DIRECT INSURANCE) (*)

	as a monopoly	in competition with private insurance companies
Australia	Compulsory third party motor insurance (in four States) Workers compensation insurance (in three States).	Compulsory third party motor insurance (in other States) Workers compensation insurance (in other States).
Austria	N	N
Belgium	N	Export credit insurance
Canada	Motor vehicle insurance (in four Provinces).	N
Czech Republic	N	N
Denmark	N	N
Finland	N	N
France	N	N
Germany	N	A few classes
Greece	N	Export credit insurance
Hungary	Political risks	Export credit insurance
Iceland	N	N
Ireland	N	N
Italy	N	N
Japan	Trade and investment insurance	Life insurance
Korea	Export insurance, Workers' compensation insurance	Life insurance
Luxembourg	N	Export credit insurance
Mexico	N	N
Netherlands	N	N
Norway	War risk cargo insurance.	N
Poland	N	Export credit insurance.
Portugal	N	N
Spain	N	Export credit insurance
Sweden	N	N
Switzerland	Fire insurance (in 19 Cantons)	Fire insurance (in certain Cantons)
Turkey	Export credit insurance	N
United Kingdom	N	Export credit insurance
United States	Exclusive workers' compensation funds in four States and residual market mechanisms for workers' compensation, auto liability, property insurance, and health insurance. Workers compensation and motor vehicle liability insurance in some States. However, this typically applies to risks for which insurance is not reasonably available in the private marketplace.	

N= Not existing.

Note: (*) Social Security, which in most countries is operated by the State as a monopoly, is not mentioned in this table, since the item D/1 (Social Security and Social Insurance) of the OECD Code of liberalisation of invisible transactions has been left outside the scope of the present study.

Table II

GOVERNMENT PROCUREMENT

Australia	R
Austria	R
Belgium	R
Canada	n.a.
Czech Republic	T
Denmark	R
Finland	R
France	R
Germany	R
Greece	T
Hungary	T
Iceland	R
Ireland	R
Italy	R
Japan	R
Korea	T
Luxembourg	R
Mexico	n.a.
Netherlands	R
Norway	R
Portugal	R
Spain	T
Sweden	R
Switzerland	R
Turkey	n.a.
United Kingdom	R
United States	R for the Federal Government T for the State Governments

R= The Government in principle retains its own risks.

T= The Government takes up insurance with private insurers, but in principle tenders out.

Table III

ADMISSIBILITY OF ESTABLISHMENT OF BRANCHES OR AGENCIES OF FOREIGN INSURERS

Australia	N, for life insurers. Y, for non-life insurers.
Austria	Y
Belgium	Y
Canada	Y
Czech Republic	Y
Denmark	Y
Finland	Y
France	Y
Germany	Y
Greece	Y
Hungary	Y
Iceland	Y
Ireland	Y
Italy	Y
Japan	Y
Korea	Y
Luxembourg	Y
Mexico	N
Netherlands	Y
Norway	Y
Poland	Y
Portugal	Y
Spain	Y
Sweden	Y
Switzerland	Y
Turkey	Y
United Kingdom	Y
United States	N, in 17 States, unless an insurer is licensed in some other US State.

Y= Admissible.

N= Not admissible.

Table IV
DOMESTIC RETENTION/ COMPULSORY CESSIONS AND POOLS

Australia	Y, in the case of life business, foreign reinsurance companies must set up the statutory funds in Australia for the purpose of conducting business.
Austria	N
Belgium	N
Canada	Y, non-life insurers cannot cede more than 25 per cent of gross premiums written to unregistered (non-resident) reinsurers. In the GATS commitments, it is stated that, at the federal level as well as provinces' level excluding two provinces, reinsurance and retrocession services must be supplied through a commercial presence.
Czech Republic	N
Denmark	N
Finland	N
France	N
Germany	N
Greece	N
Hungary	N
Iceland	N, excluding a voluntary but well-established pool for fishing fleets over 100 tons.
Ireland	N
Italy	N
Japan	Y (compulsory cession to the State for 60 per cent of the compulsory automobile liability insurance).
Korea	N
Luxembourg	N
Mexico	N
Netherlands	N
Norway	Y (compulsory pool for fire insurance).
Poland	N
Portugal	N
Spain	N
Sweden	N
Switzerland	N
Turkey	Y (compulsory cession up to a certain proportion to a domestic private company for non-life insurance) ¹ .
United Kingdom	N
United States	N

Y= Existing.

N= Not existing.

1: To be abolished by the end of 2001.

Table V
FREEDOM OF INSURANCE TRANSACTIONS - ADMISSIBILITY OF CROSS-BORDER TRANSACTIONS

	May persons resident in your country enter into an insurance contract with an insurer neither established nor authorised in your country where it is not possible to cover the risk concerned in your country?	May persons resident in your country enter into an insurance contract with an insurer abroad even when this insurer is also established and authorised in your country for the same class of insurance?
Australia	non-life: Y life: N	non-life: Y life: N
Austria	Y, if the resident proposer takes out the contract directly with the insurer abroad or if he does so by correspondence (As regards EEA insurers, the third EU Directives apply).	N, except for D/2 and EEA insurers.
Belgium	N	N, except for EEA insurers.
Canada	Y, if the transaction does not constitute business in Canada.	Y, if the person initiates the transaction and the contract of insurance is reported in the Canadian books and records.
Czech Republic	This issue has not yet been solved.	N
Denmark	Y, if the resident proposer takes out the contract directly with the insurer abroad or if he does so by correspondence (As regards EEA insurers, the third EU Directives apply).	n.a.
Finland	Y, if the resident initiates the transaction.	Y
France	Y, subject to authorisation from the Ministry of Economy.	N, except for EEA insurers and marine or aviation transport insurance.
Germany	Y	Direct insurance: N Reinsurance: Y
Greece	Y	Y
Hungary	Y, if the person is obliged to have compulsory insurance.	n.a.
Iceland	Y, at the own initiative of the persons except in mandatory classes of insurance where the person must take out insurance with companies licensed or registered in Iceland.	Y
Ireland	N, except for EEA insurers.	N, except for EEA insurers and MAT classes.
Italy	Y, subject to authorisation from the Ministry of Industry.	N, except for EEA insurers and D/2.
Japan	Y, subject to authorisation from the Ministry of Finance (for verification purposes).	Y
Korea	Y	Y
Luxembourg	Y	N, except for EEA insurers.
Mexico	Y, subject to authorisation from the Ministry of Finance.	N, except for goods in international trade and in other cases with authorisation from the Ministry of Finance.
Netherlands	Y	Y, except for third party liability insurance for hunters
Norway	Y (for non EEA insurers, it is required that the resident enters into the contract by contacting the insurer directly or does so by correspondence).	Y
Poland	Y	N
Portugal	Y, subject to prior authorisation from the Insurance Institute of Portugal.	N, except for EEA insurers.
Spain	Y, subject to authorisation from the Ministry of Economy and Finance.	N, except for EEA insurers and in other cases with authorisation from the Ministry of Economy and Finance.
Sweden	Y	Y
Switzerland	N	N
Turkey	Y	N
United Kingdom	Y	Y
United States	Y	Y

Y= Admissible

N= Not admissible

Table VI
FREEDOM OF INSURANCE TRANSACTIONS - INTERMEDIATION

	May persons resident in your country enter into insurance contracts with an insurer abroad by using the services of an insurance intermediary (for instance, broker or agent) resident in your country?	May insurers which are not authorised offer insurance contracts to cover residents in your country by using the services of an insurance intermediary resident in your country?	May these insurers offer contracts to cover residents in your country through direct means such as advertising in the domestic press, canvassing by letter, etc.?
Australia	Non-life: Y Life: N	Non-life Y Life: N	Non-life: Y Life: N
Austria	N, except for the intermediaries acting on behalf of an EEA insurer.	N, except for EEA insurers.	N, except for EEA insurers.
Belgium	N, except for EEA insurers.	N, except for EEA insurers	N, except for EEA insurers
Canada	Y, provided the person initiates the transaction and that the transaction does not constitute business in Canada.	N, except for marine insurance.	N, except for marine insurance and nuclear insurance.
Czech Republic	N	N	N
Denmark	N, except for EEA insurers.	N, except for EEA insurers.	N, except for EEA insurers.
Finland	Y, only by using a broker.	Y, only by using a broker.	N
France	N, except for EEA insurers and marine or aviation transport insurance.	N, except for EEA insurers and marine or aviation transport insurance	N, except for EEA insurers and marine or aviation transport insurance.
Germany	N, except EEA insurers.	Direct insurance: N, except for EEA insurers. Reinsurance: Y	Y
Greece	Y	N, except for EEA insurers	N, except for EEA insurers.
Hungary	n.a.	N	N
Iceland	N, except for EEA insurers	N	N
Ireland	Y	N, except for EEA insurers and MAT classes.	Y
Italy	N, except for EEA insurers and D/2.	N, except for EEA insurers.	N, except for EEA insurers.
Japan	N	N	Y
Korea	N, except for reinsurance.	N, except for reinsurance.	Y
Luxembourg	N, except for EEA insurers.	N, except for EEA insurers.	N, except for EEA insurers.
Mexico	N, except for goods in international trade and in other cases with authorisation from the Ministry of Finance	Y, if foreign insurers obtain prior authorisation from the Ministry of Finance.	Y, if foreign insurers obtain prior authorisation from the Ministry of Finance.
Netherlands	Y, except for third party liability insurance for hunters.	Y	Y
Norway	Y, as to the commercial insurance classes - with the exception of compulsory insurance.	N, except for EEA insurers.	N, except for EEA insurers.
Poland	N	N	N
Portugal	N, except for EEA insurers	N, except for EEA insurers.	N, except for EEA insurers.

Spain	N, except for D/2 and in other cases with the authorisation from the Ministry of Finance.	N, except for EEA insurers.	N, except for EEA insurers.
Sweden	Y	N	N, except for EEA insurers.
Switzerland	N, except for D/2.	N, except for D/2.	N, except for D/2.
Turkey	N	N	N
United Kingdom	Y	Y	Y, but in the case of life insurance with an investment element, there are restrictions on who can promote such contracts.
United States	Y, however sanctions may apply to the seller if the insurer is unauthorised.	N	N (with exception of surplus lines and excess business, insurers in all States are required to be authorised to provide insurance).

Y= Admissible
N= Not admissible

Table VII
FREEDOM OF INSURANCE TRANSACTIONS - CONTRACT LAW

	Are the parties entering into insurance contracts allowed to make their own choice of law for the contract (excluding choice of tax law)?	
	with regard to the compulsory provisions of the contract law?	with regard to the whole contract?
Australia	N. The Insurance Contracts Act 1984 cannot be avoided by selecting a foreign law. The Insurance Contracts Act 1984 applies to all contracts. The Insurance Contracts Act 1984 does not distinguish compulsory provisions in contracts from others.	
Austria	Provisions concerning the general good must be observed.	
Belgium	Y, except that, in life insurance, the applicable law is Belgian law for contracts covering risks in Belgium. In non-life insurance Belgian law is applicable if the contract covers risks located in Belgium and if the proposer resides or is headquartered in Belgium.	
Canada	N	N
Czech Republic	N	N
Denmark	The provisions concerning choice of law within the EEC Directives apply.	
Finland	Y (but the compulsory provisions of Finnish law may still be applicable).	Y (excluding certain consumer contracts)
France	N for the provisions concerning public order and for compulsory insurance. Y for marine transport and aircraft contracts, reinsurance and under certain conditions for contracts written by an insurer lawfully established in an EEA member state.	
Germany	Y	Y for D/2.
Greece	Y with two exceptions: a) compulsory contracts b) if the risk is situated in Greece and the insured has his habitual residence or the center of his activity in Greece.	Y
Hungary	Y	Y
Iceland	N	N
Ireland	Y	Y
Italy	Y, but the compulsory provisions of Italian law continue to apply.	
Japan	N, except for D/2.	N
Korea	N	N
Luxembourg	Y	Y (under certain conditions)
Mexico	N	N
Netherlands	Y	Y
Norway	In general, N. The Act on Insurance Contracts (and appurtenant regulations) and the Act on Choice of Law in Regulation to Insurance apply.	
Poland	Y	Y
Portugal	Y, to some extent; but compulsory insurance contracts are governed by Portuguese law; the law applicable to insurance contracts covering risks situated in Portugal or in which Portugal is the contracting State must not be inconsistent with Portugal's essential principles of international public policy.	Y, within limits; e.g., existence of an express clause and overriding interests of the contracting parties or particular relevance of the chosen law to a legal aspect of the contract that falls under international private law.
Spain	N, except for major risks and some types of non-life insurance	
Sweden	Y	Y
Switzerland	N for D/2 if contract is written by an insurer established or authorised in Switzerland. N for other classes if contract is part of the Swiss portfolio.	
Turkey	N	N
United Kingdom	Y	Y
United States	N	N

Y = Allowed
N = Not allowed

Table VIII
FREEDOM OF INSURANCE TRANSACTIONS - FISCAL TREATMENT

	Are insurance contracts written in the domestic market subject to premium tax; stamp duty or other charges payable by the proposer?	Are higher rates of premium tax or other fiscal charges imposed on insurance contracts concluded with insurers not established or authorised in your country?	Are there other fiscal advantages granted to the proposer when a contract is effected with an insurer established in your country which are not granted when it is effected with an insurer neither established nor authorised in your country (such as allowing premiums as a deduction for income tax purposes)?
Australia	Y (these duties are levied by state governments)	N	N
Austria	Y	Y, except for EEA insurers	Y (life, sickness and accident insurance)
Belgium	Y	N	Y (life insurance)
Canada	Y	Y unless risk cannot be covered in Canada	N
Czech Republic	N	N	n.a.
Denmark	Y	N	Y (life insurance)
Finland	Y	N	Y (voluntary pension insurance)
France	Y	N	N
Germany	Y (excluding life insurance, sickness and suretyship insurance and cattle insurance up to DM 7500)	N	Y
Greece	Y	N	Y (life contracts more than 10 years)
Hungary	N	N	N
Iceland	Y	N	N
Ireland	Y	N	N
Italy	Y	N	N
Japan	Y (200 yen stamp duty paid by insurer)	N	N
Korea	Y (100 won stamp duty per policy paid by the insurer)	N	N
Luxembourg	Y (excluding life)	N	Y (life insurance)
Mexico	Y	N	N
Netherlands	Y (except for D/2, life insurance, sickness and medical expenses insurance and a few other classes)	N	Y (life insurance)
Norway	N	N	Y (life insurance) unless the insurer (1) has its head office in another EEA country and (2) has established a branch in Norway in accordance with the EU life directives.
Poland	N	N	N
Portugal	Y	N	Y (life insurance)
Spain	Y	N	N

Sweden	N	N	Y (pension insurance)
Switzerland	Y (excluding D/2 and a few other classes)	N	N
Turkey	Y	N	Y (life and health insurance)
United Kingdom	Y (insurance premium tax except for life, MAT and reinsurance).	N	Y, in the taxation of benefits.
United States	Y	Yes, one per cent federal excise tax on life insurance premiums and four per cent federal excise tax on non-life insurance premiums in case they are paid to companies not incorporated under US law.	Y (in some States).

Y= Yes
N= No

PART I

IDENTIFICATION AND ANALYSIS OF MEASURES RELATED TO INTERNATIONAL INSURANCE OPERATIONS: GENERAL ISSUES AND CROSS-BORDER TRADE

I. General Issues

Supervised Classes of Direct Insurance

With a few exceptions, Member countries supervise all classes of private direct insurance. The exceptions concern specific institutions (in Australia, friendly societies, trade unions etc.; in Switzerland, some institutions and provident funds providing unemployment and sickness insurance) and, less often, specific sectors (in Canada, marine insurance; in Luxembourg, nuclear risk and war; in the Netherlands, life insurance in kind and war insurance covered by insurers who exclusively conclude contracts for the covering of war damage on a mutual basis).

Classes of Direct Insurance operated by the State

Social security, which in most Member countries is operated by the State as a monopoly, is not dealt with, because the item D/1 (Social security and social insurance) of the Invisible Code has been left outside the scope of the present study.

Apart from social security, the classes of insurance operated by the State, either as a monopoly or in competition with private insurance concerns, are usually specifically defined. The following categories of insurance are often provided by the State; workers' compensation insurance, export credit insurance and insurance specifically related to political risks or war.

Examples are as follows. In Australia, workers' compensation is provided by public monopoly in three States and in competition with private insurers in other States. In Belgium, with regard to export credit, certain risks having a severity and duration which exceed the technical capacity of private and public companies are covered by the State if it considers that the operations in question are politically advisable. In addition, the State also grants its guarantee for operations covered by a public establishment if the risks cannot be covered normally by private insurers, though such risks do not actually constitute political risks. In Greece and Luxembourg, export credit insurance on behalf, or with the guarantee of the State, is operated by the State in competition with private insurance companies. In Hungary, political risk is covered by the State monopoly, and export credit insurance is provided by the State in competition with private insurance companies. In Italy, Poland, Spain and the United Kingdom, export credit insurance is provided in competition with private insurance companies. In Japan, trade and investment insurance is provided as the State monopoly. In Korea, export insurance and workers' compensation insurance are operated exclusively by the State. In Norway, the War Risk Cargo Insurance, which is cargo or transport insurance related to various kinds of war risks (at sea), is provided by the State as a monopoly. In Turkey, export credit insurance is provided as a State monopoly.

In several Member countries, major classes of insurance such as life, fire and motor are also provided by the State. In Japan and Korea, post offices are providing life insurance in competition with private insurance companies. In Switzerland, a public monopoly on fire and natural damage insurance on buildings exists in 19 cantons. In two cantons out of these 19 cantons, the public monopoly on fire and natural damage insurance includes also movable property located in the buildings. In other cantons, this class of insurance is provided in competition with private insurers. In Australia, compulsory third party motor vehicle accident is provided by public monopoly in four States and in competition with private insurers in other States. In Canada, motor vehicles insurance is provided by public monopoly in four Provinces.

In the United States, where insurance supervision is conducted by each State, there exist States with exclusive workers' compensation funds (Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming) and States with residual market mechanisms for workers' compensation, auto liability, property, and health insurance. Some States offer workers' compensation and motor vehicle liability insurance through State-owned facilities. It is explained, however, that this typically applies to risks which are not reasonably available in the private marketplace.

In some OECD Member countries (Australia, Mexico and Turkey), state-owned insurance companies or public insurance companies operate in competition with private insurance companies. In this respect, it should be mentioned that the definition of "state-owned insurance companies" or "public insurance companies" varies from one country to another, in particular in respect of the percentage of shareholding by the State.

Domestic Retention/Compulsory Cessions and Pools

Some Member countries have reported the restrictions which necessitate domestic retention (see also "Deposits with Direct Insurers by Foreign Reinsurers" and "Resident Accounts by Foreign Reinsurers"). The restrictions in this respect are as follows. Out of these restrictions, three situations in Australia, Japan and Turkey are reflected in their respective reservations to the item D/5 (Reinsurance and retrocession) of the Invisible Code.

In Australia, cross-border reinsurance transactions related to life business is restricted, although it is at least in theory still possible. In this country, the Life Insurance Act 1995 requires any life insurance company carrying on business in that country to register under that Act. This includes foreign reinsurance companies, which must set up the statutory funds in this country for the purpose of conducting business. If an overseas reinsurer not registered in Australia reinsures Australian life insurance business, this is ignored for the purpose of the Life Insurance Act. In particular, the Australian ceding company must maintain the same reserves at it would have done if the business had not been reinsured overseas.

In Japan and Turkey, there exist restrictions related to compulsory cessions. In Japan, 60 per cent of the compulsory third party liability motor insurance is subject to the compulsory cession to the State. In Turkey, there are compulsory cessions to a domestic private company called Milli Reasurans A.S.; according to which, apart from life insurance, (i) 15 per cent of all other insurances except motor vehicle insurance, after holding the necessary retention, and (ii) 10 per cent of each motor vehicle insurance, must be ceded to this particular company. This compulsory cession, however, will be abolished as of the end of 2001.

In Canada, there exists no compulsory cession. In this country, however, the purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from unregistered (non-resident) reinsurers is limited to no more than 25 per cent of gross premiums written by the insurer purchasing the reinsurance (see also "Restriction on Volume of Business"). More fundamentally, this country states in its

GATS commitments that, at the federal level as well as provinces' level excluding two provinces, reinsurance and retrocession services must be supplied through a commercial presence, which might mean the general prohibition of cross-border reinsurance transactions. The position of this country in this respect calls for further clarification.

In Norway, there exists a compulsory pool related to fire insurance. In this country, all insurance undertakings, i.e. both domestic insurance undertakings and branches of foreign insurance undertakings, underwriting fire insurance in this country must be members of the Norwegian Pool of Natural Perils. According to the Act on Insurance Covering Natural Perils, all insurance contracts covering damage caused by fire must also include coverage against natural perils. The Norwegian Pool of Natural Perils is a pool arrangement in the strict sense of the word. The pool handles all claims related to damages caused by windstorms, floods etc. The claims expenses are distributed among the members of the pool, based on their premium income stemming from cover against natural hazard. As a consequence, the loss ratio is identical for all undertakings being members of the pool. The pool deals with the external reinsurance related to claims caused by natural perils or natural catastrophes. EU/EEA insurers may provide fire insurance on a cross-border basis, if they are members of the Norwegian Pool of Natural Perils.

In Iceland, fishing fleets over 100 tons are insured in a pool administrated by a certain reinsurance company. Although this is a voluntary scheme, all insurance companies operating in this field have been participating in this scheme since long. This kind of voluntary scheme could be found in other Member countries as well.

II. Restrictions concerning the Placing of Contracts

Admissibility of Cross-border Transactions

Liberalisation in this respect has considerably progressed in recent years. In EU/EEA member countries, the implementation of the EU Third Insurance Directives has enabled in principle all classes of insurance to be placed on a cross-border basis, more precisely under the freedom to provide services, within these countries. Under the General Agreement on Trade in Services (GATS), the Understanding on Commitments in Financial Services, which was initiated by OECD Member countries, has set out the liberalisation of cross-border supply of insurance services in the field of reinsurance (including retrocession) and MAT (Marine, Aviation and Transport).

The reinsurance market is in general widely liberalised within OECD Member countries, reflecting the international nature of this business. Nonetheless there are still restrictions reported in a number of Member countries (see "Domestic Retention/Compulsory Cessions and Pools").

The cross-border trade of MAT also seems to be well recognised by most OECD Member countries. This is indicated by a limited number of reservations to the item D/2 (Insurance relating to goods in international trade) of the Invisible Code which covers one of the most important class of insurance within MAT.

In the Netherlands, the cross-border trade is in principle allowed for all classes of insurance, with only one exception of compulsory third party liability insurance for hunters, where the insurance contract must be concluded with an insurer licensed in that country or with an insurer whose head office is in an EEA member country.

In several OECD Member countries, the cross-border trade is allowed for all classes of insurance, provided the resident proposer initiates the transaction (in Austria; Denmark and Germany, provided the resident proposer takes out the contract directly with the insurer abroad or he does so by correspondence; in

Canada, provided the transaction does not constitute business in Canada; in Finland, except for statutory classes of insurance; in Iceland and the United Kingdom, except for compulsory classes of insurance; in Sweden, except for motor third party).

In most OECD Member countries, resident proposers can enter into an insurance contract with an insurer neither established nor authorised in their respective countries, at least when it is not possible to cover the risk in their respective countries (in Germany, Greece, Korea, Luxembourg the Netherlands, Poland, Sweden, Turkey, the United Kingdom and the United States; in Australia, for non-life insurance; in Austria, Denmark and Iceland, subject to the initiative of proposers; in Canada, if the transaction does not constitute business in Canada; in France, Italy, Japan, Mexico, Portugal and Spain, subject to authorisation; in Hungary, for compulsory insurance; in Norway, for non-EEA insurers, it is required that the resident enters into the contract by contacting the insurer directly or does so by correspondence). In several Member countries, however, the cross-border transactions are not allowed even under such circumstances (in Belgium and Ireland, the prohibition is applied for non-EU/EEA insurers; in Australia, for life insurance; in Switzerland, with exceptions). In the Czech Republic, this issue has not yet been solved.

In most OECD Member countries, cross-border trade is allowed even if the insurer concerned is also established and authorised in respective countries for the same classes of insurance. In Belgium, Portugal and Turkey, however, once the insurer is established in those countries, it can no longer conclude other classes of insurance on a cross-border basis (in Belgium and Portugal, except for EU/EEA insurers). In Germany, reinsurance can be concluded on a cross-border basis even after the reinsurer is established in that country, whereas, except for EU/EEA insurers, direct insurance can no longer be concluded on a cross-border basis once the insurer is established. In Australia where the cross-border trade of life insurance is in general not allowed, once incorporated in that country, foreign life insurers can conduct the cross-border trade as well. Switzerland has reported that, once established in that country, the foreign insurer must operate through the intermediary of his office in that country if a proposal comes from a person resident in that country.

Insurance Intermediation

In more than one third of OECD Member countries, resident proposers can enter into an insurance contract with an insurer neither established nor authorised in respective countries by using the service of an insurance intermediary such as an insurance broker or an insurance agent which are resident in those respective countries (in Greece, the Netherlands and the United Kingdom; in Australia, for non-life insurance; in Canada, if the transaction does not constitute business in Canada; in Finland, a proposer may use the service of an insurance broker only; in France, for marine and aviation insurance, for all classes of insurance in the case of an EU/EEA insurer; in Japan, for reinsurance and MAT; in Norway, as to commercial classes of insurance excluding compulsory insurance, if the intermediary is a broker registered (but, not necessarily resident) in this country; in Spain, for D/2 and other cases with the authorisation of the Ministry of Finance; in Switzerland, for D/2). In several EU countries (in Austria, Belgium, Denmark, Germany, Luxembourg and Portugal), this is allowed only for the intermediary acting on behalf of an EU/EEA insurer. In Korea, it is allowed for reinsurance only. In the Czech Republic and Turkey, it is generally not allowed.

In the following OECD Member countries, the admissibility or non-admissibility of resident insurance intermediaries in respect of cross-border insurance transactions depends on which of a proposer or an insurer initiates the transaction. In Canada, the admissibility of resident intermediaries is restricted only for marine insurance, when an insurer takes the initiative. In Finland, this distinction is relevant only in cases where the insurer is not an EU/EEA insurer. In Germany, apart from EU provisions, resident insurance intermediation is admissible for reinsurance, only when a reinsurer takes the initiative. In Sweden, resident insurance intermediaries are admissible, only when a proposer takes the initiative.

In most OECD Member countries, when non-established insurers are (not) allowed to offer insurance contracts to cover residents in respective countries by using the services of insurance intermediaries resident in respective countries, they are (not) allowed to do so also through direct means such as advertising in the domestic press, canvassing by letter, etc. In Germany and Ireland, however, non-established insurers can generally use direct means, whereas only EU/EEA insurers can use resident intermediaries (in Germany, reinsurance business can be conducted either through intermediaries or through direct means). In Japan, reinsurance and MAT business can be conducted through intermediaries, whereas all classes of insurance including reinsurance and MAT can be sold through direct means (the conclusion of insurance contracts other than reinsurance, MAT and overseas travellers' personal accident insurance is subject to the prior permission). In Korea, non-established insurers are allowed to use the services of a resident intermediary for reinsurance only, whereas non-established insurers can use direct means for all classes of insurance for which cross-border transactions are allowed. However, non-established insurers have to report the name of the company, the address of its head office and the content of the advertisement to the Governor of the Insurance Supervisory Board before advertising. The content of advertisement should include the following statement: "The policyholder protection provisions stipulated in the Insurance Business Law does not apply to the insurance contracts concluded with the foreign insurer." In the United Kingdom where non-established insurers are allowed to offer insurance contracts to cover residents in this country by using the services of an insurance intermediary resident in this country, non-established insurers are allowed to do so also through direct means, providing the advertisement states the insurer is not authorised in this country. In the case of life insurance with an investment element, however, there are restrictions on who can promote such contracts.

In the United States, there are 19 States which have restrictions related to brokerage licenses (brokerage licenses are not issued in 12 States, they are not issued to non-resident in two States, and they are issued to non-residents for only certain lines of insurance in five States). In addition, higher license fees for non-residents may be charged in 24 States. As for surplus lines brokers, all States require in-state residency.

Group Insurance and Compulsory Insurance

Group insurance and Compulsory insurance are currently excluded from the scope of the item D/4 (All other insurance) of the Invisible Code.

In some OECD Member countries, there exist special regulations which restrict or exclude the possibility of concluding group insurance contracts with non-established insurers (in the Czech Republic, Germany and Japan; in Australia, for life insurance; in Belgium, except EU/EEA insurers; in Korea, for non-life insurance; in the Netherlands, only for compulsory third party liability insurance for hunters; in Portugal, applicable only for non EU/EEA insurers).

In the majority of OECD Member countries, there exist special regulations which restrict or exclude the possibility of concluding compulsory insurance contracts with non-established insurers (in the Czech Republic, Finland, Iceland, Korea, Poland, Switzerland and the United Kingdom; in Australia, for compulsory third party motor vehicle insurance, workers' compensation, etc.; in Austria and Belgium, only for non EU/EEA insurers; in Germany, for liability insurance for hunters, owners of motor vehicles registered in that country, operators of nuclear plants, estate agents and builders, watchmen and guard services; in Greece and Sweden, for motor third party; in Japan, for compulsory automobile liability; in the Netherlands, for liability insurance for hunters; in Portugal, applicable only for non EU/EEA insurers; in Spain, for liability insurance for motor vehicles, hunters, nuclear damages and travellers).

Restriction on Volume of Business

In most OECD Member countries, for the classes of insurance for which cross-border transactions are allowed, there is no restriction on the volume of insurance business.

Only one exception in this respect, which has been reported, is that in Canada the purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from unregistered (non-resident) reinsurers is limited to no more than 25 per cent of gross premiums written by the insurer purchasing the reinsurance. This volume restriction on ceding companies can lead to the volume restriction on reinsurers (see also “Domestic Retention/Compulsory Cessions and Pools”).

International Co-insurance

The treatment of international co-insurance varies from one Member country to another. Even within EU/EEA countries, the Co-insurance Directive (Directive 78/473) does not apply to co-insurance contracts with non-EU/EEA insurers, which leaves the member countries to regulate this issue in different ways. This Directive applies to so-called “large and commercial risks” related to the majority of classes of non-life insurance excluding accident, sickness, credit, suretyship, legal expense and assistance. In Austria, Germany and Portugal, non-EU/EEA insurers must be established in these respective countries in order to participate in the insurance of domestic risks and in the insurance of risks related to the insured who is normally resident in these countries. In the Netherlands, international co-insurance is allowed for all classes of insurance with only one exception of the third party liability insurance for hunters, where the insurance contract must be concluded with an insurer licensed in that country or with an insurer whose head office is in an EU member country. In Spain, international co-insurance is subject to the same regulation as direct insurance. In the United Kingdom, international co-insurance is allowed for all classes of insurance except for compulsory insurance. As for EEA countries, Iceland reports that co-insurers - leaders and others - need authorisation like all other insurers in direct insurance, and Norway reports that in general the same regulations apply as for direct insurance, in addition to the special EU rules concerning co-insurance within the EU/EEA.

As for non EU/EEA countries, in Hungary, Mexico and Switzerland, only companies authorised to do business in that country can co-insure risks in that country. In Japan and Korea, international co-insurance is allowed for the classes of insurance for which cross-border transactions are allowed. In Canada, even if a company is not authorised to do business in Canada, a company can co-insure risks in Canada, provided the co-insurance would not constitute doing business in Canada. In the United States, co-insurance is treated as reinsurance, except where the reinsurance agreement contains a “cut through” clause.

The Member countries which allow international co-insurance do not set any limits to the size of the risks which can be insured in international co-insurance, nor impose any requirement as to the proportion of insurance to be retained by the domestic leading insurer and/or by co-insurers established in the country of the leading insurer.

III. Other Conditions applying to Transactions

In examining the extent to which the freedom of cross-border transactions exists, attention should be given to other legal provisions which do not belong to the insurance legislation in a narrower sense. Under certain circumstances, these conditions could be considered as obstacles to international insurance operations, and could make the existing freedom theoretical only.

Contract Law

In most OECD Member countries, the parties who enter into insurance contracts covering risks situated in a Member country must comply with the compulsory provisions such as those related to general good, public order etc. stipulated by the contract law of that country, even if the parties are allowed to make their own choice of the applicable contract law.

As for risks situated outside a Member country, the parties are usually allowed to make their own choice of the contract law even with regard to the compulsory provisions. This applies in Belgium and Greece, and for the item D/2 (Insurance relating to goods in international trade) in Japan and Switzerland (in the last country, unless the contract is written by an insurer established or authorised in that country). In Luxembourg, with respect to major risks, parties to insurance contract may opt for any other law, except for compulsory insurance.

Regarding the choice of the contract law, the difference between the treatment of EU/EEA enterprises and that of the others has been only rarely reported, although France has reported that contracts written by an insurer established in an EU/EEA member country can be more flexible than the others. This might be due to the fact that there are conflicts between national contract laws even within the EU member countries and the EU has not yet elaborated the way to overcome these conflicts.

Domestic Regulations of a General Nature

In general, the parties of insurance contracts are subject to domestic regulations of a general nature such as those on consumer protection. This seems to be somewhat parallel to the treatment of the compulsory provisions of the contract law. In this respect, it should be noted that in Korea some domestic regulations of a general nature on consumer protection (those prescribed by the Insurance Business Law as well as Consumer Protection Act) are not applied in the case of the cross-border contracts.

Jurisdiction of Civil Court

If the parties to insurance contracts have not chosen the domestic contract law of a Member country, this in general does not mean that they are no longer entitled to bring dispute before the civil courts of that country. The jurisdiction of civil courts depends on the location of insured objects (France), the place of events (Portugal) etc. In this respect, Norway refers to the Lugano Convention (as adopted in September 1988) and explains that a policyholder in general has a right to bring a dispute before the courts of his home country. In respect of the enforcement of the court's judgement, Korea has pointed out that, though the parties are entitled to bring disputes on contracts concluded under the foreign law before Korean courts, the enforcement of judgement by the court could be guaranteed by mutual recognition of respective court decisions through bilateral agreement.

Premium Tax, Stamp Duty or Other Charges

In most Member countries with exceptions of the Czech Republic, Hungary, Norway, Poland and Sweden, insurance contracts written in the domestic market in general are subject to at least one of the following fiscal charges; premium tax, stamp duty or other charges payable by the proposer. In some Member countries, however, several classes of insurance are exempted from these charges (in Belgium, individual life insurance, in Germany, life, sickness, suretyship and cattle up to DM 7 500; in Luxembourg, life; in the Netherlands, life, sickness, medical expenses and a few other classes; in Switzerland, D/2 and a few other classes; in the United Kingdom, life, MAT and reinsurance).

In most of these countries which have reported the existence of these charges, insurance contracts concluded with insurers neither established nor authorised in these countries are not subject to higher rates of premium tax or other fiscal charges. In Austria and Canada, however, these contracts are subject to higher rates of premium tax or other fiscal charges (in Austria, except for EU/EEA insurers; in Canada, unless risks cannot be covered in a domestic market). In the United States, a one per cent federal excise tax is imposed on all life insurance premiums and a four per cent federal excise tax is imposed on all non-life insurance premiums covering US risks that are paid to companies not incorporated under US law, except for premiums that are earned by such companies through an office or dependent agent in the United States.

Fiscal Treatment

More than one third of OECD Member countries (Austria, Belgium, Denmark, Finland, Germany, Greece, Luxembourg, the Netherlands, Portugal, Sweden and Turkey) have reported the existence of fiscal advantages which are granted to the proposer when a contract is concluded with an insurer established in these respective countries, however not granted when concluded with an insurer neither established nor authorised in these respective countries.

For example, in the Netherlands, premiums paid for certain kinds of life insurance are income tax deductible only if the contract has been concluded with an insurer with its head office in that country. The same or similar treatment can be observed in the following classes of business; life (in Austria, Belgium, Denmark, Greece, Luxembourg, Portugal and Turkey), health (in Austria and Turkey), accident (in Austria) and voluntary pension insurance (in Finland). The United States reports that, on the State level, there may be this kind of fiscal advantages in some States. It can be said that, for these classes of insurance, the cross-border trade itself is only rarely allowed (by a limited number of Member countries, only within EU/EEA countries, etc.). In Norway, life insurance contracts concluded on cross-border basis are tax deductible based on the same rules applicable to contracts issued by domestic companies, but only when the insurer (i) has its head office in another EEA country and (ii) has established a branch in Norway in accordance with the EU life directives.

No Member countries have reported special tax or fiscal charges to which indemnities paid under insurance contracts concluded outside the domestic market are subject.

Foreign Currency

In most Member countries with an exception of Hungary, Poland and the United States (in the United States, explicit prohibitions may not exist in all States), insurance contracts can be expressed in foreign currency. In several countries, however, there are certain restrictions. In Portugal, in the case of life insurance, the aggregate annual amount of premiums and benefits, when converted into escudos, must fall within the limits decreed by the Ministry of Finance. These limits are determined for each insurer in respect of contracts in ECUs or foreign currency. In Switzerland, in the case of life insurance, the contracts for the insurers resident in this country must be expressed in Swiss franc, and, in the case of non-life insurance, the supervisory authorities may prohibit, for special reasons, the conclusion in this country of contracts expressed in foreign currency.

Foreign Exchange Control

No Member countries have reported foreign exchange controls in respect of insurance transactions which involve foreign exchange (payment of premiums, payment of indemnities, remittance of insurance company's earnings to non-resident shareholders, etc.).

In this respect, Korea has reported that, according to the Foreign Exchange Management Act of this country, the payment of premiums and indemnities should be reported to the head of the designated foreign exchange bank. So long as this reporting requirement does not create excessive burden on insurance companies, it is not inconsistent with Korea's obligations under international agreements such as the OECD Codes. Reporting requirements to foreign exchange authorities (including delegated authorities such as foreign exchange banks) which are imposed in addition to normal recording requirements under insurance legislation are not common by today's OECD standards.

Underwriting Association

In nearly half of Member countries (Canada, Finland, Greece, Hungary, Japan, Korea, Poland, Portugal, Turkey and the United Kingdom; in Austria and Belgium, except for EU/EEA insurers), insurers neither established nor authorised within those respective countries are not entitled to be a member of underwriting associations. Out of those countries, Austria, Finland, Greece, Japan and the United Kingdom have confirmed that non-established insurers can nonetheless write a significant volume of insurance business without being a member of the relevant underwriting associations.

In this respect, Denmark, Luxembourg and Spain point out that these associations can decide freely their respective membership requirements because of the private nature of these associations.

In a few Member countries (in Germany; in Australia, only for non-life insurance), even non-established insurers can obtain the membership of underwriting associations. It should be noted that, in these countries, non-established insurers can write a significant volume of business without the membership of such associations.

Deposits with Direct Insurers by Foreign Reinsurers

In most Member countries with an exception of Mexico, foreign reinsurers are by law not required to deposit funds with the direct insurers they reinsure to satisfy domestic solvency requirements imposed on the latter with regard to the representation of technical reserves. In Mexico, the percentage for the fund required will be reduced gradually until it disappears in 2001. In Canada, however, federally-regulated insurers which enter treaties with unauthorised reinsurers are subject to rules requiring establishment of funds in this country in order to get credit for reinsurance ceded. In the United States, unless the reinsurer is authorised or accredited, a deposit of funds is required for the insurer to take credit for the reinsurance in its financial statements.

In some of other Member countries, this requirement is imposed not by law but at the request of the direct insurer (in Belgium) or by standard practice between reinsurers and direct insurers to add a clause to that effect in the contracts (in Portugal).

Resident Accounts by Foreign Reinsurers

In several Member countries (Germany, Iceland, Italy, Japan, Korea and Portugal), non-resident reinsurers may open resident accounts. Some Member countries regard this issue as not relevant, because of the lifting of exchange control (Austria, France and Spain). In Belgium, the accounts of foreign reinsurers are "foreign accounts", which are freely convertible. In the Netherlands, non-resident reinsurers must open non-resident accounts, although no discrimination exists against such accounts.

PART II

IDENTIFICATION AND ANALYSIS OF MEASURES RELATED TO INTERNATIONAL INSURANCE OPERATIONS: CONDITIONS OF ESTABLISHMENT OF BRANCHES OR AGENCIES OF FOREIGN INSURERS

I. Admissibility of Establishment of Branches or Agencies of Foreign Insurers

The establishment of branches or agencies is admissible in most OECD Member countries with the following exceptions (see also “III. Other Issues on Licensing, Domestication”). Not all of these restrictions are expressed in reservations of Member countries concerned to the item D/6 (Conditions for establishment and operation of branches and agencies of foreign insurers) of the Invisible Code.

Hungary's reservation to the item D/6 of the Invisible Code has ceased to apply on 31 December 1997. Likewise, Poland's reservation to the item D/6 has ceased to apply on 31 December 1998. In this country, an amendment to the Act on Insurance Activity came into force on 1 January 1999. According to this amendment, the branch operation by foreign insurers is now allowed.

In Australia, under the Life Insurance Act 1995, new approvals of non-resident life insurers has been restricted to domestically incorporated entities. This new restriction, which is in contradiction with the standstill obligation imposed by the Codes, is not yet reflected in the reservations of this country to the Codes. Even before the implementation of this Act, domestication was actively encouraged by the Commissioner, though it was in principle not obligatory. This country mentions three reasons. Firstly, a local subsidiary facilitates the communication between the Commissioner and the company, and the company's ability to meet the technical requirements of the legislation. Secondly, the company's interests can be more easily identified with local conditions. Thirdly, the foreign government's restriction and the head office's policy have a minimal effect on a subsidiary company. In the case of foreign non-life insurers wishing to operate in Australia, domestication is to some extent encouraged by the Commissioner. This measure is said to be able to overcome practical difficulties that can arise in the supervision of companies, especially in relation to accounting information and the signing of returns by directors in Australia.

Mexico also does not allow the branch operation by foreign insurers. In this country, no liberalisation in this respect is envisaged in the near future. According to this country, this prohibition is due to the perception that policyholders can be better protected if insurance companies are incorporated in that country and subject to the surveillance of a domestic authority. As for the establishment of subsidiaries of financial institutions including insurance companies, as part of the accession commitments, this country agreed with the OECD to review its treatment of non-NAFTA institutions and to consider extending the benefits of NAFTA to all OECD Member countries, no later than the beginning of 1998. In December 1998, the Mexican authorities proposed to extend the benefits of NAFTA to all OECD member countries, which allows the establishment of subsidiaries of all OECD-based financial institutions, subject to transitory market share quotas similar to those applicable to NAFTA-based institutions until 31 December

1999. Accordingly, Mexico's reservation under the item I/A (inward direct investment) of the Capital Movements Code has been narrowed.

The position of Sweden in this respect, in particular in relation to the OECD codes, called for clarification. In this country, the branch operation by non-EU/EEA insurers was not allowed by the end of June 1998, although for this country the last remaining reservation to the item D/6 of the Invisible Code was removed already in 1987. However, new legislation related to the activities of foreign insurers in Sweden, which came into effect on 1 July 1998, enabled non-EU/EEA insurers to establish branches in this country on terms equal to those applicable to domestic insurers.

In the United States, 17 States have no mechanism for licensing initial entry of a non-US insurance company as a branch, unless that company is already licensed in some other US State. After a license is obtained in some other US State, licensing and entry into these States is permitted.

II. Administrative and Procedural Aspects of Licensing

Supervisory Authority responsible for Licensing

In most OECD Member countries, an insurance company must be authorised for insurance business by one responsible supervisory authority. In Canada, however, an insurance company, regardless of whether domestic or foreign, must be authorised for insurance business by both the federal regulatory authority and each province of Canada where the company plans to carry on business.

In most OECD Member countries, the same authority is responsible for granting licences to domestic concerns as well as branches and agencies of foreign insurers, and responsible for granting a licence as well as an authorisation for extension of activities to other classes. Exceptions in this respect are as follows.

In Germany, the Federal Office for the supervision of insurance concerns is responsible for granting licences to domestic concerns as well as EU/EEA insurers, whereas the Federal Ministry of Finance is responsible for non-EU/EEA insurers. According to this country, the reasons for this difference are as follows; domestic insurers and EU/EEA insurers have a statutory right to authorisation if the conditions laid down in the regulations are satisfied, whereas granting a similar right, subject to similar conditions, for other foreign insurers under international agreements such as the OECD Codes, and refusing authorisation for instance on political grounds, are matters for the competent Federal Minister and not for the insurance supervisory authority. In Iceland, the Ministry of Commerce gives domestic insurance companies the license to operate in this country and it gives non-EU/EEA insurers the authorisation to open a branch in this country, whereas the Insurance Supervisory Authority grants the authorisation to expand the activities of licensed insurance companies and it gives the authorisation for EU/EEA insurers either to provide services in this country without an establishment or to open a branch. The reason for this difference is the Home Country Control in the EU/EEA, according to which the Insurance Supervisory Authority does not supervise EU/EEA insurers. In Norway, the Ministry of Finance is responsible for the granting of licences. With respect to authorisation for extension of activities to new classes of insurance, however, the power of decisions is delegated to the Banking, Insurance and Securities Commission.

Pre-application Procedures

Pre-application procedures, whichever formal or informal, can be observed in many OECD Member countries (e.g. Australia, Austria, Belgium, Canada, Finland, Hungary, Iceland, Japan, Luxembourg, Norway, Portugal, Switzerland, the United Kingdom, Sweden and Turkey). It might depend on the

definition of "pre-application procedures" whether these procedures should be regarded as "existing". In France, it is said that there are no official or unofficial pre-application procedures. However, at the same time it is said that applicants may contact the competent authorities for information about the procedure to be followed or the documentation to be provided, which is considered by other Member countries as informal pre-application procedures.

In Member countries, where pre-application procedures exist, contacts with the insurance supervisory authority prior to the formal application are reported to have proved useful and helpful for potential applicants, because they can be, at an early stage, informed of all information on the documents and data required by the authority during the licensing procedure. These pre-application procedures are applicable to domestic concerns as well as branches and agencies of foreign insurers.

As for the implication of pre-application procedures, Luxembourg reports that on a number of occasions potential applicants decided not to submit applications, although no applications of domestic and foreign concerns were formally refused.

In the context of pre-application procedures, Korea's case might be worth mentioning. In this country two categories of application documents should be submitted; application documents for pre-approval and those for main approval. Accordingly the application procedures consist of the following stages; a) application for pre-approval and examination, b) pre-approval, c) fulfilment of conditions of pre-approval, d) application for main approval, and e) licence granted. The Minister of Finance and Economy has to reach a conclusion whether to grant a pre-approval within four months after receiving the application for pre-approval. The applicants who receive a pre-approval should fulfil the conditions of pre-approval and apply for the main approval within six months. The Minister of Finance and Economy has to reach a conclusion whether to grant a main approval after examining the fulfilment of conditions of pre-approval within two months after receiving the application for main approval.

Licensing Requirements

The introduction of a single licence system by the implementation of the EU Third Directives has facilitated the procedures and requirements regarding the establishment of branches within EU/EEA countries by insurers with head offices in other EU/EEA countries. Insurers from EU/EEA countries wishing to establish branches in other EU/EEA countries do no longer need a license by the supervisory authorities in host countries. The notification by the authority of a home country is sufficient, if the following documents are supplied: a scheme of operations describing the types of business envisaged, the structural organisation of the branch, the address of the branch, the name of the branch's authorised agent etc. and a solvency certificate.

Apart from the establishment of branches within EU/EEA countries by insurers with their head offices in other EU/EEA countries, the establishment of branches by foreign insurers necessitate, in many OECD Member countries, specific requirements and documents, some of which are as follows.

a) Reciprocity

Some Member countries have reciprocity provisions. Examples in this respect are as follows. Under the GATS, however, these provisions are not applied to GATS members. In Austria, the license has to be refused if the home country of an applicant does not grant Austrian insurers the same competitive opportunities as to domestic insurers and an effective market access that is comparable to that Austria grants insurers from that country, unless there is an overriding public interest in the granting of the license. In Belgium, the supervisory legislation contains a reciprocity rule. However, it should be pointed out that,

in practice, this measure has never been applied. In Canada, insurance legislation provides that, before granting authority to a foreign company to carry on business in Canada, the Minister must be satisfied that the treatment as favourable for Canadian regulated companies exists or will be provided in the jurisdiction in which the foreign company making application to enter Canada principally carries on business. In Denmark, the authorisation is subject to whether Danish companies shall be granted a similar right in the home country of an applicant. In Italy, when licensing companies from non-EU/EEA countries, the authority can check that the said countries respect the principle of reciprocity.

b) *Deposits or Financial Guarantees*

With a few exceptions (Hungary; Australia, non-life insurers only), most OECD Member countries have provisions regarding deposits from foreign insurers wishing to establish branches.

Insurers from EU/EEA countries wishing to establish branches in other EU/EEA countries do no longer need to constitute and maintain deposits and solvency margins in their respective host countries.

In Switzerland, branches and agencies of foreign non-life insurers from EU countries are no longer required to constitute and maintain deposits and solvency margins in Switzerland under the agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance signed on 10 October 1989. Branches and agencies of foreign insurers excluding non-life insurers from EU countries must have assets in Switzerland of an amount equivalent to the minimum guarantee fund or solvency margin, whichever is the higher, and deposit a fraction of them (to cover technical provisions). In addition, they must have in their head office the capital equivalent to that of Swiss insurers.

In EU/EEA countries, insurers outside the EU/EEA excluding Swiss non-life insurers must, in order to establish a branch in an EU/EEA country, possess in a host country an amount equal to at least one half of the minimum guarantee fund imposed on EU/EEA insurers and deposit one fourth of the said minimum guarantee fund as security. For these branches, the guarantee fund is defined as the higher of one third of the solvency margin or one half of the minimum guarantee fund imposed on EU/EEA insurers. The initial deposit lodged (one fourth of the minimum guarantee fund imposed on EU/EEA insurers) is considered as forming part of the guarantee fund. Assets representing the solvency margin must be kept within a host country where activities are carried on up to the amount of the guarantee fund and the excess within the EU/EEA. Unlike EU/EEA insurers, such branches must localise the assets representing their technical provisions within the host country.

In France, the reciprocity principle can be applied in this respect, and thus companies from third countries (non-EU/EEA insurers and Swiss life insurers) can be required to provide deposits or guarantees if their home countries imposed, or used to impose, similar requirements on French companies. In the GATS context, the application of this provision is suspended.

c) *Legal Form in a Home Country*

A few Member countries require that the legal form of an applicant is comparable to the legal forms admitted in these respective countries. In Austria, the license has to be refused if the legal form of an applicant in its home country is not comparable to the legal forms admitted in this country (either a joint stock company or a mutual insurance association). In Greece, an applicant must have in its home country a legal form as a stock company. In Switzerland, an applicant must have a legal form equivalent to a Swiss joint stock company or co-operative.

There are, however, some other OECD Member countries which accept legal forms which are not admitted in their own countries. In Japan, the applicant needs to be simply an individual or a juridical person authorised under the law of a country other than Japan to carry on insurance business, and does not need to be either a stock company or a mutual company which the applicant needs to be in the case of establishing a domestic insurance company (including a foreign-controlled one). In the Netherlands, an undertaking with its head office outside the EU/EEA shall be simply a legal person according to the law of its home country. In Sweden, non-EU/EEA insurer establishing a branch or an agency should be a juridical person, whereas an EU/EEA insurer may also be an association of individuals, such as Lloyd's syndicate. Similarly, in Canada, the legal form of the foreign company seeking authority to operate as a branch may be a mutual or stock corporation incorporated outside Canada, an association known as Lloyd's, an exchange being a group of persons formed in a foreign country for the purpose of exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney, or a fraternal benefit society incorporated outside Canada.

d) *Types of Business conducted in a Home Country*

The types of business which branches of foreign insurers are allowed to conduct in host countries are, probably commonly in the OECD Member countries, restricted to those which the foreign insurers are allowed to conduct in their respective home countries. Therefore it is quite often required to provide a certificate of the supervisory authority of the home country indicating the types of business which an applicant is allowed to conduct in its home country.

In Austria, where every individual class of business requires a separate license, the license has to be refused if an applicant is not allowed to transact business in its home country in the insurance class it proposes to transact in Austria. Accordingly an applicant has to provide a certificate of the supervisory authority of its home country stating the insurance classes which the company is allowed to operate and which it is actually operating. In Greece, an applicant has to submit a certificate issued by the supervisory authority stating that it operates in its home country and is entitled to carry on the classes of insurance which it seeks to exercise. In Japan, an applicant has to submit a certificate issued by the competent authority of its home country certifying that it is duly carrying on in its home country the same kinds of insurance business as those which it proposes to carry on in Japan.

Regarding the treatment of composite insurers, in Switzerland, an insurer which writes both life and non-life insurance in its home country is not authorised to write life insurance in Switzerland. In EU/EEA countries, in accordance with the EU Directives, a composite insurer with its head office outside the EU carrying on non-life insurance business in these countries must establish a subsidiary if it wishes to carry on life business as well, and vice versa. There is no possibility for two branch offices for one composite insurer. In Canada, composite insurers authorised in their home jurisdiction to write both life and non-life insurance may not write both in this country through the same entity.

e) *Business Record in a Home Country*

A business record over the past three years is required at least in some OECD Member countries. This should allow supervisory authorities to assess the soundness of applicants. In Austria and Finland, an applicant has to submit the balance sheets and profit and loss accounts of the past three years or, in the event that the applicant has not been operating for three years, of the years for which the accounts are already closed. In Denmark, an applicant has to submit copies of the company's accounts and annual reports for the last three financial years. In Hungary, an applicant has to submit its audited balance sheet for the last three years. In Japan, a three years' period must have elapsed from the date when the applicant was incorporated in the case of a juridical person or when it commenced its business in the case of an

individual. Profit or surplus must be counted up at the last settlement period. In Norway, an applicant has to submit the accounts and annual reports for the last three financial years. In Switzerland, an applicant must prove that it has been writing insurance for at least three years in its home country and provide the balance sheets and profit and loss accounts for the last three accounting years. In Turkey, an applicant must submit the last three years' balance sheets and must not have been deprived of the right to carry out insurance business because of its acts against the insurance legislation of its home country.

There are, however, other OECD Member countries which require a more than three years' period of time since an applicant's incorporation in its home country. In Portugal, the opening of branches of companies whose head office is outside the EU/EEA is authorised only if the companies have been in existence for at least five years. In Spain, an applicant must have been authorised for at least five years in its home country to write the classes of insurance for which it seeks a licence in Spain.

f) *Official Certification of the Supervisory Authority in a Home Country*

The following countries have reported that an applicant has to submit the official certification of the supervisory authority in its home country. In Denmark, an applicant has to submit an official certification on whether, in the last three years, the authority in the home country has made any comments on the manner in which the business has been carried out. In Hungary, an applicant has to submit the statement of the supervisory of the home country, which should certify that the founding of the branch office does not breach the law of the home country and does not jeopardise the operation of the insurer concerned. In Norway, an applicant has to submit the official verification that the undertaking is legally established in its home country, including information about how long it has conducted the notified activity in its home country, and whether the supervisory authority of the home country have made comments to the manner the insurance activities have been carried out during the last three years.

g) *Tax Representative*

In Belgium, foreign insurers having a branch, agency or any sort of base of operations in this country are required, prior to conducting any business in this country, to obtain the Ministry of Finance's approval of a tax representative who shall pledge to the State that the annual tax on contracts will be paid.

III. Other Issues on Licensing

Market Needs Test

No Member countries have reported the application of the Market Needs Test to examine whether there is a need for any additional insurer in the national market. In Korea, the Economic Needs Test was abolished as of 1 January 1997.

Domestication

In most OECD Member countries, foreign insurers wishing to operate in other OECD Member countries are not required to set up exclusively as subsidiaries, with several Member countries not allowing the branch operation (see also "I. Admissibility of Establishment of Branches or Agencies of Foreign Insurers"). In the following Member countries, the domestication is to some extent encouraged, although the branch operation is possible.

In the United Kingdom, foreign insurers are not required but they are encouraged to set up a subsidiary. Two reasons are mentioned. Firstly, experience has shown that foreign insurers are often unable readily to comply with U.K. regulation. The efforts needed to comply with both of the regulation in the home country and the regulation in the U.K. can be costly. The position is explained to foreign applicants, and the potential difficulties are explored (e.g., the U.K. supervisory authority would wish the global return to be presented on a U.K. basis). Secondly, having foreign insurers set up as subsidiaries provides better security for policyholders by "ring-fencing" the assets covering the U.K. liabilities from those representing the world-wide liabilities.

Refusals of Applications

The following reasons for the refusals of the first applications as well as those for the extension to other classes of business are mentioned; incomplete applications, unsatisfactory financial capability, unsatisfactory business plan, inappropriate qualification of the management, inadequate business character and concerns for shareholders. The United States mentions failures to meet requirements of "seasoning", which requires an adequate number of years transacting insurance business in the United States. Belgium refers to the case where the opinion of the authorities of the home country was unfavourable with regard to specific classes.

No meaningful difference between the frequency of the refusals for domestic concerns and that for foreign concerns has been reported. Likewise, no meaningful difference between the frequency of the refusals of the first applications and that of the refusals of applications for extension to other classes of business has been reported.

Time-lags between Lodging of Applications and Decisions by the Authorities

No average time-lag between the lodging of applications and the final decisions by the licensing authorities, which exceeds six months (a deadline stipulated in the item D/6 of the Invisible Code), has been reported. The following Member countries have reported that applicants can bring the matter before the courts, if the time-lags exceed six months. In Austria, complete applications have, by law, to be decided upon within six months. Otherwise, the applicants can turn to the Supreme Court of Administration. In Denmark, the supervisory authority shall state its opinion about an application within six months after the receipt of the application. Otherwise, the applicant may bring the matter before the courts. This provision covers both domestic and foreign applicants with head office in a country outside the EU/EEA (see also "Appeals Procedures").

It is reported that long time-lags between the lodging of applications and the final decisions by the licensing authorities have been caused for the following reasons; incomplete applications (Canada, Finland, France, Italy, the Netherlands, Spain, Turkey and the United Kingdom) including the deviation of applications from the standard operating plans (Germany), ignorance of the relevant legislation (the United Kingdom), insufficient financing (Canada, Turkey and the United Kingdom), inadequate organisational structure (Turkey), differences in legislation (Finland), lack of qualified persons (Turkey and the United Kingdom), the difficulty in obtaining financial information because of confidentiality concerns and differences in accounting standards (the United States).

No meaningful difference between the frequency of the delays for domestic concerns and that for foreign concerns has been reported. In this respect, however, the following situations should be noted. Belgium indicates the possible delay which might arise from the necessity that some items of information have to be supplied by a foreign supervisory authority. In the Netherlands, for both domestic and foreign undertakings with their head office outside the EU/EEA, it takes on average nearly two months for a

license or an authorisation for extension of business to be granted (or refused) from the date when a complete application is submitted to the licensing authority, whereas, for foreign undertakings with their head office in an EU/EEA member country, it takes on average one month after the advice of the supervisory authority of the home country has been received.

A few differences between the average time-lag in the case of a licence and that in the case of an authorisation for extension of business have been reported. Korea reports that, on average, a licence takes about three months and an authorisation for extension of business takes about 20 days. Norway reports that the time-lags regarding the handling of applications for extensions of activities to other classes are shorter than those regarding the handling of the initial applications for licence, mainly because in this country the power of decisions in the former case is delegated by the Ministry of Finance to the Banking, Insurance and Securities Commission and therefore the applications for extensions do not need to be forwarded to the Ministry of Finance. Sweden reports that, on average, a licence takes three to six months and an authorisation for extension of business takes one to three months.

Appeals Procedures

In many OECD Member countries, there are appeals procedures for license denials. In Canada and the Czech Republic, however, the decision of the minister of finance is final one. Therefore no possibility of further appeal exists for license denials.

In OECD Member countries, where appeal procedures exist, the same procedures apply to domestic and foreign insurers. In France, however, an exceptional limitation exists. In this country, special authorisations related to the appointment of general agents, who are necessary for foreign insurers, cannot be appealed against, although, in the case of refusal of administrative authorisations, an insurance company can lodge an appeal before the “Conseil d'Etat” (in this case, the same procedures apply to domestic and foreign insurers).

Several OECD Member countries have reported that applicants can bring the matter before the courts, if time-lags exceed six months (see also “Time-lags between Lodging of Applications and Decisions by the Authorities”).

Compulsory Classes of Insurance

In most OECD Member countries, foreign insurers are not precluded from writing compulsory classes of insurance. In the Czech Republic, however, foreign insurers cannot underwrite compulsory classes of insurance such as motor third party liability insurance and employers' liability insurance of workers' compensation. In Finland, only Finnish insurers may be granted a license to carry on statutory pension insurance. Foreign insurers wishing to treat this insurance in Finland have to establish a subsidiary in that country and obtain a license. The reason is that statutory pension insurance is social insurance and constitutes an integral part of the Finnish social security system.

IV. Valuation, Localisation and Lodging of Assets

Valuation of Assets

Although financing requirements for domestic and foreign insurers are not identical in most Member countries, no difference of valuation methods of assets for domestic and foreign insurers has been reported.

Localisation of Assets

In the context of EU Directives, "localisation of assets" means the existence of assets, whether movable or immovable, within the EU/EEA. Therefore, the document of title, the debtor or the collateral of a loan and the real estate must be situated in a country within the EU/EEA. In the case of EU/EEA insurers, the assets representing the technical provisions in respect of risks situated within the EU/EEA must be localised within the EU/EEA. In the case of branches and agencies whose head office is outside the EU/EEA, the assets representing the solvency margin must be kept within the country where the business is carried on up to the amount of the guarantee fund, and the excess must be kept within the EU/EEA. Only insurers with their head office outside the EU/EEA must make an initial deposit (see also "II. Administrative and Procedural Aspects of Licensing, Licensing Requirements, b) Deposits or Financial Guarantees").

As for non EU/EEA countries, in Canada, foreign companies are required to maintain in this country assets vested in trust, which cover their policy and other liabilities in Canada plus a margin. In Korea, branches of foreign insurers are required to hold their assets in Korea which are equivalent to the sum of technical reserve and contingency reserve. The objective of this requirement is explained to be to protect domestic policyholders and other creditors by securing the assets in Korea. In Turkey, in life insurance other than overseas business, insurance companies must localize assets which correspond to the technical reserves.

Lodging of Assets

In many OECD Member countries (Belgium, Denmark, Finland, Germany, Italy, Japan, Korea, Sweden, Switzerland, Turkey and the United Kingdom), only assets representing deposits are required to be lodged. The reason why deposits must be lodged is due to uncertainty about foreign regulation as regards soundness, solvency and supervision. However, in Finland, the scope of deposits seems to be relatively extensive, although the deposit requirement concerns non-EU/EEA insurers only. In this country, at least half of the basic capital shall be deposited as a security in a bank with licence to operate in that country.

Among Member countries which have provisions regarding deposits from foreign insurers, however, Austria has no specific lodging requirement. This country explains that the obligation falling upon branches of foreign insurers not to dispose of 25 per cent of the minimum guarantee fund does not create the necessity to deposit the corresponding assets in a specific way.

V. Transfers

In most Member countries (Australia, Austria, Denmark, Finland, Germany, Iceland, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom), transfers of profits, surplus assets and reinsurance balances are not subject to control or authorisation by the insurance supervisory authorities. Transfers should be understood to be indirectly subject to the normal solvency control (Australia, Canada, Denmark, Finland, Iceland, Ireland, Norway, Portugal, Spain and the United Kingdom). Examples in this respect are as follows.

In Australia, transfers of more than 15 per cent of the insurer's assets will trigger the provisions of the Insurance Acquisitions and Take-overs Act 1991. Then the prudential supervision of the Act will come into application if the transfer has an impact on the insurer's overall, or solvency position in Australia. In Portugal, in principle no authorisation is required. If the effect of a transfer is to reduce the foundation fund, however, the branch must obtain the prior authorisation of the Portuguese Insurance Supervisory Authority. In Spain, transfers are not subject to prior authorisation. If the company is in difficulty (inadequate cover of technical provisions, inadequate solvency margin and guarantee fund, losses 25 per cent higher than the registered capital in Spain, management irregularities or shortage of liquidity), however, the supervisory authority can prohibit the transfers. In the United Kingdom, if the Financial

Services Authority (FSA) intervenes in the affairs of an insurance company because of doubts about its solvency, it is likely that the transfers of profits and surplus assets will be made subject to prior consent of the FSA. Such consent depends on there being sufficient assets in the United Kingdom to meet the liabilities to policyholders or other acceptable arrangements having been made in respect of policyholders in the United Kingdom. Agreement to the transfer of the reinsurance balances depends on the circumstances.

However, there are several exceptions in this respect. In Belgium, except for payments abroad in respect of the execution of insurance or reinsurance contracts, projected transfers of sums or securities abroad by a Belgian branch or agency of a foreign company must be reported to the Insurance Supervisory Office at least 15 days before the transaction takes place. The Office can object to the transfer if it considers that the financial situation of the branch or agency in Belgium is not satisfactory. The Insurance Supervisory Office has fifteen days to object to a transfer. Once fifteen days have passed, the company can carry out the transaction. Since 1 July 1994, these rules no longer apply to branches of companies whose head office is situated in an EU/EEA country. In France, transfers of assets by a branch of foreign insurers with head office outside the EU/EEA are subject to the prior authorisation of the Insurance Supervisory Commission. The Insurance Supervisory Commission authorises transfers after having checked that they will not jeopardise the company's business in France. In Korea, the transfer of business profits from a branch or agency of a foreign insurer to its head office should be reported to the Governor of the Insurance Supervisory Board ten days before the date of transfers.

VI. Staff

Work Permit

Many EU/EEA countries have reported that only non-EU/EEA citizens are required to obtain work permits (Belgium, Germany, Greece, Ireland, the United Kingdom etc.). Compared with work permits for managerial posts, work permits for supervisory and clerical posts are in general more difficult to obtain. In Austria, managers and key personnel of foreign insurers enjoy a liberalised treatment regarding the granting of a work permit, whereas the normal provisions for stay and work permit, which are based on a certain quota of foreign nationals, apply to other staff. In this country, a foreign non-EU/EEA insurer is only allowed to operate a branch office for which it has established a separate management consisting of at least two natural persons resident in this country (a single representative is not allowed; the same "four eyes principle" applies for the management of domestic insurance companies as well). In the Netherlands, a work permit will generally be issued to fill managerial posts although the local employment bureau will take into account the labour supply in its region, whereas there is a greater chance that a work permit for lower ranks is not issued to non-EU/EEA citizens because the local labour force is usually larger in the lower categories. In the United Kingdom, a foreign applicant for a supervisory or clerical post, who is not a national of another EU/EEA country, is unlikely to be granted a work permit. In this country, even for a foreign applicant for a managerial post, it must be demonstrated that there is no suitably qualified UK resident or national of an EU/EEA country available to fill the post.

In Switzerland, residence permits, which can be issued by the decision of the Federal Office of Industry, Crafts and Labour (the federal quota) in addition to the cantonal quotas, are usually reserved to specialised staff appointed to managerial functions in branches or agencies established in that country, not to lower level staff.

In Korea, in order to obtain visas for managerial posts, foreigners are required to satisfy one of the following qualifications; (i) at least five years' service experience at a general management level or director in a corporation listed in the stock market, (ii) at least five years' service experience as a director in a corporation that receives external auditing, (iii) at least five years' service experience in insurance-

related business as an attorney at law, a medical doctor, a certified public accountant, a certified public appraiser, or a licensed tax accountant, (iv) at least five years' service experience in economy-related field of mass media,(v) at least five years' teaching experience in the area of insurance or other finance courses as a college professor including full-time instructor of a junior college, or (vi) at least five years' total service experience in the items (i) through (v) of the above qualifications.

General Agent

In Denmark, Finland, Germany, Italy and Norway, general agents of insurers with their head office within the EU/EEA do not need to be domiciled in these respective countries, whereas general agents of insurers with their head office outside the EU/EEA must be resident in these respective countries. In Belgium, a foreign insurer with its head office outside the EU/EEA must appoint a general agent who is resident in Belgium and is sufficiently authorised to commit the insurer in relation to the third party and to represent the insurer in relation to the authorities and courts in Belgium. In case a general agent is a legal entity, it must have its head office in Belgium and appoint in turn a physical person, who fulfils the conditions mentioned above, in order to represent itself. In Iceland, insurers outside the EU/EEA have to appoint one authorised resident agent, whose appointment requires the approval of the Insurance Supervisory Authority. The rationale for this requirement is that this resident agent has to represent the company as regards matters pertaining to their operations. This agent shall, furthermore, be empowered to commit the company to a contract or payment of debt in connection with their operations in this country, because legal actions relating to claims arising from the operations may be brought against the company in Icelandic courts. In contrast to other EU/EEA countries, in Sweden, all general agents must be resident, irrespective of where the head office of the insurer is located.

The situations in non-EU/EEA countries are as follows. In Switzerland, branches of foreign insurers must appoint resident general agents, and this requirement is equally applied to EU non-life insurers as well as to other insurers. In Canada, every foreign company seeking authority to transact business in this country must establish a chief agency office in this country and appoint a Chief Agent as the official representative of the company in this country for the receipt of all notices. The Chief Agent must be an individual who is ordinarily resident in Canada and should be familiar with the day-to-day operations of the company in this country.

Language Capability

Most OECD Member countries have not referred to the language capability of managers or general agents.

In Germany and Portugal, however, general agents of branches of non-EU/EEA insurers are required to have good capability of their respective national languages. The objectives of this requirement are explained to be to ensure effective supervision because it enables general agents to understand circulars and administrative acts of the supervisory office as well as the legislation (Germany and Portugal), and to provide policyholders with the opportunity to address branches in their own language (policyholder protection) (Germany).

VII. Underwriting Associations

In some OECD Member countries (Australia, Belgium, Iceland, Spain, Turkey and the United Kingdom; in the United States, as for joint underwriting associations and compulsory participation in certain risk pools (assigned risk auto, high risk health pools)), there are underwriting associations, whereby a high proportion of contracts in one or more classes of insurance are placed with members of these associations. In these

countries, the same conditions of membership apply to domestic and foreign insurers established through branches. In Turkey, all insurance and reinsurance companies operating in this country are required to be a member of "Association of Insurance and Reinsurance Companies of Turkey" within three months following the establishment. In the United Kingdom, however, the membership of an association of insurance companies, whose members write a significant proportion of the Marine, Aviation and Transport business placed in the company market, may be refused by the association if the home country of an applicant does not allow the association's members to establish and obtain business locally. Switzerland points out that it is not the role of the insurance supervisory authority to intervene in the organisation of the Swiss insurance market, this being left to private initiative.

In respect of cross-border transaction, it should be noted that, in several Member countries, insurers neither established nor authorised within those countries are not entitled to be a member of such associations (see also "PART I, III. Other Conditions applying to Transactions, Underwriting Association).

The membership in a policyholder protection fund could be compulsory. For example, in Canada, every insurance company, other than reinsurance companies and fraternal benefit societies, must be a member of the industry compensation corporation which provides coverage to policyholders in the event of an insurance company failure, whereas the membership in an industry association is not compulsory.

VIII. Taxation

In some OECD Member countries (Australia, Austria, Canada, Denmark, Sweden and the United Kingdom), there are differences in taxation treatment between domestic and foreign insurers. Examples in this respect are as follows.

In Australia and Austria, resident taxpayers (i.e. bodies incorporated in those respective countries) are taxed on their world-wide income, whereas non-resident companies are taxed on their income sourced in those respective countries only, and will usually be able to avoid "double taxation" under an applicable taxation treaty. In Canada, the tax rules for foreign insurance companies operating on a branch basis in this country are different from the rules applicable to Canadian incorporated insurance companies, regardless of whether they are Canadian or foreign owned. In the case of branches, tax is computed on income and imputed capital from Canadian operations. In the case of Canadian incorporated companies, tax is computed on income and capital from world-wide operations. In Denmark, the part of the income of the company arising from its activity in Denmark and subject to taxation is fixed by the ratio between the gross premium income in Denmark and the global gross premium income of the foreign company. This indirect taxation basis is laid down since experience has shown that a correct profit and loss account or a balanced sheet of a branch cannot be produced. In Sweden, for branches and agencies of foreign insurers, a taxable income for non-life business is fixed as 2 per cent of the premium income for direct non-life insurance in Sweden (for life insurance, there is no difference in tax treatment). The rules are currently subject to an official review. In the United Kingdom, a company resident in that country is chargeable to Corporation Tax on all its profits wherever arising, whereas the liability to Corporation Tax is more limited for a non-resident company. It will encompass trading income arising directly and indirectly from the branch operation, certain capital gains, and investment income connected with the branch.

In respect of cross-border transactions, it should be worth mentioning that several Member countries have reported the existence of fiscal advantages which are granted to the proposer when a contract is concluded with an insurer established in these respective countries, however not granted when concluded with an insurer neither established nor authorised in these respective countries(see also "PART I, III. Other Conditions applying to Transactions, Fiscal Treatment).

IX. Government Procurement

In most OECD Member countries (Australia, Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, and the United Kingdom), the government in principle retains its own risks. Many of these countries (Austria, Denmark, Germany, Iceland, Ireland, the Netherlands, Norway and the United Kingdom) have reported that the government at least generally tenders out in exceptional cases where it takes up insurance with private insurers. In Belgium, Luxembourg and Portugal, it depends on the amount involved whether or not the government tenders out. For example, in Portugal, if the contract does not exceed 20 mil Esc, the government can put it out to restricted tender (contracts over 5 mil Esc), negotiate it (contracts over 100,000 Esc) or transact it directly (contracts under 100,000 Esc).

In some Member countries (the Czech Republic, Hungary, Korea and Spain; In Greece, excluding compulsory motor vehicle insurance), the government takes up insurance with private insurers. In these countries with an exception of the Czech Republic, the government in principle tenders out and sets up guidance describing circumstances under which tenders are exceptionally not issued. In Hungary, tenders are not issued if the value of the services is under 7.5 million forints. In Spain, tenders are not issued in the following cases: (i) when it is not possible to obtain a more competitive price, (ii) when it is urgent to obtain insurance covers, (iii) when the amount involved is less than 50 mil Ptas, (iv) when no bids have been received, (v) when the bids were unacceptable, or (vi) when the bidder does not meet the contractual conditions. In Korea, the insurance contracts with regard to security-related properties of the government are solely placed with member companies of either the Korea Non-life Insurance Association or the Korea Fire Protection Association, whereas the insurance contract with regard to non-security-related government properties are always put out to tender.

In the United States, with rare exceptions, the federal government self-insures its risks. At the local and State level, the governments place risks with private insurers. When the governments take up insurance with private insurers, they tender out, unless the amount of premiums is “de minimis”, or in rare emergency procurement situations.