



# OECD Codes of Liberalisation USER'S GUIDE





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**Please cite this publication as:**

OECD (2019), *OECD Codes of Liberalisation: User's Guide*,  
[www.oecd.org/investment/codes.htm](http://www.oecd.org/investment/codes.htm).

## Foreword

Since its inception in 1961, the Organisation for Economic Co-operation and Development (OECD) has had the vocation of aiding its member countries to promote the liberalisation of international trade in goods and services and the progressive freedom of capital movements. This objective is set out in the OECD Convention and finds concrete expression – in regard to services and capital movements – in the twin Codes of Liberalisation of Capital Movements and Current Invisible Operations. In 2011, the OECD Codes were opened to adherence by non-OECD countries, thus facilitating the promotion of the values of openness, transparency and co-operation underpinning the Codes.

The Adherents to the Codes (referred to hereafter as “Codes Members”, “Member countries” or “Members”) include all Members of the OECD, as well as any non-Members adhering to the Codes.

The purpose of this User’s Guide is to contribute to a better understanding of the principles and procedures of the OECD Codes. It also provides detailed explanations of the coverage of the Codes and may therefore serve as a manual for Code users.

This User’s Guide, which was approved by the Committee, draws on Chapters II, III, IV and V of the *Introduction to the OECD Codes of Liberalisation of Capital Movements and Current Invisible Operations*, OECD (1995) which was derestricted by the OECD Council. The content has, however, been updated to include additional interpretations and clarifications resulting from the Committee’s work over the years from 1995 to 2019. The present version of the User’s Guide was adjusted in May 2019 to take recent developments into account, specifically, the participation of non-OECD Members in discussions on the Codes and their future adherence to the Codes, revised understandings on the treatment of measures with stated prudential objectives, and strengthened governance of the OECD Codes.

Further information relating to the Codes can be obtained from the following sources:

- The *OECD Code of Liberalisation of Capital Movements* presents the full text of the Code as well as reflecting all changes in the positions of members. It serves as a reference manual to the obligations of members under the Code and

to the degree of liberalisation achieved by each member country in regard to capital movements.

- The *OECD Code of Liberalisation of Current Invisible Operations* presents the full text of the Code under which Members have accepted legally binding obligations as well as reflecting all changes in the positions of members.
- *Forty Years' Experience with the OECD Code of Liberalisation of Capital Movements*, OECD (2002), provides an account of the liberalisation process in respective OECD member countries over time.
- Website for OECD work on international investment:  
[www.oecd.org/investment](http://www.oecd.org/investment).

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## Part I.

# OVERVIEW OF THE OECD CODES OF LIBERALISATION

## Introduction

Free circulation of capital, investment and services across national frontiers is a motor for economic growth, employment and development. It encourages competition and economic efficiency to the benefit of consumers and provides financial resources and technological innovation to companies. It benefits the host country and the country of origin, developed and developing countries alike. This idea has been, from the beginning, at the core of OECD's approach to international economic and financial relations, but, like all good ideas, the philosophy of free and open markets only works if it is applied taking account of the real life context. Depending on the state of development of its economy, infrastructure and financial markets, each country and its citizens have individual needs, concerns and possibilities when it comes to opening their markets to the free flow of capital and services. Growth and development need to be sustainable. Only a balanced and comprehensive approach to liberalisation can guarantee benefits to society as a whole in the long run.

Faced with this challenge – promoting open markets everywhere whilst respecting each country's individual situation – OECD Member countries created almost sixty years ago a balanced framework for gradual progress towards liberalisation: the OECD Code of Liberalisation of Capital Movements which also covers direct investment and establishment, and the OECD Code of Liberalisation of Invisible Operations which covers services. While firmly committed to the central idea of open markets, the Codes build on a consultative process where understanding and persuasion have greater weight than pressure and negotiation.

In this way, the Codes have assisted OECD Member countries efficiently over many years in pursuing the aim of getting rid – for good – of unnecessary barriers to the free circulation of capital and services. Today, public interest worldwide focuses more than ever on globalisation and liberalisation issues, an interest often fraught with anxiety and distrust. The experience of progressive liberalisation under the Codes,

assisted by peer reviews and discussions, serves as a useful example of reasonable and harmonious international co-operation.

In 2011, the OECD Codes were opened to adherence by non-OECD countries. Accordingly, the Adherents to the Codes (referred to hereafter as “Codes Members”, “Member countries” or “Members”) include all Members of the OECD as well as any non-Members adhering to the Codes.

### **What are the Codes and how are they structured?**

The OECD Codes of Liberalisation are legal instruments which establish rules of behaviour for the governments of Codes Members. Technically speaking, they are Decisions of the OECD Council. The OECD Council is the supreme organ of the Organisation in which each OECD member country is represented. Its Decisions, which are taken by consensus, are legally binding on OECD Member governments. Although the OECD Codes are not a treaty in the sense of international law, they are an instrument which derives from a treaty: Article 5 of the Convention on the OECD provides that the Council may adopt legally binding Decisions.

Both Codes consist of a set of Articles which, with some exceptions, are broadly the same. Article 1 in both Codes spells out the central idea: Members subscribe to the general aim of eliminating between one another restrictions on capital movements and invisible transactions. The remaining provisions describe the framework under which Codes Member countries shall work towards reaching this goal. Examples of provisions include

- the right to proceed gradually towards liberalisation through a process of lodging and maintaining reservations,
- the obligation not to discriminate
- exceptions for reasons of public order and security,
- derogations in case of temporary economic difficulties,
- provisions to ensure compatibility with regional arrangements such as the European Union and its special processes,
- a system of notification, examination and consultation which is run by a special OECD Committee, the Investment Committee.

Each Code has two principal annexes: a list of operations covered, and a list of current Member country reservations.

## Which international transactions are covered by the Codes?

The Codes precisely define to which economic activities they apply. A list of these activities is annexed to each Code. The international transactions spelled out in the Annex are called Items. Members do not make a positive selection of the Items to which they wish to subscribe, i.e. there is no option to “pick and choose”. All Items apply across the board, subject to the specific reservations which may have been lodged.

The OECD Capital Movements Code is the only multilateral instrument promoting liberalisation of the full range of international capital movements, other than the rules of the European Union and of the European Economic Area. When it was created in 1961, its coverage was rather limited. However, since then, national economies have become more integrated, financial market regulation has become more harmonised and financing techniques have become more sophisticated. As a consequence, Member countries have gradually extended the list of transactions until it could be considered complete.

Today, the Capital Movements Code applies to all long- and short-term capital movements between residents of Member countries. Examples of such movements are the issuing, sale and purchase of shares, bonds and mutual funds, money market operations, and cross-border credits, loans and inheritances. In addition, it covers foreign direct investment – for instance acquisition of an existing company by a foreign enterprise or establishment of a subsidiary by a multinational corporation.

Coverage of cross-border trade in services by the Current Invisibles Code is large, but not quite as comprehensive. Cross-border trade in services means the supply of services to residents by non-resident service providers, and vice versa. The service providers can be companies or individuals. Among the major sectors covered are banking and financial services, insurance and private pensions services, professional services, maritime and road transport and travel and tourism.

Much work has been devoted over the last decade to the treatment of measures with stated prudential objectives. Policies with prudential intent, in particular macro-prudential policies that are meant to reduce systemic risks, have been used for some time. However they have proliferated since the 2008 global financial crisis and represent a large and evolving policy toolkit. There has also been greater resort to the use of capital flow measures taken with a macro-prudential intent. The Capital Movements Code was updated in 2019 to clarify the treatment under the instrument of different types of measures, and in particular currency based measures (i.e. discriminating on the basis of the currency of an operation, rather than residency of the parties to the operation).

## What are the main principles of the Codes?

There are many ways one could imagine leading to the achievement of the Codes' ultimate goal, freeing international capital movements and services transactions from all restrictions and thereby allowing residents of Member countries to do business with each other as if they were residents of a single country. The articles of the Codes propose their own, detailed roadmap towards this goal. There are a number of main principles which emerge from the reading of these legal provisions.

### *Standstill*

Member countries have accepted under the Codes that they may not introduce new barriers. Reservations to the obligations of the Code can only be reduced or deleted but not added or extended. This applies across the board and to all transactions under the coverage of the Codes, except for new obligations, for some specific items in the Capital Movements Code, and for a special derogation procedure designed to take account of temporary economic and financial difficulties. Once a restriction has been abolished, it cannot be reintroduced. This is called the standstill obligation. In order to achieve standstill as efficiently as possible, governments are expected to word their reservations very precisely so that they reflect only restrictions that actually exist. The regulatory status quo is thus locked in and can only evolve in the direction of further liberalisation, the so-called “ratchet-effect”.

### *Rollback*

Liberalisation is the principal objective of the Codes, even if Member countries may achieve it gradually through abolishing restrictions over time and according to their individual situation. This is called the rollback principle. If and where a Member country has decided to maintain restrictions to the free circulation of capital and services, its situation is examined periodically. The other Member countries will listen to its explanations why it still considers the restriction necessary. They may try and persuade the country concerned that its preoccupations can be met in other, less restrictive ways. While the Codes' procedures do not provide for coercion or applying of leverage, Member countries' commitment to the common goal of liberalisation, together with the dynamics of the process and the spirit of co-operation are such that the number of reservations has sensibly declined over the years.

### *Unilateral liberalisation*

Contrary to other international agreements on trade and investment, the Codes' approach is not one of bargaining and negotiation of mutual concessions under a give-for-take approach. Rather, the Codes are based on an underlying philosophy which considers that, on the long term, liberalisation is as much in a country's own interest

as it is an advantage for its trading partners. Therefore, Member countries should be ready to abolish restrictions without expecting an immediate concession from other Member countries. Of course, this approach only works if it is shared by all parties, if all the players play the game. One could argue that it has worked for the Codes because of the relative homogeneity of Member countries. However, unilateral liberalisation has also become a worldwide trend over the last decade and in virtually all countries, be they developed, developing or in transition.

### *Non-discrimination*

Codes Members are expected to grant the benefit of open markets to residents of all other Member countries alike, without discrimination. Where restrictions exist, they must be applied to everybody in the same way. Even Members which are in economic difficulties and cannot themselves liberalise yet must continue to receive the economic advantages of liberalisation granted by other Members. The Codes do not permit the listing of reservations to the non-discrimination, or MFN, principle. The only exception to this rule concerns liberalisation measures adopted under a special system of regional integration, such as the European Union, which do not have to be extended to all Members automatically.

### *Transparency*

Transparency means that information on the barriers to capital movements and trade in services in Member countries should be complete, up-to-date, comprehensible and accessible to everyone. How do the Codes achieve this goal? Firstly, by requiring Member countries to notify all measures which affect any of the transactions covered by the Codes. Secondly, by asking for notification of modifications to any of these measures within 60 days. Thirdly, by reflecting these measures as accurately as possible in reservation lists country by country, so that the reader can be confident that no restrictions exist except for those appearing in the reservation lists (this is called the “top-down” approach to defining obligations). Fourthly, through placing on the OECD public website<sup>1</sup> and regular publication of updated versions of the Codes, together with country positions. Fifthly, by promptly declassifying all Investment Committee decisions and final reports on Members’ obligations under the Codes, thus making them available to the public, unless a Member explicitly objects in duly justified cases. The Member should explicitly state the reasons for the objections, e.g., confidentiality requirements and/or market sensitivity issues. In such cases, selected

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<sup>1</sup> [www.oecd.org/daf/investment](http://www.oecd.org/daf/investment).

extracts, sections of the document, or as a minimum, a summary statement should be agreed for declassification<sup>2</sup>.

### **Do all countries have the same commitments under the Codes?**

While all Members subscribe to the common goal of progressive liberalisation, the degree to which they have advanced towards this goal is not the same. Members unable to liberalise immediately are permitted to lodge a reservation against specific Items of the Codes. Any country's individual position at a given moment can thus be understood through reading of the lists of reservations annexed to each Code. These lists define each country's current commitments. If a country has not lodged a reservation to a particular Item, the transactions covered by this particular Item are expected to be fully liberalised.

There are "full" and "limited" reservations. A full reservation means that the transaction to which it refers cannot be undertaken at all. A limited reservation means that the transaction may be permitted, subject to certain restrictions. Reservations should, in general, reflect as precisely as possible the kind of restrictions which a Member country still imposes on international capital movements and trade in services. When a new reservation is lodged, the Member must state its reasons for doing so and submit to periodic examination of the reservation it maintains. The OECD process of periodical reviews of the extent of and motivations underlying the restrictions aims at turning full into limited reservations, and at further limiting, or deleting altogether limited reservations.

Are there indeed marked discrepancies between countries' positions? It would be difficult to make sweeping overall assessments, because each country has areas where it is more liberal than in others, and those areas differ from one country to another. But it is probably true that some countries tend to assume the role of "locomotive" by moving ahead faster than others in removing reservations across the board. On the other hand, new Members joining the Organisation have traditionally started out with a longer set of reservations than most of the "old" Members.

### **Who oversees application of the Codes?**

The Enlarged Investment Committee for work related to the Codes is the structure where Member countries meet to discuss application and implementation of the Codes. The European Union is represented. Other representatives, including from non-Member countries, may be invited; the International Monetary Fund (IMF),

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<sup>2</sup> The procedures for declassification and publication are further detailed in the Commentary to Article 12, section F Publication.

World Bank (WB), World Trade Organisation (WTO), United Nations Conference on Trade and Development (UNCTAD) and European Free Trade Association (EFTA) are observers.

The Enlarged Investment Committee for work related to the Codes has delegated authority from the Council to make all decisions regarding the Codes, except decisions to make any change in the text of the Codes (other than amendments to country-specific reservations in Annex B of either Code or to country-specific entries in Annex E of the Code) or to invite a non-Member to adhere to either or both of the Codes. These decisions require a double consensus, that is, approval by both the Committee and the OECD Council.<sup>3</sup>

Double consensus means that a decision on either of these fundamental matters will not be final and binding until consensus has been reached on both levels. Thus, if a decision proposed by the Committee does not achieve consensus in Council, the Committee's proposed decision will not become final and binding. If, on the other hand, Council decides to amend a decision proposed by the Committee, the Council amendment will need to be submitted to the Committee and would need consensus there in order to become final and binding. Through this mechanism, no decision on these fundamental matters can be taken without the consent of all the Members to the Codes, be they OECD Members or not.

Technical discussions relating to the Codes are handled by the Advisory Task Force on the OECD Codes (ATFC). The ATFC is a joint advisory task force of the Investment Committee, the Committee on Financial Markets, and the Insurance and Private Pensions Committee consisting of governmental experts with specialised financial expertise. Upon request of the parent committees, the ATFC examines specific measures by individual Members with relevance to their obligations under the Codes. The Enlarged Investment Committee for work related to the Codes can also decide to consult other OECD Committees, and/or other relevant international organisations.

The Committee and the ATFC usually meet twice a year for several days, once in spring and once in the fall. They are assisted by staff from the OECD Secretariat, in particular the Investment Division. The Committee may also set up ad hoc working groups to tackle specific issues relating to the OECD Codes which need in-depth expertise and analysis, such as foreign direct investment or certain services sectors such as insurance, private pensions and E-finance. It can also organise more informal conferences and workshops, often with participation from the private sector and/or academics.

Why do we need a committee to look after the Codes? Because liberalisation under the Codes is a dynamic and ongoing process, based on analysis, consultation and peer

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<sup>3</sup>. The procedures for decision-making under the Code(s) are further detailed in the Commentary to Article 12, section E Decisions and decision-making.

persuasion. The Committee conducts peer reviews of each country's position under the Codes, seeking to explore together with the country concerned if and how it could advance towards more open markets. Horizontal peer reviews are another instrument under the Codes which look at a specific sector only but cover all countries. Recent examples concern sectors such as real estate, professional services, telecommunications and asset management services. The Committee usually adopts written reports on each of these reviews. These reports are often accompanied by draft recommendations to the country or countries concerned, or by draft decisions to modify the reservation lists.

In order to do its job properly, the Committee needs reliable information on any policy measures in Member countries that could affect the Codes. The Codes stipulate that governments shall notify the OECD within 60 days of all measures having a bearing on the Codes. In addition, the Committee, with the help of the OECD Secretariat, conducts its own regular surveys. Drawing on a multitude of available sources, the Committee systematically examines and discusses new policy developments in Member countries which affect capital movements, direct investment and trade in services.

### **Who benefits from liberalisation under the Codes?**

The Codes are instruments of international law which produce rights and obligations for governments. Legally, individual citizens or enterprises of Member countries can not directly invoke rights resulting from the Codes to invest abroad, move funds or provide cross-border services; they need to go through their national governments for a case under the Codes to be eventually raised before the Committee. However, the Codes demand that Member countries implement their obligations through adopting or maintaining the necessary measures at the domestic level.

Thus, the ultimate beneficiaries of liberalisation are indeed the citizens and the companies of each Member country. They can buy and sell stocks and mutual funds abroad, transfer inherited assets, set up an enterprise in another Member country, provide legal or financial advice to clients abroad, etc. As important, they can be confident that these benefits are stable and will not be reversed. This stability is particularly important to those who invest abroad under a long-term perspective, for instance by establishing production facilities in a foreign country.

Are the benefits of liberalisation measures limited to residents of Member countries? The legal commitments under the Codes only apply to Member countries. But Member governments have accepted to use their best endeavours to extend the benefits of liberalisation to all Members of the IMF. Thus, residents of other countries can reap the advantages of free market access in Member countries to the same extent as residents of Member countries can.

## How do the Codes fit in with EU regulation?

As mentioned before, the Codes have left room, from the beginning, for the regional integration process within special systems such as the European Union, formerly the EEC (Article 10). Twenty-three member states of the European Union are Members of the OECD, but EU and OECD processes are entirely independent from each other. EU member states may liberalise more rapidly or more widely among themselves. As an exception to the Codes' principle of non-discrimination, EU member states are permitted not to extend liberalisation measures to other Member countries which are not members of the EU. A concrete example is the EU Banking Directive, which has introduced a single "passport" or licence to provide banking services across the EU without the commercial presence of the service provider in the country where the service is delivered, an advantage which has not fully been extended to other Members.

However, the Committee does examine EU regulations and directives in order to determine whether they are otherwise compatible with EU member states' obligations under the Codes. In particular, harmonisation and liberalisation within the EU may not raise new barriers to operations with third countries. This could happen if an EU member with very liberal policies were obliged to introduce a more restrictive regime in a particular area, as part of the harmonisation effort within the EU. Smooth co-operation between OECD and the EU is facilitated by the regular participation of a representative of the EU in meetings of the Committee and ATFC.

While EU members may liberalise more rapidly among themselves, they remain committed to the overall objective of the Codes. Restrictions which have already been removed within the EU should be removed eventually with regard to other Codes Member countries as well, provided they fall under the coverage of the Codes. Liberalisation is not complete until restrictions are removed towards all Codes Member countries.

## How do the Codes compare with the WTO agreements?

All Codes Members are also members of the WTO and parties to its instruments. The WTO agreement which is most relevant to the areas covered by the OECD Codes is the General Agreement on Trade in Services (GATS). The GATS covers not only cross-border trade in services, but also foreign direct investment (FDI) and establishment in the services industry.

The GATS and the Codes both promote the same goal: encouraging liberalisation. The GATS approach is distinct from that of the Codes particularly in two respects: it favours a "bottom-up" approach to defining countries' individual commitments, as opposed to the Codes' "top-down" approach, and it seeks to achieve its goals through rounds of negotiation rather than through unilateral liberalisation and peer persuasion.

The bottom-up approach means that countries may select within the general coverage of the GATS those sectors where they wish to make commitments. Negotiation of commitments means that progress towards liberalisation is achieved through mutual concessions, sometimes across different services sectors.

The Committee looked at the question of coexistence and compatibility between the GATS and the Codes as early as 1994 (Appendix 2). It concluded that obligations for Codes Member countries under both instruments are different but compatible. Members view the GATS and the Codes as complementary and mutually supportive approaches to liberalisation. On the basis of a report submitted by the Committee, the OECD Council agreed that the Codes should be maintained and even strengthened. This was motivated not only by a desire to preserve progress achieved through these instruments, but also by a wish to see OECD continue to play a locomotive role for balanced liberalisation worldwide.

The Codes have comparative strengths which support this approach. Firstly, their coverage is wider in some essential areas. Not only is the Capital Movements Code the sole multilateral instrument covering the full range of capital movements. It is also the only multilateral instrument promoting liberalisation of foreign direct investment and establishment in all sectors of the economy, together with the National Treatment Instrument which provides non-binding undertakings by its Adherents not to discriminate against foreign investors operating on their territory. Secondly, the “top-down” approach of the Codes is efficient in ensuring a standstill and in guaranteeing the non-discriminatory nature of regulation. Thirdly, the co-operative atmosphere in OECD allows room for discussion and assessment of the economic and policy issues that need to be taken into account as the worldwide trend for globalisation of investment and trade in services continues.

### **Financial stability and Members’ commitments under the Codes**

Capital flows are an integral component of international finance. They allow for savings to be channelled from surplus countries to deficit countries, where returns to investment are typically higher. However, these flows can also pose important challenges to open economies, and the Codes have provisions that permit countries to take measures warranted by financial stability circumstances.

Following the 2008 global financial crisis, policymakers developed a macro-prudential policy toolkit aimed at mitigating various systemic financial stability risks. Macro-prudential measures typically fall outside the scope of the Code, even if they may have an impact on capital flows. For a measure to have a bearing on the Code’s obligations, it does not suffice that it has an impact on capital flows or capital mobility; measures which do not target the specific operations covered by the Code fall outside the scope of the agreement.

Furthermore, some macro-prudential measures that are also capital flow management measures are conforming under the Code. This can be due to carve-outs in the text of the Code, or as a result of explicit understandings reached among Members.

Even for those measures that are not conforming, Members which maintain measures constituting restrictions can, under specific circumstances, avail themselves of the flexibility mechanisms available in the Codes. That a measure introduced by a Member is considered a restriction under the Codes does not mean that the measure is not justified for financial stability or other reasons specific to the Member. It is by using these flexibility mechanisms, i.e. lodging the appropriate reservation or invoking the derogation clause of the Codes, that a Member conforms with the Codes. In the specific case of the invocation of the derogation clause, the Committee assesses whether countries are justified in introducing restrictions.

Notwithstanding, cross border leakages may arise from domestic measures addressing financial stability risks, rendering such measures less effective. Measures adopted under reciprocation arrangements among countries for macro-prudential measures, where a country applies the same, or equivalent, macro-prudential measure as that activated in another country in order to address a risk related to specific exposures in the other country concerned, fall outside the scope of the Codes. Such agreements address the issue of leakages without the need for recourse to capital controls, and the Code's disciplines on the latter add a further incentive for countries to cooperate on macro-prudential approaches.

### **What have the Codes accomplished?**

The Codes have provided for almost sixty years a multilateral framework to support, in a co-operative spirit, the individual paths towards liberalisation pursued by Member countries. They have also created an environment in which Member countries with less developed economies, or those going through temporary economic difficulties, have benefited from consultation and understanding by their peers. At the same time, the Codes have served as a useful yardstick by which the liberalisation efforts of Member countries can be assessed and compared over time.

Work on the Codes has produced a wealth of information. Under the OECD approach, the push towards liberalisation is always accompanied by study and analysis of the economic and political context. Economic activities such as foreign direct investment, insurance and private pension services, professional services, telecommunications services, tourism, and banking and financial services have been examined in depth, to take only the last decade as an example. Often, these studies have been carried out taking advantage of a multidisciplinary approach and drawn on the expertise of other OECD bodies. They are generally published to serve a worldwide audience.

From the beginning, the Codes of Liberalisation have played a central role when new Members joined the OECD. This has become apparent again during the most recent accession processes: Chile, Colombia, Estonia, Israel, Latvia, Lithuania, and Slovenia. The Codes have served as a tool to measure readiness to share their peers' philosophy of international economic relations. Candidates for Codes' adherence may lodge reservations, and it will be accepted that their reservation lists start out being lengthier than those of the established Members. They must show, however, that they are approaching a sufficient stage of liberalisation. If necessary, they need to improve existing policies so as to move closer to the standards of the Codes.

### **What is the outlook for the Codes in the 21<sup>st</sup> century?**

Progress towards the ultimate goal of open and efficient markets has been spectacular, but much is left to do. The Codes have an essential role to play in the future, as they did in the past, in locking in liberalisation among Members, in sustaining a dynamic process towards more liberalisation and in monitoring progress, taking into account, at the same time, financial stability considerations.

In 2011, the OECD Council decided to open the Codes of Liberalisation of Capital Movements and Current Invisible Operations to adherence by non-OECD countries. This has allowed the Codes to reach a wider group of countries which may be interested in applying to the instrument. At the time of writing, several countries have applied for adherence and are undergoing a comprehensive examination by the Committee of their position under the Codes.

The Codes also provide a key global forum for discussion and exchange of views about capital account liberalisation and capital flow management issues. This is important in times of concern about the potential risks to financial stability that may be associated with free capital mobility. The Advisory Task Force on the Codes is gathering a solid constituency of capital flow experts, and its regular meetings are open to all G20 members. The Codes can continue to promote balanced liberalisation not only within the OECD, but also externally in support of work within the WTO and through the G20 process for discussing standards and best practices relating to international capital movements and financial market integration. While ensuring that the benefits of cross border capital flows are retained, over time the Codes have contributed to and shaped the international debate on progressive liberalisation and the appropriateness of different policies in mitigating volatility.

In times of growing concerns about the adverse effect of international policy spillovers and the use of beggar-thy neighbour policies, the Codes are well placed to provide a much needed multilateral platform for exchanges and policy discussion on capital flow management issues.

## Part II.

# COMMENTARY

### Introduction

This commentary of the provisions of the OECD Codes of Liberalisation has been designed to serve as a reference tool for the Investment Committee, officials in national administrations, and the interested public. Like other legal commentaries, it is organised provision by provision.

While the two Codes cover different operations in their respective Annexes, the body of Articles is largely identical. For ease of presentation and accessibility, only the text of Articles 1, 2, 18, 19, 20, 21 and 22 is reproduced in full for both Codes. All other Articles reproduce the text as it is contained in the Capital Movements Code.

The substance of the remarks below draws on the Committee's understandings in applying the Codes over the years since their adoption by the OECD Council in 1961. In the course of its work, the Committee has reached numerous understandings to help clarify cases where interpretation of the Codes is not immediately clear from a reading of the legal texts. Some of these understandings act to strengthen application of the Codes, whereas others make allowance for certain national priorities. These agreed understandings are contained in formal acts of the Organisation (e.g. entries in the Council minutes) and in reports by the Committee.

### Section 1: The Articles of the Codes

#### Article 1 General Undertakings

##### [Capital Movements Code]

- a. *Members shall progressively abolish between one another, in accordance with the provisions of Article 2, restrictions on movements of capital to the extent necessary for effective economic*

*co-operation. Measures designed to eliminate such restrictions are hereinafter called “measures of liberalisation”.*

- b. Members shall, in particular, endeavour:*
  - i. to treat all non-resident-owned assets in the same way irrespective of the date of their formation*
  - ii. to permit the liquidation of all non-resident-owned assets and the transfer of such assets or of their liquidation proceeds.*
- c. Members should use their best offices to ensure that the measures of liberalisation are applied within their overseas territories.*
- d. Members shall endeavour to extend the measures of liberalisation to all members of the International Monetary Fund.*
- e. Members shall endeavour to avoid introducing any new exchange restrictions on the movements of capital or the use of non-resident-owned funds and shall endeavour to avoid making existing regulations more restrictive.*

#### **[Current Invisibles Code]**

- a. Members shall eliminate between one another, in accordance with the provisions of Article 2, restrictions on current invisible transactions and transfers, hereinafter called “current invisible operations”. Measures designed for this purpose are hereinafter called “measures of liberalisation”.*
- b. Where Members are not bound, by virtue of the provisions of this Code, to grant authorisations in respect of current invisible operations, they shall deal with applications in as liberal a manner as possible.*
- c. Members shall use their best offices to ensure that the measures of liberalisation are applied within their overseas territories.*
- d. Members shall endeavour to extend the measures of liberalisation to all members of the International Monetary Fund.*
- e. “Member” shall mean a country which adheres to this code.*
  - a. Article 1 spells out the basic purpose of the Codes and defines what is meant by liberalisation: restrictions are to be eliminated progressively between Member countries with regard to all operations covered by the Codes. This has raised questions of interpretation such as: Who has to implement the liberalisation*

*obligations? What is a restriction? What is the standard of liberalisation, and what is discrimination between residents and non-residents? What is progressive liberalisation?*

### ***A. Entities subject to the liberalisation obligation***

The obligation to abolish restrictions concerns “**Members**”. Sub-paragraph e. of Article 1 of the Current Invisibles Code refers to countries “which adhere to this Code”. All Members of the Organisation adhere to both Codes. Indeed, the ability to comply with the Codes’ liberalisation obligation serves as a benchmark for candidates for membership in OECD and has become a condition *sine qua non* in the accession procedure for new OECD Members. At the same time, it is possible for non-OECD countries to adhere to one or both Codes.

The obligation applies to **government authorities**. It does not apply to private entities. Unless mandated by government authorities, measures by private enterprises which are restrictive and discriminate against non-residents are outside the scope of the Codes. The Committee reviews nevertheless such private practices during the periodic examinations of Member countries’ position under the Codes, in order to evaluate their implications on liberalisation. Such implications are possible in particular in the field of foreign direct investment and portfolio operations involving shares.

**Government-owned industrial, commercial or financial enterprises** are treated like private enterprises. Where the state acts as an entrepreneur, it enjoys the same freedom and is, like a private enterprise, not obliged to extend non-discriminatory treatment towards foreign residents. On the other hand, where government-owned enterprises act, for instance, as service suppliers, host countries should accord them the same rights to provide cross-border services as are enjoyed by private enterprises.

More generally, where **a government acts on its own account**, and not as a regulatory authority (except with regard to transfers concerning social security and government expenditure under the Current Invisibles Code), the liberalisation obligations of the Codes does not apply.

The **privatisation of a public enterprise** raises specific issues. While government authorities are free to decide to whom they initially want to sell shares in such enterprises, the situation is different regarding the re-sale of equity holdings by initial purchasers. If governments impose restrictions on such operations affecting non-residents, for instance by reserving a certain percentage of shares permanently to residents, such measures are subject to the liberalisation obligations of the Code.

Measures by **self-regulatory authorities** are considered as equivalent to regulatory measures by the government, where such organisations act under delegated authority. In this case, they are considered as measures by the government itself. For instance,

self-regulatory authorities may be authorised to design binding regulations; or they may be authorised to determine their own conditions of admission, while at the same time, membership is a condition for carrying out operations or activities falling within the purview of the Codes. Where this involves discrimination against non-residents, such measures would be subject to the disciplines of the Codes.

The authorities of states, provinces, regions, autonomous units or other **sub-national units** are bound by the liberalisation obligations of the Codes. However, exceptions have been conceded to certain member countries with a federal structure, recognising the constitutional limits to the power of the federal government in those countries. Thus, Annex C to each Code exempts actions by a State of the United States from the obligations of the Codes; Annex D to the Current Invisibles Code, and a General Remark in Annex B to the Capital Movements Code exempt actions under provincial jurisdiction in Canada from the obligations of the Codes; and a General Remark in Annex B of both Codes exempts matters under the jurisdiction of Australia's States from the expanded obligations of the Codes that were resulting from the 1992 Revision. However, the federal governments of these countries have undertaken to use their best endeavours to encourage application of the Codes' provisions at the sub-national level. They have reported sub-federal measures for transparency purposes in horizontal reviews under the Codes, such as real estate and insurance and private pensions.

Other countries with a federal structure, such as Germany, Switzerland or Austria, have not requested such exceptions, accepting thereby that the Codes apply fully at the sub-national level.

In accordance with sub-paragraph c., Members shall use their best offices to ensure that the measures of liberalisation are applied within their **overseas territories**. Under international law and practice, a country may exclude application of its international obligations to overseas territories, if its constitutional system allows for this. Currently, only Finland has maintained a declaration in Annex B of the Codes, which temporarily excludes application of the 1992 expanded obligations to certain territories (Åland Islands).

### ***B. Measures constituting restrictions***

Any **law, decree, regulation, policy and practice** taken by the authorities which may restrict the conclusion or execution of operations covered by the Codes constitutes a restriction. Measures such as screening procedures or registration requirements are not considered restrictions, if they do not affect the effective carrying out of the operation.

However, international transactions may be affected by certain measures which have effects equivalent to a restriction, although they do not prevent operations. This is the

case where such measures raise the effective cost of operations. **Equivalent measures** in the field of capital movements might take the form of compulsory deposit requirements, interest rate penalties or queuing arrangements for security issues. The Codes treat these equivalent measures like restrictions subject to progressive liberalisation.

A similar question has arisen with respect to particularly burdensome **licensing requirements and other domestic regulations** and **internal arrangements**, such as "golden shares" keeping special decision power to governments not proportionate to their shareholding in privatised enterprises, which may affect operations both under the Capital Movements Code and the Current Invisibles Code. The Committee has considered, however, in most cases, that despite their possible economic impact, such measures do not constitute restrictions under Article 1 of the Codes, as long as they are applied in a non-discriminatory manner. They may however, on a case-by-case basis, give rise to an action under Article 16 of the Codes (see below), if their impact is such that they effectively frustrate operations covered by the Codes.

**Taxes on financial and capital transactions** – for example stamp duties, taxes on the issue, transfer, purchase and sale of securities, banking taxes, taxes on cheques and taxes levied on transactions such as validation of contracts and sale of real estate – may constitute restrictions, if they penalise specifically international transactions between residents and non-residents. Taxes of a general nature, such as income taxes and capital gains taxes are not concerned, since in general they are not intended to discourage international capital movement operations as such. Equally, apparently discriminatory taxes levied in accordance with widely accepted principles of international tax law are not considered as equivalent to a restriction under the Codes.

Under the Capital Movements Code, **currency rules** – i.e. the obligation to use a particular currency – for denomination and settlement, imposed by a country on operations by its residents abroad, would be considered restrictions. On the other hand, Member countries are of course free to determine which currencies may be used on their domestic markets by residents and non-residents alike.

The obligation to use **special payments channels**, e.g. different exchange markets for different kinds of operations, constitutes a restriction under the Capital Movements Code, if any exchange rate differential with the official market were to exceed 2 per cent continuously over several months.

### *C. Liberalisation standard: Non-discrimination between residents and non-residents*

The Codes' liberalisation obligations require member countries to abolish restrictions on **operations between residents and non-residents**. These terms, which are basic concepts of exchange control and balance of payments, are not related to nationality.

Under the OECD Codes, national authorities retain discretion to decide whether, from their point of view, an individual or an institution is resident or non-resident. Non-residents are to be dealt with on an equal footing with their resident counterparts. A measure is a restriction, if it discriminates between residents and non-residents. As a consequence, Member countries are free to prohibit operations between residents, even if one party to an individual operation happens to be a resident foreign-owned or controlled enterprise.

The Committee has stressed on several occasions that Member countries are not required to grant **preferential treatment** to non-residents. This approach applies primarily to operations on the territory of the Member country concerned. If, for instance, a Member country restricts lending operations to residents on its territory, it may restrict them as well with regard to non-residents. However, as regards operations taking place abroad, member countries are expected to allow their residents to transact freely with non-residents in any operations abroad, if such operations are free in the country where the operation takes place.

The Codes focus on residency, not on nationality. However, **nationality requirements** have consistently been considered as restrictions incompatible with the liberalisation obligations of the Codes. This is justified by the fact that, in practice, non-residents are almost always non-nationals, and that a nationality requirement thus defeats all possibility for transactions between residents and non-residents, except for nationals of the country who are resident abroad.

This interpretation extends to the case where nationality is not imposed as a direct condition of ownership or supply of services, but as a condition to obtain a local license which, in turn, is necessary to acquire shares in a domestic enterprise or to provide cross-border services

**Residence and other local presence requirements** defeat by definition the principle of freedom of cross-border-trade and trans-frontier capital movements. The Committee has considered that this includes residence requirements for foreign participation in a local enterprise. Certain minimal forms of local presence requirements which are only a matter of formalities, such as the maintenance of a mailing address, or a simple local registration, have, however, been accepted as not constituting effective impediments for carrying out operations covered by the Codes and are not considered as discriminating against non-residents.

Measures which differentiate between residents and non-residents are, however, not always contrary to the obligations of the Codes. The Committee has accepted as **equivalent treatment** certain cases where a different regime applies to non-residents as compared to residents. The condition is that this does not exceed what is necessary, for prudential or other purposes provided in the Codes, to place residents and non-residents on an equal footing.

The principle of equivalent treatment has been developed in particular with regard to the establishment of branches or agencies by non-resident enterprises. When a foreign company establishes a subsidiary in the host country, the establishment takes place through incorporation, with the same guarantees and conditions (for example, minimum capital) as applies to resident investors. But where a foreign company decides to establish only a branch or agency, i.e. not to incorporate as a legal person, host country authorities may feel the need to impose special requirements for prudential reasons, which do not apply to branches of host-country enterprises. This need is recognised under the Codes, and differential treatment is accepted in such cases, but only if such requirements on branches of enterprises incorporated are not more burdensome than necessary for prudential or other purposes provided in the Codes.

The terms “burdensome” and “necessary” may involve a certain degree of subjective judgement. Member countries have attempted, wherever possible, to agree on minimum conditions under which treatment would be considered “equivalent”, and thus not constitute a restriction under the Codes. An example is the areas of banking and financial services, as well as insurance and private pensions services. Detailed provisions are included in the Current Invisibles Code regarding authorisation procedures, representation, and prudential and financial requirements which may apply to the establishment of branches and agencies of non-resident enterprises. In addition, interpretations of the insurance and private pensions provisions of the Code have been adopted by the Committee (Appendix 1).

Under the principle of equivalent treatment, different but not more burdensome than necessary admission procedures can be acceptable also in other areas, such as the admission of foreign securities on the domestic market, or the cross-border provision of financial services from abroad. A similar reasoning may apply in the field of taxation: Where different taxation regimes result nevertheless in “equivalent treatment” between residents and non-residents, these regimes would not be seen as restrictive under the Codes.

The obligation to treat non-residents on an equal footing with residents applies only between residents of member countries. **Residents of third countries** do not, in principle, benefit from the Codes’ obligation not to discriminate against non-residents. Sub-paragraph d. of Article 1 only contains a best-endeavour commitment regarding residents from countries which are Members of the IMF.

The adoption of the GATS (General Agreement on Trade in Services) has, however, modified to a certain extent this situation. A number of operations covered by the OECD Codes – in particular establishment and cross-border trade in the services area – are now subject also to the liberalisation obligations of the GATS. Where Codes Members have committed themselves to non-discrimination between GATS Members, liberalisation benefits under the Codes which overlap with the GATS are

normally to be extended to all signatories of the GATS. This obligation results from the GATS MFN clause, not from the obligations under the OECD Codes. There are certain options in the GATS which would allow Codes Members to limit in some cases the benefit of liberalisation obligations to each other.

In practice, however, extension of liberalisation measures on an *erga omnes* basis, has been the predominant policy of member countries.

#### ***D. Mechanism of liberalisation: progressive abolition of restrictions***

The Codes favour gradual liberalisation which allows each Member country to progress at its own pace towards the full abolition of restrictions. In accordance with the principle of “progressive elimination” in Article 1, it is thus accepted that a country liberalises only subject to its possibilities and state of economic development. Other Members are expected to take account of these individual circumstances, rather than pressing for liberalisation on a “give-and-take” basis through successive rounds of negotiation. In that sense, the Codes’ approach might be considered a prudent one. At the same time, however, it is also ambitious, since Member countries have accepted for all areas covered by the Code a general commitment to progressively roll back restrictive measures, without the possibility to “pick and choose” sectors, and without the possibility, in principle, to introduce any new restrictions. This is called the “**top-down**” approach to liberalisation. The main mechanism for maintaining temporarily restrictions is the lodging of reservations, which is the subject of Article 2.

### **Article 2** **Measures of Liberalisation**

#### **[Capital Movements Code]**

- a. *Subject to the provisions of paragraph (b)(iv), Members shall grant any authorisation required for the conclusion and execution of transactions and for transfers specified in an item set out in List A or List B of Annex A to this Code.*
- b. *A Member may lodge reservations relating to the obligations resulting from paragraph (a) when*
  - i. *an item is added to List A of Annex A to this Code;*
  - ii. *obligations relating to an item in that List are extended;*
  - iii. *obligations relating to any such item begin to apply to that Member; or*
  - iv. *at any time, in respect to an item in List B.*

- c. *Reservations shall be set out in Annex B to the Code.*
- d. *Whenever the liquidation proceeds of non-resident-owned assets may be transferred, the right of transfer shall include any appreciation of the original assets.*
- e. *Whenever existing regulations or international agreements permit loans between residents of different Members otherwise than by issuing marketable domestic securities or by using, in the country in which the borrower resides, funds the transfer of which is restricted, the repayment obligation may be expressed or guaranteed in the currency of either of the two Members concerned.*

### **[Current Invisibles Code]**

- a. *Members shall grant any authorisation required for a current invisible operation specified in an item set out in Annex A to this Code.*
- b. *A Member may lodge reservations relating to the obligations resulting from paragraph a) when:*
  - i. *an item is added to Annex A to this Code*
  - ii. *obligations relating to an item in that Annex are extended*
  - iii. *obligations relating to any such item begin to apply to that Member.*

*Reservations shall be set out in Annex B to this Code.*

Article 2 sets out how the obligation of progressive liberalisation is to be implemented within the framework of the Codes. The mechanism provided is the following:

- In accordance with the first paragraph of Article 2, liberalisation is achieved when operations can be freely executed because any authorisation required is granted.
- The scope of liberalisation obligations is defined by lists of operations annexed to the Codes. The list is the same for all countries. No positive decision as to which items are accepted as subject to progressive liberalisation is allowed or required. All operations covered by these lists are subject to liberalisation by all Members.
- Since the Codes aim at achieving liberalisation progressively over time, existing restrictions may be maintained until full liberalisation is possible. These existing restrictions are to be indicated in each Member country's lists of reservations to the two Codes. Countries are

expected to reduce these restrictions and thus their list of reservations over time until full liberalisation is reached.

### *A. Granting of Authorisations*

When liberalised operations require authorisation, such authorisations shall be given automatically. This is subject only to the right of the authorities to restrict or regulate operations under Articles 3, 5 and 6 of the two Codes (see below). Obviously, the liberalisation obligation is satisfied *a fortiori*, if no authorisation is necessary at all to carry out the operation.

Regarding the Capital Movements Code, the obligation to liberalise goes beyond the requirement that the transfer of funds to and from abroad should be free from exchange control restrictions. It also requires that the underlying transactions themselves should not be frustrated by legal or administrative regulations.

Regarding the Current Invisibles Code, not only the transaction, i.e. the cross-border provision of services, is to be authorised, but at the same time any transfers or payments that may be connected to such provision of services.

### *B. Liberalisation Lists – Operations covered by the Codes*

The operations which are to be liberalised are defined by **lists attached to each Code as Annex A**. These lists define precisely the scope of the liberalisation obligation for all Members. In other words, they describe in detail the types of capital movements and invisible transactions covered by the Codes. Operations are classified as Items. The Capital Movements Code now covers the full range of Capital Movements, while the services covered by the Current Invisibles Code are more limited.

#### *Operations covered by the Capital Movements Code*

Annex A to the Capital Movements Code contains the list of international operations involving a transfer of capital between two Member countries. The list is subdivided into **List A and List B**. The difference is as follows: Operations in List A are subject to the general standstill principle of the Codes (see below), i.e. no new restrictions may be introduced to these operations. As regards operations in List B, Members have the right to introduce new restrictions at any time, in accordance with paragraph b ii) of Article 2. With respect to these operations, Members are not yet prepared to accept full standstill, i.e. renouncing on the reintroduction of regulatory measures. However, care was taken during the 1992 revision of the Capital Movements Code to limit the number of operations included in List B. Several existing operations were transferred from List B to List A, such as the issue of capital market securities and operations in unquoted capital market securities.

Throughout the lists, a distinction is made between **actions initiated by non-residents in the country concerned** (the host country), and **actions abroad initiated by residents** of the country concerned. This reflects the twin elements traditionally associated with liberalisation of capital movements.

A further sub-division exists, where applicable, for each of these operations. This sub-division distinguishes between operations involving **capital inflow** and operations involving **capital outflow**. Such distinctions serve to facilitate the examination process by the Committee and allow to focus on different aspects of an operation when recommending the narrowing down of restrictions.

The lists of operations annexed to the Capital Movements Code have **evolved over time** since 1961. At the beginning, these lists were rather limited. Over the years, however, national economies became more integrated, a trend toward more open financial markets appeared, and financing techniques amongst Member countries became increasingly innovative and sophisticated. This has motivated Members to update and extend, in successive steps, the liberalisation lists.

A first extension in 1984 expanded the definition of inward direct investment and included the **right of establishment**. Thus, a wide variety of restrictions on foreign investment became unambiguously subject to liberalisation obligations: licenses and concessions, as well as requirements for running an enterprise, ceilings on non-resident participation in resident enterprises and restrictions on the form of business (subsidiary, branch, agency or other) available to non-residents.

Of course, foreign investors are not entitled to preferential treatment and remain subject to the same general regulations as resident enterprises. Under the expanded definition, measures restricting individuals' right to settle and work, as well as measures regulating public, private or mixed monopolies remain excluded from application of the Code's liberalisation obligations.

Another revision in 1992 expanded the liberalisation lists to include short-term money-market operations and new forms of financing, such as futures, swaps and options. In 2002, restrictions applying to portfolio investment abroad by certain institutional investors, namely insurance companies and pension funds, were brought within the purview of the Capital Movements Code and made subject to its progressive liberalisation obligations. Thus, today, **virtually all short- and long-term capital movements** are covered by liberalisation obligations. The only notable exception from the coverage of the Capital Movements Code, which remains today, concerns, for reasons of consumer protection, financial credits and loans extended by non-residents to residents other than enterprises.

In 2002, the OECD Council clarified that the Capital Movements Code's obligations apply to restrictions on portfolio investment abroad by insurance companies and private pension funds.

In 2019, a revision of the Codes clarified the treatment of macro-prudential measures.

### *Operations covered by the Current Invisibles Code*

“Invisibles” is the general term applied to all exchanges in which no merchandise is involved. The Current Invisibles Code main focus is on the **free cross-border provision of services**, i.e. the supply of services to residents by non-resident service suppliers abroad, and *vice versa*. It also provides for the free transfer of funds in connection with current international transactions. The liberalisation list in its Annex A specifies **eleven areas**: Business and Industry, Foreign Trade, Transport, Insurance and Private Pensions Services, Banking and Financial Services, Income from Capital, Travel and Tourism, Films, Personal Income and Expenditure, Public Income and Expenditure and General (including Professional Services). These Items are subdivided into different types of services. Some of the listed areas have complementary sub-annexes which define with greater precision the nature of liberalisation obligations, notably in the field of insurance, private pensions, banking and other financial services.

In view of the growth of international trade in services and the development of new services industries, a **major review** of the Current Invisibles Code has been under way since the late 1970s. Agreement was reached to expand obligations in the area of travel and tourism and audio-visual works. In 1992, a new section was introduced to include **cross-border banking and financial services** operations. The Current Invisibles Code now covers the right to provide services through the establishment of branches and other unincorporated entities by non-resident suppliers of insurance, banking and other financial services. In 2008, amendments to the **insurance and private pensions provisions** were introduced. Interpretations on how the new provisions apply in specific circumstances were also adopted (Appendix 1).

The provisions of the Current Invisibles Code regarding **branches and agencies** are of course closely linked to those of the Capital Movements Code which contain the principal obligations on foreign direct investment and establishment. But it is the Current Invisibles Code which contains the more detailed description of obligations regarding establishment and operation of branches and agencies in the financial sector. In addition, it lists specific obligations in the non-insurance financial sector which are of importance to operations by individual foreign service suppliers in particular: representation, self-employed intermediaries and membership of associations or self-regulatory bodies.

### *C. Reservations to the Codes – Standstill, rollback and ratchet effect*

Members are permitted to lodge reservations against specific Items of the Code. If and where they do so, they retain the **right to maintain restrictions on the operations**

**concerned**, in accordance with the content of their reservation. When a reservation is lodged, the Member must indicate its reasons and submit to an initial examination as well as to further periodic examinations of all reservations it maintains. Reservations by Member countries are reported under Annex B of each Code, and grouped country by country in alphabetical order. Any modification of Annex B and its list of reservations is subject to a decision by the Committee; this applies whether a reservation is added, limited or abolished. Annex B is regularly updated and published. The reading of a Member's list of reservations in Annex B thus permits one to understand at any given point in time where that Member stands on its way to full liberalisation.

When lodging reservations, Members are encouraged to limit their scope. The wording of reservations should correspond as precisely as possible to existing restrictions. **Precautionary reservations** – which leave room for restrictive measures not existing yet, but perhaps to be taken in the future – are strictly discouraged.

Thus, Members are invited to make as little use as possible of **full reservations**, which imply that a given operation cannot be undertaken in any way. The preference is towards **limited reservations**, which more precisely circumscribe existing restrictions through a “Remark” specifying the circumstances in which an operation may be permitted or restricted.

The possibility of lodging reservations should not be thought of as weakening the force of the Codes. On the contrary, it provides an orderly regime towards achieving progressive liberalisation over time. The mechanism by which the Codes' system of lodging reservations achieves this goal is based on two main features: standstill and rollback, which combine to produce a ratchet effect.

The **standstill obligation** – the prohibition to introduce new restrictions – is no doubt one of the core principles of the OECD Codes. And yet, it is not explicitly spelled out in Article 2. It results from the liminary enumeration of cases in which Members may lodge reservations, an enumeration which implies *a contrario* that new reservations, and thus new restrictions, are prohibited in all other cases.

According to Article 2 of both Codes, the lodging of reservations is permitted in three cases: when an item is added to Annex A, when obligations relating to an item in that Annex are extended, or when obligations relating to such item begin to apply to that Member. An example for the first case is the 1992 addition of short-term capital movements to the Capital Movements Code. At that time, all Members were entitled to lodge reservations against the newly added Items. An example for the second case is the 1984 extension of the definition of foreign direct investment and establishment, which was accompanied by a complete revision of Member country reservations regarding this Item. An example for the third case is the admission of new Members who, when accepting the obligations of the Codes, are permitted to lodge reservations

to any Item. The Organisation may agree on a case-by-case basis that reservations be re-lodged retroactively to rectify technical errors due to unintentional oversight as long as certain conditions, such as no breach of standstill, are met.

In no other cases, are Members allowed to introduce new restrictions which are not covered by their existing reservations (except under the special temporary derogation procedures in Article 7, see below). There is however one notable exception under the Capital Movements Code: the standstill obligation does not apply to Items in List B for which a reservation may be lodged at any time. Operations on List B are essentially limited to short-term financial operations and non-resident acquisitions of real estate.

Once a reservation is lodged, it is subject to periodical examination by the Organisation as to whether it could not be abolished. This is the consequence of the **rollback principle**: reservations are generally considered as temporary, subject to abolition whenever a Member's economic situation allows it to do so. During periodical country examinations, reservations are examined, and the Organisation seeks to encourage abolition of existing restrictions wherever possible.

The combination between standstill and rollback involves an important **ratchet effect**: once a reservation has been limited or altogether abolished, the corresponding restriction cannot be reintroduced anew. Thus, liberalisation once achieved is there to remain, and any evolution can only be towards more liberalisation, not less. The degree of liberalisation is secure, once it is achieved.

### Article 3 Public order and security

*The provisions of the Code shall not prevent a Member from taking action which it considers necessary for:*

- i. the maintenance of public order or the protection of public health, morals and safety;*
- ii. the protection of its essential security interests;*
- iii. the fulfilment of its obligations relating to international peace and security.*

The **safeguard provisions** relating in particular to public order and essential security interests are deemed to address exceptional situations. In principle, they allow Members to introduce, reintroduce or maintain restrictions not covered by reservations to the Code, and, at the same time, exempt these restrictions from the principle of progressive liberalisation.

However, over recent years, Members have been encouraged to lodge reservations when they introduce restrictions for national security concerns, rather than keeping

these restrictions outside the disciplines of the Codes. This has not only the advantage of enhancing transparency and information for users of the Codes, it also constitutes a first step towards eventual liberalisation, especially when national security is not the predominant motive for restrictions, i.e. accompanied by economic considerations.

#### Article 4 Obligations in existing multilateral international agreements

*Nothing in this Code shall be regarded as altering the obligations undertaken by a Member as a Signatory of the Articles of Agreement of the International Monetary Fund or other existing multilateral international agreements.*

Article 4 does not apply to international agreements concluded after the adoption of the Codes. The Codes give **precedence** to international agreements which were concluded **before the Codes' adoption** in 1961. This rule would apply where it has been determined that a conflict exists between such previous agreements and the Codes. Under international law, such a conflict would only be deemed to exist if it is not possible to interpret the provisions of the Codes and the previously existing agreement as being compatible.

The question of the Codes' relationship with other international agreements has most prominently arisen with regard to the **relationship between the OECD Codes and the GATS**, adopted in 1994. The Committee concluded, however, that the two instruments were not in conflict with each other. It considered the GATS and the OECD Codes as being complementary and promoting a common objective. The question of precedence therefore did not arise.

#### Article 5 Controls and formalities

- a. The measures of liberalisation provided for in this Code shall not limit the powers of Members to verify the authenticity of transactions and transfers nor to take any measures required to prevent evasion of their laws or regulations.*
- b. Members shall simplify as much as possible all formalities connected with the authorisation or verification of transactions and transfers and shall co-operate, if necessary, to attain such simplification.*

This provision reaffirms Members' rights to prevent fraud connected to transactions and transfers, to act against evasion of their laws and regulations. The latter is particularly relevant to the prevention of tax evasion and consumer protection.

The authorisation procedures employed for this purpose are nevertheless to be simplified as far as possible. Members are allowed considerable scope for national

prudential measures, as long as they do not discriminate against non-residents. However, the lack of internationally agreed standards of regulation is not recognised as a reason for delaying the liberalisation of operations covered by the Codes.

### Article 6 Execution of transfers

- a. *A Member shall be deemed to have complied with its obligations as regards transfers whenever a transfer may be made:*
- i) *between persons entitled, by the exchange regulations of the State from which and of the State to which the transfer is to be made, respectively, to make and/or to receive the said transfer;*
  - ii) *in accordance with international agreements in force at the time the transfer is to be made; and*
  - iii) *in accordance with the monetary arrangements in force between the State from which and the State to which the transfer is to be made*

Under Article 6, Members may generally require that transactions and transfers be effected through “authorised agents”. These authorised agents are typically designated foreign exchange banks, sometimes also securities firms. This possibility applies to operations under both Codes. If, however, financial transactions may be concluded only through authorised agents which are resident in the host country, this would constitute a restriction under the Current Invisibles Code.

### Article 7 Clauses of derogation

- a. *If its economic and financial situation justifies such a course, a Member need not take the whole of the measures of liberalisation provided for in Article 2(a).*
- b. *If any measures of liberalisation taken or maintained in accordance with the provisions of Article 2(a) result in serious economic and financial disturbance in the Member State concerned, that Member may withdraw those measures.*
- c. *If the overall balance of payments of a Member develops adversely at a rate and in circumstances, including the state of its international reserves, which it considers serious, that Member may temporarily suspend the application of measures of liberalisation taken or maintained in accordance with the provisions of Article 2(a).*
- d. *However, a Member invoking paragraph (c) shall endeavour to ensure that its measures of liberalisation:*

- i. *cover, twelve months after it has invoked that paragraph, to a reasonable extent, having regard to the need for advancing towards the objective defined in sub-paragraph ii), transactions and transfers which the Member must authorise in accordance with Article 2(a) and the authorisation of which it has suspended, since it invoked paragraph (c); and*
  - ii. *comply, eighteen months after it has invoked that paragraph, with its obligations under Article 2(a).*
- e. *Any Member invoking the provisions of this Article shall do so in such a way as to avoid unnecessary damage which bears especially on the financial or economic interests of another Member and, in particular, shall avoid any discrimination between other Members.*

The Codes recognise that Members may encounter, on the road to full liberalisation, temporary economic **difficulties** and setbacks which oblige them to reimpose restrictions they had already abolished. The derogation procedure of Article 7 is a safety valve. It is not aimed at weakening the standstill principle, but at allowing some flexibility in exceptional situations, so that all Members are able over sometimes difficult periods to continue to accept the Code obligations.

**Derogations** under Article 7 may concern operations in List A of the Capital Movements Code and certain operations under the Current Invisibles Code which are not covered by a Member's reservations. In other words, it concerns operations which a Member had previously accepted to liberalise and which are, in principle, subject to the standstill obligation. A derogation may only be invoked in certain, defined situations: Under Article 7c), the Member must demonstrate that it needs to reintroduce restrictions because of a seriously **deteriorating balance-of-payments situation**, whereas under Article 7b), it needs to show that liberalisation of a particular operation has resulted in **serious economic and financial disturbance** for other reasons. A form of general derogation, provided for under Article 7a) was used in the past by certain countries to obtain dispensation from the duty to liberalise in respect of all operations covered by the Code. Once surrendered, however, this form of dispensation cannot be used again.

The details of the derogation procedure under Article 7 are set out in Articles 13, 14 and 15 (see below). The Member concerned must notify the Organisation forthwith. It must provide justification and submit to examination of these justifications. Derogations are granted for specific operations subject to the Organisation's review and acceptance of the presented justifications and are expected to be maintained for a **limited period** only. Re-introduced restrictions are not expected to discriminate among Member countries. This period is limited to 18 months in the case of Article 7c. Derogations under Article 7 are regularly re-examined by the Organisation in order to ensure that a liberal regime is restored as soon as possible.

With respect to capital inflow surges and a derogation under Article 7b, Members may wish to consult [Technical Note: Measurement of and Identification of Capital Inflow Surges](#) as part of the process of demonstrating support for an invocation. In past instances of capital inflow surges, evidence of a surge alone has not been raised as a justification of invoking the derogation under Article 7b, with Members having also considered the possibility of viable alternative policies, taking into account the country's macroeconomic situation.

## Article 8 Right to benefit from measures of liberalisation

*Any Member lodging a reservation under Article 2(b) or invoking the provisions of Article 7 shall, nevertheless, benefit from the measures of liberalisation taken by other Members, provided it has complied with the procedure laid down in Article 12 or Article 13 as the case may be.*

## Article 9 Non-discrimination

*A Member shall not discriminate between other Members in authorising the conclusion and execution of transactions and transfers which are listed in Annex A and which are subject to any degree of liberalisation.*

While non-discrimination between residents and non-residents characterises the principle of liberalisation resulting from Article 1, Articles 8 and 9 together define another fundamental principle of the Codes: **a Member must not discriminate between other Members** when liberalising operations. Article 9 spells out the basic rule of non-discrimination: If a restriction is abolished or not applied with regard to one Member country, it must be abolished with regard to all other Member countries as well. The lodging of discriminatory reservations is not permitted. Article 8 confirms that this rule is independent of a Member country's degree of restrictiveness under the Code. Even the most restrictive Member is still entitled to benefit from all liberalisation measures of other Members. Retaliation, for instance against a Member invoking the derogation procedures under Article 7, is not permitted.

This is in keeping with the Codes' general philosophy to **promote liberalisation rather through unilateral action than through "bargaining"**. As noted in a report by the drafters of the Codes, "there should be no attempt by countries to bargain with their neighbours individually in securing reciprocal concessions on specific Items. Even Members which are in economic difficulties and cannot themselves liberalise must not be discriminated against and must continue to receive the economic advantages of liberalisation granted by other Members".

As regards **reciprocity measures**, some Members have taken a more differentiated view, particularly with regard to inward direct investment and establishment. They consider that reciprocity conditions may in certain cases contribute to increasing the overall degree of liberalisation, and have used this tool to support the efforts of their national enterprises to establish themselves in foreign markets. This concerns especially the banking and financial services sector with its sometimes complex institutional structures, varying from one Member country to the other, which may cause particular problems for foreign investors.

In response to this development, it was decided in 1986 to establish a special **Annex E to the Capital Movements Code** to record reciprocity measures and practices outstanding at that time. To provide further transparency, asterisks were placed against Member countries' reservations to Item I/A (inward direct investment) of the Capital Movements Code, and Items D/6 and E/7 of the Current Invisibles Code, relating to the establishment of branches by foreign insurers and financial services providers, respectively.

The 1986 Decision on reciprocity measures applies exclusively to inward direct investment and establishment. It gives a status to such reciprocity measures which is somewhat different from that of restrictions normally covered by reservations. However, notification and examination procedures are essentially the same with a view to their eventual elimination.

**Selective recognition agreements**, which may affect the right to carry out operations covered by the Codes, are in general based on objective technical criteria. In other words, different treatment is based on different circumstances and thus does not violate the non-discrimination provisions of the Codes. Where, however, such agreements introduce nationality or residency criteria, they may constitute potential violations of Article 9. In these cases, the host Member country concerned should stand ready to afford third Member countries adequate opportunity to demonstrate that comparable circumstances exist for similar recognition of their licenses, degrees, regulations etc.

## Article 10

### Exceptions to the principle of non-discrimination special customs or monetary systems

*Members forming part of a special customs or monetary system may apply to one another, in addition to measures of liberalisation taken in accordance with the provisions of Article 2a), other measures of liberalisation without extending them to other members. Members forming part of such a system shall inform the Organisation of its membership and those of its provisions which have a bearing on the Code.*

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

### Article 11 Notification and information from members

- a. *Members shall notify the Organisation, within the periods which the latter may determine, of the measures of liberalisation which they have taken and of any other measures which have a bearing on this Code, as well as of any modification of such measures.*
- b. *The Organisation shall consider the notification submitted to it, in accordance with the provisions of paragraph a) with a view to determining whether each Member is complying with its obligations under this Code.*
- c. *Members shall submit to the Organisation, at intervals determined by the Organisation, but of no more than eighteen months, information concerning:*
  - i. *any channels, other than official channels, through which transfers are made, and any rates of exchange applying to such transfers, if they are different from the official rates of exchange;*
  - ii. *any security money markets and any premiums or discounts in relation to official rates of exchange prevailing therein.*
- d. *The Organisation shall consider the notifications submitted to it in accordance with the provisions of paragraphs (a), (b) and (c) with a view to determining whether each Member is complying with its obligations under this Code.*

### Article 12 Notification and examination of reservations lodged under Article 2B)

- a. *Each Member lodging a reservation in respect of an item specified in List B of Annex A to the Code shall forthwith notify the Organisation of its reasons therefor.*

- b. *Each Member shall notify the Organisation within a period to be determined by the Organisation, whether it desires to maintain any reservations lodged by it in respect of an item specified in List A or List B of Annex A to this Code, and if so, state its reasons therefor.*
- c. *The Organisation shall examine each reservation lodged by a Member in respect of an item specified in:*
- i) *List A at intervals of not more than eighteen months;*
  - ii) *List B within six months of notification, and at intervals of not more than eighteen months thereafter;*
- unless the Council decides otherwise.*
- d. *The examination provided for in paragraph (c) shall be directed to making suitable proposals designed to assist Members to withdraw their reservations.*

One of the strengths of the OECD Codes of liberalisation is the framework they offer for ongoing monitoring of compliance with their obligations. Articles 11 and 12 set out the **basic procedure** for notification, examination, consultation and transparency applicable under the Codes.

### ***A. Notification***

The availability of reliable information is essential to the effective functioning of the Codes. Article 11 contains the general notification obligation. Members are required to notify the Organisation within 60 days of **all measures having a bearing on the Codes**, as well as of any modification to such measures. It is thus not sufficient to notify a relevant law or regulation upon adoption. Any subsequent amendments, additions, changes in the practice of application etc. must also be notified within 60 days of their implementation.

Article 12 concerns more specifically the obligation to notify **restrictions giving rise to reservations**. Members have to explain their reasons for maintaining such restrictions. This need for justification continues to apply as long as the restriction exists. In other words, the initial explanation for the introduction of a restriction is not sufficient; Members are asked to regularly provide justifications for continuing to maintain such a restriction. This is an important element in allowing Members to explore for themselves the possibility for rollback of restrictions.

Supporting Members' notification obligation, the OECD itself regularly screens press reports and other sources of information, in order to enable Members to review any new policy developments affecting capital movements and current invisible operations.

### *B. Examination of new measures introduced by Members*

In the case of a newly introduced measure, notified by a Member pursuant to Article 11 or having come to the attention of the OECD Secretariat through its regular monitoring of measures taken by Members, the Committee may undertake an examination of the measure in view of determining whether the Member is complying with its obligations under the Code.

This conformity assessment addresses in particular the following questions:

1. Does the measure apply to an operation listed under an item covered by the Code?
2. Is the measure listed under or related to an item in the list of ‘equivalent measures’ that are not direct restrictions but techniques equivalent to restrictions?
3. Has the operation to which the measure applies been excluded from the list of operations covered by the Code (e.g. non-resident’s lending to non-corporate residents)?
4. Does the measure apply only to operations between residents?
5. Are residents granted better treatment than non-residents in the conduct of an operation covered by the Code (national treatment test)?
6. Has the measure been recognised by a past understanding among members as not giving rise to a reservation– e.g. overall net FX position of financial institutions?

As an outcome of a conformity assessment, Members can also agree to a new understanding, for instance when the measure conforms to an internationally agreed standard.

In case of unfamiliar or untested measures, the Committee may conduct additional analysis on a case by-case basis taking into account country specific circumstances, in line with the Code’s balanced and comprehensive approach to liberalisation that guarantees benefits to society as a whole in the long run.

### *C. Periodic examination of existing reservations of Members*

Along with the general notification obligation, Article 12 requires that the Organisation regularly examine reservations lodged by each Member country. Concretely, **Members’ positions under the Codes are reviewed**, recent policy and economic developments are considered, and the possibilities for further liberalisation are discussed. Thus, examinations serve to heighten awareness of the need for making progress towards liberalisation while taking account of each Member’s individual

circumstances. They provide a practical mechanism through which to encourage the abolition of restrictions wherever possible. As stipulated in paragraph (d) of Article 12, the examination process “shall be directed to making suitable proposals designed to assist Members to withdraw their reservations”.

During examinations, the performance of each Member country is **judged by its peers**. This does not involve negotiations in the sense of exchanges of concessions. Since liberalisation is considered to be in a country’s own interest, it would make no sense if it agreed to liberalise only if other Members do likewise. The idea is, rather, that other Members reflect together with the Member concerned on the possibilities for further abolishing restrictions without compromising legitimate objectives of the authorities concerned. The nature and purpose of remaining restrictions are discussed. Member countries are encouraged to modify their reservations to reflect current, particularly more liberal practices, and thus to subject them to the Codes’ standstill obligation and ratchet effect. This process usually leads to formal invitations to the Member to withdraw or limit reservations to the Codes.

Examinations by the Organisation go, however, beyond the explicit reservations to the Codes. For the sake of **transparency**, monopolies and concessions are taken into account in the reviews carried out under the Capital Movements Code. The Organisation examines as well any known instances of private practices having a bearing on the Code.

Traditionally, **the examination process has differed between the two Codes**. Examinations under the Current Invisibles Code are generally conducted by service area, the reservations of all Members being considered at the same time. Under the Capital Movements Code, however, examinations have dealt with all the reservations of each Member country in turn. This difference of approach resulted from the nature of the restrictions involved in each Code. Under the Current Invisibles Code, the restrictive measures maintained by a Member are often unrelated. They are often concentrated in certain services sectors more than in others, although most countries tend to have particular services sectors where they are more restrictive than elsewhere – audio-visual works for some, maritime transport for others, etc. By contrast, Member country reservations under the various items of the Capital Movements Code are often closely related to the country’s specific macro-economic and exchange control policy framework and are therefore being considered as a whole. At present, capital controls have been abolished in virtually all Members, with reservations maintained mainly for certain sectors subject to restrictions on foreign direct investment and certain real estate operations. As a result, recent examinations under the Capital Movements Codes were conducted by sector areas and horizontally. The examination process for both Codes follows the same assessment procedure (see Appendix 3 for an illustrative chart).

### *D. Comprehensive examination of the position of countries requesting adherence to the Code(s) or candidates for OECD membership*

On 19 May 2011, the Council opened the Codes of Liberalisation of Capital Movements and Current Invisible Operations to adherence by non-OECD countries. A country requesting adherence undergo a comprehensive examination process concerning its position with regard to the requirements of the Code(s), item by item. For those countries who are undergoing the process of accession to the OECD and must adhere to both Codes, this examination plays a central role in the accession process and serves as a yardstick concerning new Members' preparedness to accept obligations resulting from Membership in the Organisation.

### *E. Decisions and decision-making*

The obligations under the Codes are binding for all Members.

The OECD Council is the Organisation's supreme decision-making body, composed of Ambassadors of all Member countries. By Decision of the Council on the Governance of the Codes of Liberalisation, Council delegated to the Enlarged Investment Committee for work related to the Codes, the authority to take all decisions concerning the Codes of Liberalisation<sup>4</sup>. Decisions by the Committee are taken under the **consensus rule**.

Decisions concerning the Codes on the **assessment of and recommendations on country-specific measures**, which do not alter by themselves a Member's rights and obligations, namely adoption of i) recommendations to the Member concerned to consider ways and means towards relaxing certain existing restrictions; ii) individual conformity assessments of a new measure with a Member's obligations under the Codes; or iii) Committee proposals for action by a Member, following a Committee review of a measure introduced or maintained by a Member; can be taken by the Committee on the basis of **consensus-minus-one**, meaning that, while every effort will be made to reach consensus, no one Member can block the decision to adopt the report. The use of consensus-minus-one decision-making is a last resort. All Member countries can participate at every step and their views are fully reflected in the Committee's report.

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<sup>4</sup>. Consensus both in Council and in the Committee is necessary to i) invite a non-Member to adhere to either or both of the Codes; or ii) make any change in the text of either Code, other than amendments to country-specific reservations in Annex B of either Code or to country-specific entries in Annex E of the Code. See Part I, section 5.

## ***F. Publication***

The Codes attach great importance to the principle of **transparency**. But internal transparency within the Organisation, keeping Member governments informed, is not sufficient. If the Codes are to fully play their role, ongoing work under the Codes needs to achieve a minimum of outside transparency. Business and industry, academics and the interested public need to be kept informed about the current state of liberalisation in Member countries.

Thus, the Codes themselves, including the updated lists of reservations defining Member countries' positions, are updated and published regularly. In addition, general surveys on restrictive measures by Member countries in particular fields are made available to the public. Studies of this kind have been published on portfolio operations, financial operations, inward direct investment and professional services. Since 1992, individual country reports examinations concerning inward direct investment and establishment have been published on a regular basis. In addition, all final reports of the Committee on Members' obligations under the Codes, including decisions on amending the lists of reservations, and those which do not alter by themselves Member's rights and obligations, are promptly declassified and made available to the public in accordance with OECD procedures, unless a Member explicitly objects in duly justified cases. The Member should explicitly state the reasons for the objections, e.g., confidentiality requirements and/or market sensitivity issues. In such cases, selected extracts, sections of the document, or as a minimum, a summary statement should be agreed for declassification.

### **Article 13** **Notification and examination of derogations** **made under Article 7**

- a. Any Member invoking the provisions of Article 7 shall notify the Organisation forthwith of its action, together with its reasons therefor.*
- b. The Organisation shall consider the notifications and reasons submitted to it in accordance with the provisions of paragraph a) with a view to determining whether the Member concerned is justified in invoking the provisions of Article 7 and, in particular, whether it is complying with the provisions of paragraph e) of that Article.*
- c. If the action taken by a Member in accordance with the provisions of Article 7 is not disapproved by the Organisation, that action shall be reconsidered by the Organisation every six months or, subject to the provisions of Article 15, on any other date which the latter may deem appropriate.*

- d. *If, however, in the opinion of a Member other than the one which has invoked Article 7, the circumstances justifying the action taken by the latter in accordance with the provisions of that Article have changed, that other Member may at any time refer to the Organisation for reconsideration of the case at issue.*
- e. *If the action taken by a Member in accordance with the provisions of paragraphs a), b) or c) of Article 7 has not been disapproved by the Organisation, then, if that Member subsequently invokes paragraphs a), b) or c) of Article 7 of the Code of Liberalisation of Capital Movements or, having invoked one paragraph of Article 7 of this Code, invokes another paragraph of that Article, its case shall be reconsidered by the Organisation after six months have elapsed since the date of the previous consideration, or on any other date which the latter may deem appropriate. If another Member claims that the Member in question is failing to carry out its obligations under paragraph e) of Article 7 of this Code or paragraph e) of Article 7 of the Code of Liberalisation of Capital Movements, the Organisation shall consider the case without delay.*
- f. i) *If the Organisation, following its consideration in accordance with paragraph b), determines that a Member is not justified in invoking the provisions of Article 7 or is not complying with the provisions of that Article, it shall remain in consultation with the Member concerned, with a view to restoring compliance with the Code.*
- ii) *If, after a reasonable period of time, that Member continues to invoke the provisions of Article 7, the Organisation shall reconsider the matter. If the Organisation is then unable to determine that the Member concerned is justified in invoking the provisions of Article 7 or is complying with the provisions of that Article, the situation of that Member shall be examined at a session of the Council convened by its Chairman for this purpose, unless the Organisation decides on some other procedure.*

#### **Article 14**

### **Examination of derogations made under Article 7 - Members in the Process of Economic Development**

- a. *In examining the case of a Member which it considers to be in process of economic development and which has invoked the provisions of Article 7, the Organisation shall have special regard to the effect that the economic development of that Member has upon its ability to carry out its obligations under paragraph a) of Articles 1 and 2.*

- b. *In order to reconcile the obligations of the Member concerned under paragraph a) of Article 2 with the requirements of its economic development, the Organisation may grant that Member a special dispensation from those obligations.*

### **Article 15** **Special report and examination concerning derogations made under Article 7**

- a. *A Member invoking the provisions of paragraph c) of Article 7 shall report to the Organisation, within ten months after such invocation, on the measures of liberalisation it has restored or proposes to restore in order to attain the objective determined in sub-paragraph d) i) of Article 7. The Member shall, if it continues to invoke these provisions, report to the Organisation again on the same subject – but with reference to the objective determined in sub-paragraph d) ii) of Article 7 – within sixteen months after such invocation.*
- b. *If the Member considers that it will not be able to attain the objective, it shall indicate its reasons in its report and, in addition, shall state:*
- i) *what internal measures it has taken to restore its economic equilibrium and what results have already been attained; and*
  - ii) *what further internal measures it proposes to take and what additional period it considers it will need in order to attain the objectives determined in sub-paragraphs d) i) or d) ii) of Article 7.*
- c. *In cases referred to in paragraph b), the Organisation shall consider within a period of twelve months and, if required, of eighteen months from the date on which the Member invoked the provisions of paragraph c) of Article 7, whether the situation of that Member appears to justify its failure to attain the objective determined in sub-paragraph d) i) or d) ii) of Article 7, and whether the measures taken or envisaged and the period considered by it as necessary for attaining the objective determined, appear acceptable in the light of the objectives of the Organisation in the commercial and financial fields.*
- d. *If a Member invokes the provisions of both paragraph c) of Article 7 of this Code and paragraph c) of Article 7 of the Code of Liberalisation of Capital Movements, the periods of twelve and eighteen months referred to in paragraph c) shall run from the date of the earlier invocation.*
- e. *If, following any of the examinations provided for in paragraph c), the Organisation is unable to approve the arguments advanced by the Member concerned in accordance with the provisions of paragraph b), the situation of that Member shall be examined at a session of the Council convened by its Chairman for this purpose, unless the Organisation decides on some other procedure.*

Articles 13, 14 and 15 contain specific rules concerning the notification and examination of derogations made under Article 7. While the general obligations to notify and justify apply, the Codes provide a more detailed and more constraining framework for the approval and continuous re-examination of such derogations. As noted above, derogations under Article 7 allow an exception to one of the core principles of the Codes, i.e. the standstill obligation. Therefore, high priority is given to the early termination of any derogations, and such early termination is encouraged by the tight procedural framework provided in Articles 13, 14 and 15.

### Article 16

#### Reference to the Organisation - Internal Arrangements

- a. *If a Member considers that the measures of liberalisation taken or maintained by another Member, in accordance with Article 2(a), are frustrated by internal arrangements likely to restrict the possibility of effecting transactions and transfers, and if it considers itself prejudiced by such arrangements, for instance because of their discriminatory effect, it may refer to the Organisation.*
- b. *The Secretariat may also bring to the attention of the Committee cases where it deems that compliance with the Code is not assured and may be prejudicial to Members.*
- c. *If, following the consideration of a matter referred to it under paragraphs (a) or (b) the Organisation determines that internal arrangements introduced or maintained by the Member concerned have the effect of frustrating its measures of liberalisation, the Organisation may make suitable suggestions with regard to the removal or modification of such arrangements.*

The liberalisation obligations under the Codes normally do not apply to **non-discriminatory domestic regulations**, and the latter do not require reservations to the Codes. For instance, the requirement of a local license, which applies to residents and non-residents alike, is not subject to the liberalisation obligations of the Code under Articles 1 and 2. Sometimes, however, such regulations have the potential to put non-residents at a considerable disadvantage and thus have a *de facto* discriminatory effect. Therefore, under Article 16, a Member country which considers itself **prejudiced** by the effects of domestic regulations or other arrangements not directed at non-residents as such, may appeal to the Organisation. The latter will examine the specific case and the alleged prejudice and, if warranted, make suggestions for the removal or modification of such regulations. The Secretariat may also bring to the attention of the Committee cases it deems that compliance with the Code is not assured and may be prejudicial to Members.

The possibility of a **recourse to the Organisation** in accordance with Article 16 has been discussed, in the context of professional services regulations. Where, for instance, local licensing requirements amount to a full retraining obligation for foreign professionals and thus prevent, *de facto*, cross-border provision of services or even shareholding in a local firm, it has been considered that this could entitle a Member country which considers itself prejudiced to ask the Organisation to examine the case by invoking the disciplines of Article 16. A similar possibility exists for cases of extreme calibration of macro-prudential measures, e.g. the setting of an extreme limit or ratio, which could, *de facto*, prevent cross border transactions or transfers.

### Article 17

#### Reference to the Organisation - Retention, Introduction or Reintroduction of Restrictions

- a. *If a Member considers that another Member which has not invoked the provisions of Article 7 has retained, introduced or reintroduced restrictions on capital movements or the use of non-resident-owned funds contrary to the provisions of Articles 1, 2, 9, or 10, and if it considers itself to be prejudiced thereby, it may refer to the Organisation.*
- b. *The fact that the case is under consideration by the Organisation shall not preclude the Member which has referred to the Organisation from entering into bilateral conversation on the matter with the other Member concerned.*

The OECD instruments do not contain legally binding **dispute settlement** provisions. However, Article 17 offers the possibility of bringing to the Organisation any case of alleged violation by a Member of its obligations regarding, in particular, standstill and non-discrimination. Such a case may arise, for instance, if a Member reintroduces restrictions which had been abolished and which are not covered any more by reservations in Annex B. While such a case may normally be considered as a matter of course under the notification and examination provisions of Articles 11 and 12, Article 17 offers individual Member countries the formal right to take the initiative and make the case that they have been prejudiced by such violations. However, Article 17 offers no specific procedure for the binding settlement of such complaints. To date, this procedure has never been used in a formal sense.

Since the Codes contain legal obligations under international law, disputes over alleged prejudice from a violation of the Codes' obligations could, however, be brought to **other general dispute settlement mechanisms** which the parties have accepted, e.g. the International Court of Justice, or to an ***ad hoc* mechanism** the parties decide to accept for a particular dispute.

## Article 18

### Investment Committee – General Tasks

#### [Current Invisibles Code]

The Investment Committee shall consider all questions concerning the interpretation or implementation of the provisions of this Code or other acts of the Council relating to the liberalisation of current invisible operations and shall report its conclusions thereon to the Council as appropriate.

#### [Capital Movements Code]

- a. *The Investment Committee shall consider all questions concerning the interpretation or implementation of the provisions of this Code or other Acts of the Council relating to the liberalisation of capital movements and the use of non-residents-owned funds and shall report its conclusions thereon to the Council as appropriate.*
- b. *The Investment Committee shall submit to the Council any appropriate proposals in connection with its tasks as defined in paragraph (a) and, in particular, with the extension of measures of liberalisation as provided in Article 1 of this Code.*

The Committee, as the **OECD body responsible for interpretation and implementation of the two Codes**, has as central task the ongoing monitoring of compliance with obligations. It is within the Committee that the notification, examination and consultation procedures take place. The Committee can also decide to consult other OECD Committees, and/or other relevant international organisations. The Committee informs the OECD's supreme body, the Council of actions taken in the exercise of its delegated authority. Technical discussions relating to the Codes are handled by the Advisory Task Force on the Codes of Liberalisation (ATFC). Other representatives, including from non-Member countries, may be invited to both the Committee and the ATFC. The IMF, WB, WTO, UNCTAD and EFTA are observers.

The Committee may also organise in support of its work more **informal events**, such as seminars, roundtables, workshops etc. Such events, while held under the auspices of the Committee, are not meetings of a body of the Organisation and can thus adopt more flexible and informal procedures. As an example, the Committee has organised a series of workshops on professional services over the last decade, which have brought together governments, private sector participants and other international organisations involved. Such events are precious in gathering information and establishing dialogue with business, academics and other actors of civil society interested in the issues under discussion.

## Article 19 Investment Committee – Special Tasks

### [Capital Movements Code]

- a. *The Investment Committee shall:*
- i) *determine the periods within which the information provided for in paragraphs (a) and (c) of Article 11 and the reasons provided for in paragraph (b) of Article 12 should be notified to the Organisation by the Members concerned;*
  - ii) *subject to paragraph (c) of this Article, consider, in conformity with paragraphs (c) and (d) of Article 12, each reservation notified to the Organisation in accordance with paragraphs (a) and (b) of that Article and make, where appropriate, suitable proposals designed to assist Members to withdraw their reservations;*
  - iii) *determine, in accordance with the provisions of Article 12, the date on which any reservation should be re-examined, if the reservation has not been withdrawn in the meantime;*
  - iv) *consider, in accordance with the provisions of paragraph (d) of Article 11, the notifications submitted to the Organisation;*
  - v) *consider reports and references submitted to the Organisation in accordance with the provisions of Article 13 or paragraphs (a) and (b) of Article 15 where a Member has invoked the provisions of Article 7, or submitted in accordance with the provisions of Article 16 or Article 17;*
  - vi) *determine the date on which the case of a Member which has invoked Article 7 should be reconsidered in accordance with the provisions of paragraph (c), paragraph (e) or paragraph (f)ii) of Article 13;*
  - vii) *transmit to the United States Government, with any comments it considers appropriate, notifications received from Members in accordance with paragraph 2(a) of the Decision in Annex C to the Code; and*
  - viii) *consider information received from the United States Government in accordance with paragraph 2(b) of the Decision in Annex C to the Code.*
- b. *When examining the reservations notified in accordance with paragraph (b) of Article 12, the Committee may, at its discretion, consider together either all reservations made by the same Member or all reservations made in respect of the same item specified in Annex A to this Code.*

- c. *The Committee shall, however, not consider any reservations notified to the Organisation in accordance with paragraph (b) of Article 12 by a Member which, at the time of the examination in respect of the item subject to that reservation, is invoking the provisions of Article 7 or is enjoying a dispensation in accordance with paragraph (b) of Article 14.*
- d. *In the cases provided for in sub-paragraphs ii), iv), v) and viii) of paragraph (a), the Committee shall report to the Council, except in cases of notifications under Article 11 (b) on which the Committee shall report only if it considers this appropriate.*
- e. *The Committee shall, whenever it considers it necessary:*
  - i) *consult other Committees of the Organisation and/or other relevant international organisations on any questions relating to the liberalisation of capital movements; and, in particular,*
  - ii) *request other Committees of the Organisation and/or the International Monetary Fund (IMF) to give their views on any questions relating to the balance of payments and the state of the international reserves of a Member.*

**[Current Invisibles Code]**

- a. *The Investment shall:*
  - i) *determine the periods within which the information provided for in paragraph a) of Article 11 and the reasons provided for in paragraph a) of Article 12 should be notified to the Organisation by the Members concerned;*
  - ii) *subject to paragraph c) of this Article, consider, in conformity with paragraphs b) and c) of Article 12, each reservation notified to the Organisation in accordance with paragraph a) of that Article and make, where appropriate, suitable proposals designed to assist Members to withdraw their reservations;*
  - iii) *determine, in accordance with the provisions of Article 12, the date on which any reservations should be re-examined, if the reservation has not been withdrawn in the meantime;*
  - iv) *consider, in accordance with the provisions of paragraph b) of Article 11, the notifications submitted to the Organisation;*
  - v) *consider reports and references submitted to the Organisation in accordance with the provisions of Article 13 or paragraphs a) and b) of Article 15 where a Member has invoked the provisions of Article 7, or submitted in accordance with the provisions of Article 16 or Article 17;*

- vi) determine the date on which the case of a Member which has invoked Article 7 should be reconsidered in accordance with the provisions of paragraph c), paragraph e) or paragraph f) ii) of Article 13;
  - vii) transmit to the United States Government, with any comments it considers appropriate, notifications received from Members in accordance with paragraph 2 a) of the Decision in Annex C to the Code; and
  - viii) consider information received from the United States Government in accordance with paragraph 2 b) of the Decision in Annex C to the Code.
- b. *When examining the reservations notified in accordance with the provisions of paragraph a) of Article 12 the Committee may, as it deems fit, consider together either all reservations made by the same Member or all reservations made in respect of the same item specified in Annex A to this Code.*
- c. *The Committee shall, however, not consider any reservations notified to the Organisation in accordance with the provisions of paragraph a) of Article 12 by a Member which, at the time of the examination in respect of the item subject to that reservation, is invoking the provisions of Article 7 or is enjoying a dispensation in accordance with paragraph b) of Article 14.*
- d. *In the cases provided for in sub-paragraphs ii), iv), v) and viii) of paragraph a) the Committee shall report to the Council.*
- e. *The Committee shall, whenever it considers it necessary:*
- i) consult other Committees of the Organisation and/or other relevant international organisations on any questions relating to the liberalisation of current invisible operations; and, in particular,
  - ii) request other Committees of the Organisation and/or the International Monetary Fund (IMF) to give their views on any questions relating to the balance of payments and the state of the international reserves of a Member.

The Committee can decide to consult other Committees of the Organisation and/or other relevant international organisations on a case-by-case basis. In the event that the Investment Committee decides to involve another international organisation as set out in Article 19e), the material provided pursuant to such a request would be for consultative purposes and without prejudice to any subsequent determination of the Committee. The process for this consultation is outlined under the section of the User's Guide related to Article 12 and illustrated in Appendix 3. During the 2019 Review of the Codes, it was understood by Members that the term "international organisations" could also include regional bodies, as appropriate. Requests for consultation can refer to any questions relating to the liberalisation of capital movement and invisible operations, including *inter alia* issues related to financial stability.

**[Capital Movements Code]****Article 20**  
**Definitions**

In this Code:

- i) “Member” shall mean a country which adheres to this Code;
- ii) “Domestic securities” shall mean securities issued or to be issued by a resident;
- iii) “Foreign securities” shall mean securities issued or to be issued by a non-resident;
- iv) “Recognised security market” shall mean a stock exchange or security market in a Member country (including an over-the-counter market organised by a recognised association of security dealers):
  - *which is officially recognised in the country where it operates;*
  - *on which the public can buy and sell securities; and*
  - *on which dealings take place in accordance with fixed rules;*
- v) “Securities quoted on a recognised security market” shall mean securities which have been granted an official quotation or are officially listed on such a market or for which dealing prices on such a market are published not less frequently than once a week;
- vi) *Security dealing on a “spot basis” shall mean dealing with payment and delivery to be made immediately the transaction is concluded or on the next periodic settlement date of the stock exchange where the transaction takes place;*
- vii) “Money market securities” shall mean securities with an original maturity of less than one year;
- viii) “Collective investment securities” shall mean the share certificates, registry entries or other evidence of investor interest in an institution for collective investment which, irrespective of legal form, is organised for the purpose of managing investments in securities or in other assets, applies the principle of risk-spreading, issues its own securities to the public on demand either continuously or at frequent intervals and is required on the request of the holder to redeem such securities, directly or indirectly, within a specified period and at their net asset value;

- ix) *“Financial institutions” shall mean banks, savings banks, bodies which specialise in the granting of credits, insurance companies, building societies, investment companies, and other establishments of a similar nature;*
- x) *“Deposit” shall mean a sum of money paid on terms: a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by the person making it or receiving it or by his order, and b) which are not referable to the provision of property or services or to the giving of security;*
- xi) *“Official channels” shall mean foreign exchange markets in which an officially established rate or officially established rates apply and in which spot transactions take place at rates which are free to fluctuate within the official margins;*
- xii) *“Blocked funds” shall mean funds owned by residents of other Member countries in accordance with the laws and regulations of the Member where the funds are held and blocked for balance-of-payments reasons;*
- xiii) *“Unit of account” shall mean the sum in the national currency of a Member which is equal to a unit of value of special drawing rights as valued by the International Monetary Fund.*

**[Current Invisibles Code]**

**Article 20**  
**Title of decision**

This Decision, referred to in the present text as the “Code”, shall be known as the “Code of Liberalisation of Current Invisible Operations”.

**[Capital Movements Code]**

**Article 21**  
**Title of decision**

This Decision, referred to in the present text as the “Code”, shall be known as the “Code of Liberalisation of Capital Movements”.

**[Current Invisibles Code]**

**Article 21  
Withdrawal**

Any Member may withdraw from the Code by transmitting a notice in writing to the Secretary-General of the Organisation. The withdrawal shall become effective twelve months from the date on which such notice is received.

**[Capital Movements Code]**

**Article 22  
Withdrawal**

Any Member may withdraw from the Code by transmitting a notice in writing to the Secretary-General of the Organisation. The withdrawal shall become effective twelve months from the date on which such notice is received.

So far, no Member has yet withdrawn from the Codes.

**[Current Invisibles Code]**

**Article 22  
Definition of the unit of account**

“Unit of account” shall mean the sum in the national currency of a Member which is equal to a unit of value of special drawing rights as valued by the International Monetary Fund.

## Section 2: The Annexes to the Codes: List of Operations

This Section lists the operations covered by the Capital Movements Code and the Current Invisibles Code, respectively, in accordance with their Annex A. The lists also include accompanying “Remarks” for certain Items of both the Capital Movements Code and the Current Invisibles Code, as well as Notes and Annexes to Annex A of the Current Invisibles Code. These Remarks, Notes and Annexes further define the scope of obligations under the Codes and form an integral part thereof.

In addition, this Section contains, with regard to certain Items, “Supplementary Explanatory Notes”. These have a somewhat different status, as they do not form part of the Code obligations. They are intended to provide commentary and interpretation, and assist the formulation of reservations. They were either prepared by the Committee directly, or are derived from country and other reports by the Committee.

### 2.1. Operations covered by the Code of Liberalisation of Capital Movements

#### *I. DIRECT INVESTMENT*

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

- A. In the country concerned by non-residents by means of:
  1. Creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise.
  2. Participation in a new or existing enterprise.
  3. A loan of five years or longer.
- B. Abroad by residents by means of:
  1. Creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise.
  2. Participation in a new or existing enterprise.
  3. A loan of five years or longer.

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

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

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

The authorities of Members shall not maintain or introduce:

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

**Supplementary explanatory notes:**

1. *The definition of what constitutes the “effective influence or the management” of an enterprise, which could be based on the degree of foreign participation, the level or the size of the investment in an enterprise or any other criteria, is left to the consideration of each Member country under its law.*
2. *Non-residents shall have the right to choose their form of establishment, e.g. by a branch, agency or subsidiary. Incorporation requirements shall therefore be regarded as restrictions under the Code even if they apply to both residents and non-residents since they require the non-resident investor already engaged in such activities abroad to establish a second incorporated entity in the country concerned. With regard to the opposite case, i.e. where, as a general rule, incorporation is not permitted at all, or restricted to certain forms, the de facto discriminatory effect on foreign firms is more uncertain. Such a case would therefore in general not be considered as a restriction requiring a reservation under Item I/A.*
3. *In the case of branches, a distinction should be made between “direct” branches of non-resident enterprises and “indirect” branches, i.e. branches of already established foreign-controlled enterprises. The investment activities of “direct” branches fall under the purview of the Code, while those of “indirect” branches are subject to the National Treatment instrument (see note 8 to the main text).*
4. *When the laws and regulations concerning foreign investment distinguish between residents and non-residents or between nationals and foreigners, the Code requires that such measures and practices be covered by a reservation (or a derogation) to the extent they raise – or*

*have the intent or the effect of raising – special barriers to non-resident (as compared to resident) investors. Thus, a requirement for foreign shareholders to be resident in the host country has been considered as a restriction under Item I/A, even if it applies only indirectly as part of a requirement to hold a local license which in turn is required to hold shares in a professional services firm.*

5. *Measures requiring external financing of inward direct investment are excluded from the scope of item I/A, it being understood that restrictive measures in this area are to be considered as restrictions under item IX/B (outward financial credits) or under other relevant items of the Code.*
6. *Reciprocity measures and other discriminatory practices recorded in Annex E of the Capital Movements Code have a different status from that of restrictions against which reservations can be lodged in accordance with Article 2 of the Code. These are defined as “measures and practices allowing residents of another Member country to invest or establish in the Member country concerned under terms similar to those applied by the other Member country to investors resident in the Member country concerned and/or involving discrimination among investors originating in various Member countries” (other than the exceptions to the principle of non-discrimination referred to in Article 10 of the Code). The measures and practices covered by Annex E of the Code shall be progressively abolished without, in so doing, extending the scope of restrictions on inward direct investment or establishment.*
7. *Regulations which limit the right of foreign individuals to settle or work in a Member country are beyond the scope of the Capital Movements Code. This has been interpreted so far as excluding the right of individuals to take up or pursue activities as self-employed persons.*
8. *Nationality and/or residency requirements of directors, management or employees can have an inhibiting effect on new investment, though perhaps not a decisive effect in the majority of cases. An examination of the intention and the specific effects of such measures is required to determine whether or not the measure is to be considered to fall within the liberalisation obligations of item I/A.*
9. *Laws, regulations or other measures which establish either public monopolies or government-sanctioned private monopolies (or combinations of the two) restricting whole sectors do not fall under the*

*liberalisation obligations of item I/A. These measures are nevertheless considered during the periodic country examinations of foreign direct investment policy. A Member country putting an end to a monopoly situation, for instance in the context of deregulation of a sector and/or privatisation, without allowing inward direct investment by non-residents under the same conditions as investment by residents, would need to lodge a reservation under item I/A if the resale of equity holdings by the initial purchasers to non-residents is restricted. While a government-owned enterprise acting as a private sector entity is not bound by Code obligations, restrictions imposed by the government on the sale of shares, after such an enterprise has been privatised, constitute government measures which are not exempted from Code obligations.*

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

## **II. LIQUIDATION OF DIRECT INVESTMENT**

- A. Abroad by residents.
- B. In the country concerned by non-residents.

### ***Supplementary explanatory notes:***

- 1. *Direct investment is defined as in Section I.*
- 2. *The transfer of principal, including capital gains, shall be free.*

## **III. OPERATIONS IN REAL ESTATE**

- A. Operations in the country concerned by non-residents:
  - 1. Building or purchase
  - 2. Sale.
- B. Operations abroad by residents:
  - 1. Building or purchase
  - 2. Sale.

### ***Supplementary explanatory note:***

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

- a) *the building or purchase of real estate not associated with a participation in, or creation or extension of, an enterprise;*
- b) *investment of a purely financial character in real estate which is of no direct use for the business activity of the company investing in the country concerned;*
- c) *the sale of real estate not resulting from liquidation of direct investment.*

#### **IV. OPERATIONS IN SECURITIES ON CAPITAL MARKETS**

- A. Admission of domestic securities on a foreign capital market:
  - 1. Issue through placing ) a) shares or other securities of a  
or public sale of ) participating nature;  
)
  - 2. Introduction on a ) b) bonds or other debt securities  
recognised foreign ) (original maturity of one year  
security market of ) or more).
- B. Admission of foreign securities on the domestic capital market:
  - 1. Issue through placing ) a) shares or other securities of a  
or public sale of ) participating nature;  
)
  - 2. Introduction on a ) b) bonds or other debt securities  
recognised domestic ) (original maturity of one year  
security market of ) or more).
- C. Operations in the country concerned by non-residents:
  - 1. Purchase ) a) shares or other securities of a  
) participating nature;  
)
  - 2. Sale ) b) bonds or other debt securities (original  
) maturity of one year or more).
- D. Operations abroad by residents:
  - 1. Purchase ) a) shares or other securities of a  
) participating nature;  
)
  - 2. Sale ) b) bonds or other debt securities (original  
) maturity of one year or more).

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

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

Members may:

- a) with regard to transactions and transfers under A, B, C and D, require that:
  - i) such transactions and transfers must be carried out through authorised resident agents;
  - ii) in connection with such transactions and transfers, residents may hold funds and securities only through the intermediary of such agents; and
  - iii) purchases and sales may be contracted only on a spot basis;
- b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;
- c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities by, or on behalf of, the residents of other Members.

***Supplementary explanatory notes:***

1. *Section IV covers all operations in securities, including shares (and other securities of a participating nature), bonds and other debt securities with a minimum maturity of one year at issue.*
2. *The term “securities” includes those (domestic or foreign) that are issued or to be issued – including those issued simultaneously – on more than one market, and regardless of the currency of denomination or settlement, including composite currencies such as SDRs. “Domestic” securities are those issued or to be issued by a resident. “Foreign” securities are those issued or to be issued by a non-resident.*
3. *“Other debt securities” include, inter alia, “notes” and “debentures”.*
4. *“Admission” means (1) the public offering or private placement on a primary market (including registration with the competent authorities, advertising to the public, issuing prospectuses or otherwise marketing the securities in question) and (2) listing or otherwise obtaining approval, if necessary, for offering securities on a secondary market.*
5. *The liberalisation obligations on the admission of foreign securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations – including any “queuing” system*

*or any waiting period applying to the resale of securities – may not discriminate against foreign securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

6. *“Purchase” and “sale” apply to operations in securities both (1) when they take place on a recognised security exchange or other recognised market (“quoted” securities) and (2) when they occur in some other manner authorised for transactions between residents (“unquoted” securities). The purchase and sale items cover the purchase and sale by residents of Member countries of all securities that are legally marketable in the country concerned, regardless of whether the securities themselves are of Member origin or where they have been traded.*
7. *Security dealing on a “spot” basis means dealing with payment and delivery to be made immediately after the transaction is concluded, or on the next periodic settlement date of the stock exchange if the transaction takes place on such an exchange.*
8. *Establishment restrictions with consequences for portfolio operations throughout the Code should be reflected in a single reservation on item IV/C1 (purchase, by non-residents, of securities in the country concerned).*
9. *Limitations on the purchase abroad by institutional investors of foreign securities have been brought within the purview of the Code and should be reflected through reservations. Regarding insurance companies and private pension funds, this concerns only two types of restriction: (i) imposition of maximum shares of foreign assets as percentages of the institutions assets which are lower than those for domestic assets; (ii) obligation to hold minimum shares of domestic assets which are higher than those for foreign assets; no reservations need to be lodged, however, regarding currency matching requirements or localisation requirements for documents of title to capital assets. Assets other than those covered by items IV to VII may also be affected by restrictions. In such cases, reservations under the other items concerned are also needed.*
10. *Restrictions on the purchase abroad of foreign securities by securities firms for the account of their clients, while only applying to an intermediary service, de facto limit the ability of resident investors to purchase foreign securities abroad and need to be reflected in reservations.*
11. *A prior registration requirement imposed on domestic enterprises by the authorities of their countries with regard to securities to be issued or*

*introduced abroad may amount, depending on its circumstances, to a restriction under the Code.*

12. *Non-residency based restrictions on financial institutions' foreign currency liabilities are assessed on a case-by-case basis. Such restrictions include measures based on the remaining maturity of bonds or other debt securities, as well as reserve requirements*<sup>5</sup>.

## V. OPERATIONS ON MONEY MARKETS

- A. Admission of domestic securities and other instruments on a foreign money market:
  - 1. Issue through placing or public sale.
  - 2. Introduction on a recognised foreign money market.
- B. Admission of foreign securities and other instruments on the domestic money market:
  - 1. Issue through placing or public sale.
  - 2. Introduction on a recognised domestic money market.
- C. Operations in the country concerned by non-residents:
  - 1. Purchase of money market securities.
  - 2. Sale of money market securities.
  - 3. Lending through other money market instruments.
  - 4. Borrowing through other money market instruments.
- D. Operations abroad by residents:
  - 1. Purchase of money market securities.
  - 2. Sale of money market securities.
  - 3. Lending through other money market instruments.
  - 4. Borrowing through other money market instruments.

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

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

Members may:

- a) with regard to transactions and transfers under A, B, C and D, require that:
  - i) such transactions and transfers must be carried out through authorised resident agents;

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<sup>5</sup>. As part of the 2019 Review of the Codes, the ATFC reviewed the [current use, motivations, and practical considerations of reserve requirements](#).

- ii) in connection with such transactions and transfers, residents may hold funds, securities and other instruments only through the intermediary of such agents; and
- iii) purchases and sales may be contracted only on a spot basis;
- b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;
- c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities, by or on behalf of, the residents of other Members.

***Supplementary explanatory notes:***

1. *Section V covers all operations on money markets, including those involving securities (with a maturity at issue of less than one year) and other money market instruments.*
2. *Securities and other instruments issued or traded on money markets include those that are issued on more than one market and regardless of the currency of denomination or settlement, including composite currencies such as SDRs. “Domestic securities and other instruments” are those issued by a resident. “Foreign securities and other instruments” are those issued by a non-resident.*
3. *Examples of “money market securities” are Treasury Bills and other short-term government paper, as well as negotiable (and non-negotiable) certificates of deposit, banker’s acceptances and commercial paper. Examples of “other money market instruments” include inter-bank deposits (in domestic or foreign currency), repurchase agreements and US federal funds which are short-term transferable obligations not usually regarded as “securities”.*
4. *The terms “admission”, “purchase” and “sale” and “dealing on a spot basis” have the same meaning as under Section IV.*
5. *The terms “lending through” (items C3 and D3) and “borrowing through” (items C4 and D4) apply to operations in “other money market instruments”, such as repurchase agreements which are not bought and sold like securities.*
6. *The liberalisation obligations on the admission of foreign securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations – including any “queuing” system – may not discriminate against foreign securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*

7. *Limitations on the purchase abroad by institutional investors of foreign securities have been brought within the purview of the Code and should be reflected through reservations. Regarding insurance companies and private pension funds, this concerns only two types of restriction: (i) imposition of maximum shares of foreign assets as percentages of the institutions assets which are lower than those for domestic assets; (ii) obligation to hold minimum shares of domestic assets which are higher than those for foreign assets; no reservations need to be lodged, however, regarding currency matching requirements or localisation requirements for documents of title to capital assets. Assets other than those covered by items IV to VII may also be affected by restrictions. In such cases, reservations under the other items concerned are also needed.*
8. *Restrictions on the purchase abroad of foreign securities by securities firms for the account of their clients, while only applying to an intermediary service, de facto limit the ability of resident investors to purchase foreign securities abroad and need to be reflected in reservations.*
9. *A prior registration requirement imposed on domestic enterprises by the authorities of their countries with regard to securities to be issued or introduced abroad may amount, depending on its circumstances, to a restriction under the Code.*

## **VI. OTHER OPERATIONS IN NEGOTIABLE INSTRUMENTS AND NON-SECURISED CLAIMS**

- A. Admission of domestic instruments and claims on a foreign financial market:
  1. Issue through placing or public sale.
  2. Introduction on a recognised foreign financial market.
- B. Admission of foreign instruments and claims on a domestic financial market:
  1. Issue through placing or public sale.
  2. Introduction on a recognised domestic financial market.
- C. Operations in the country concerned by non-residents.
  1. Purchase.
  2. Sale.
  3. Exchange for other assets.
- D. Operations abroad by residents:
  1. Purchase.
  2. Sale.
  3. Exchange for other assets.

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

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

Members may:

- a) with regard to transactions and transfers under A, B, C and D, require that:
  - i) such transactions and transfers must be carried out through authorised resident agents; and
  - ii) in connection with such transactions and transfers, residents may hold funds, negotiable instruments and non-securitised claims only through the intermediary of such agents;
- b) with regard to transactions and transfers under C2 and C3, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against the residents of any other Member;
- c) with regard to transactions and transfers under D1 and D3, regulate on their territory any promotional activities by, or on behalf of, the residents of other Members.

***Supplementary explanatory notes:***

1. *Section VI covers operations not included in Sections IV, V, VII and XII. It covers, inter alia:*
  - a) *rights, warrants, financial options (e.g. stock options) and financial futures, whether or not traded on a recognised exchange (but not foreign exchange options and futures which are covered by Section XII);*
  - b) *secondary market operations in other financial claims, including sovereign loans, mortgage loans, commercial credits, negotiable instruments originating as loans (e.g. certificates of indebtedness), receivables and discounted bills of trade;*
  - c) *swaps of bonds and other debt securities, collective investment securities, credits and loans, interest rate swaps, debt/equity swaps, equity/equity swaps, foreign currency swaps and swaps involving any of the instruments mentioned in a) and b) above;*
  - d) *all forward operations (other than forward operations in foreign exchange which are covered by Section XII);*
  - e) *any other operations in negotiable instruments and non-securitised claims not covered by other Sections of the Code;*
2. *Other operations in negotiable instruments and non-securitised claims include those (domestic or foreign) that are issued on more than one market, and regardless of maturity and the currency of denomination or settlement, including composite currencies such as SDRs. “Domestic instruments and*

*claims” are those issued by a resident. “Foreign instruments and claims” are those issued by a non-resident.*

3. *Although most operations under Section VI relate to already-issued instruments, the terms “admission”, “purchase” and “sale” have the same meaning as in Sections IV and V.*
4. *The term “exchange” (items C3 and D3) is used to describe “swap” operations.*
5. *The liberalisation obligations on the admission of foreign negotiable instruments and non-securitised claims on the domestic market are subject to the regulations of the financial market concerned. However, those regulations – including any “queuing” system – may not discriminate against foreign negotiable instruments and non-securitised claims if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*
6. *Limitations on the purchase or exchange abroad by institutional investors of foreign negotiable instruments and non-securitised claims have been brought within the purview of the Code and should be reflected through reservations. Regarding insurance companies and private pension funds, this concerns only two types of restriction: (i) imposition of maximum shares of foreign assets as percentages of the institution's assets which are lower than those for domestic assets; (ii) obligation to hold minimum shares of domestic assets which are higher than those for foreign assets; no reservations need to be lodged, however, regarding currency matching requirements or localisation requirements for documents of title to capital assets. Assets other than those covered by items IV to VII may also be affected by restrictions. In such cases, reservations under the other items concerned are also needed.*

## **VII. OPERATIONS IN COLLECTIVE INVESTMENT SECURITIES**

- A. Admission of domestic collective investment securities on a foreign securities market:
  1. Issue through placing or public sale.
  2. Introduction on a recognised foreign securities market.
- B. Admission of foreign collective investment securities on the domestic securities market:
  1. Issue through placing or public sale.
  2. Introduction on a recognised domestic securities market.
- C. Operations in the country concerned by non-residents:
  1. Purchase.
  2. Sale.
- D. Operations abroad by residents:

1. Purchase.
2. Sale.

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

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

Members may:

- a) with regard to transactions and transfers under A, B, C and D, require that:
  - i) such transactions and transfers must be carried out through authorised resident agents;
  - ii) in connection with such transactions and transfers, residents may hold funds and securities only through the intermediary of such agents; and
  - iii) purchases and sales may be contracted only on a spot basis;
- b) with regard to transactions and transfers under C2, take measures for the protection of investors, including the regulation of promotional activities, provided such measures do not discriminate against institutions for collective investment organised under the laws of any other Member;
- c) with regard to transactions and transfers under D1, regulate on their territory any promotional activities of foreign institutions for collective investment.

**Supplementary explanatory notes:**

1. *“Collective investment securities” mean the share certificates, registry entries or other evidence of investor interest in an institution for collective investment which, irrespective of legal form, is organised for the purpose of managing investments in securities or in other assets, applies the principle of risk-spreading, issues its own securities to the public on demand either continuously or at frequent intervals and is required on the request of the holder to redeem such securities, directly or indirectly, within a specified period and at their net asset value.*
2. *The term “collective investment securities” includes those (domestic or foreign) that are issued in more than one market, and regardless of the currency of denomination or settlement as well as of the composition of the fund. “Domestic” collective investment securities are those issued or to be issued by a resident. “Foreign” collective investment securities are those issued or to be issued by a non-resident.*
3. *The coverage of Section VII concerns the issues both of “closed-end” funds as well as the direct sale of new units of, or share certificates in, “open-end” funds qualifying as institutions for collective investment as defined in Article 21 of the Code.*
4. *Section VII extends to collective investment securities sold by institutions investing partly or wholly in short-term securities or in negotiable*

*instruments and non-securitised claims such as those covered by Section VI. General restrictions concerning operations in instruments covered within Sections V and VI and already reflected in reservations under these sections need not be reflected in reservations under Section VII.*

5. *Although most operations under Section VII relate to purchases and sales arranged directly with the collective investment institutions issuing the securities concerned, the terms “admission”, “purchase” and “sale” have the same meaning as in Sections IV, V and VI.*
6. *The term “on a spot basis” has the same meaning as under Sections IV and V.*
7. *The liberalisation obligations on the admission of foreign collective investment securities on the domestic market are subject to the regulations of the security market concerned. However, those regulations – including any “queuing” system – may not discriminate against foreign collective investment securities if the regulations are established by the governmental authorities of the Member concerned or if the authorities are in a position to exercise influence in the matter.*
8. *Limitations on the purchase abroad by institutional investors of foreign collective investment securities have been brought within the purview of the Code and should be reflected through reservations. Regarding insurance companies and private pension funds, this concerns only two types of restriction: (i) imposition of maximum shares of foreign assets as percentages of the institutions assets which are lower than those for domestic assets; (ii) obligation to hold minimum shares of domestic assets which are higher than those for foreign assets; no reservations need to be lodged, however, regarding currency matching requirements or localisation requirements for documents of title to capital assets. Assets other than those covered by items IV to VII may also be affected by restrictions. In such cases, reservations under the other items concerned are also needed.*

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

- i) In cases where a resident participates in the underlying commercial or service transaction.
- ii) In cases where no resident participates in the underlying commercial or service transaction.
  - A. Credits granted by non-residents to residents.
  - B. Credits granted by residents to non-residents.

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

**Supplementary explanatory notes:**

1. *Section VIII covers commercial credits and quasi-banking operations. Quasi-banking operations, such as “forfeiting”, “leasing” and “factoring”, refer to operations linked to the international movement of goods and services. Where no such link exists, these operations fall under Section XI (financial credits and loans).*
2. *Commercial credits of all maturities, including credits of more than five years, regardless of the currency of denomination or settlement, including currency composite units of account such as SDRs, are covered.*
3. *All measures affecting the terms on which commercial credits may be contracted and settled would be considered as restrictions under Section VIII. Members are expected to allow the contracting parties freely to establish the terms of commercial credit contracts, and freely to amend those terms by agreement between themselves. A foreign financing requirement for commercial credits granted by non-residents to residents is considered to be a restriction under the Code. However, if operators choose to transform an existing contract in such a way that in its new form it would constitute an unauthorised operation in the country concerned, the authorities would be at liberty to prevent the transformation provided they maintain a reservation under the Code to cover the unauthorised operation.*

## IX. FINANCIAL CREDITS AND LOANS

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

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

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

**Supplementary explanatory notes:**

1. *Section IX covers credits and loans other than those related to direct investment (Sections I and II) international trade in goods and services (Section VIII) and personal loans (Section XIV).*
2. *Quasi-banking operations, such as “forfeiting”, “leasing” and “factoring” are covered by Section IX to the extent that they are not directly linked to the international movement of goods or services. (An example of a non-linked operation is the financing of a leasing contract between two residents where the finance is provided by a non-resident leasing company).*

3. *Credits and loans granted by non-residents to resident individuals are not subject to liberalisation obligations.*
4. *Subject to the “remarks” to item IX and the possibility of requiring that the transfer of funds be made through an authorised resident agent, Members are expected to allow credit and loan operations to be arranged directly between residents and non-residents.*
5. *Financial credits and loans are to be permitted regardless of maturity and of the amount involved.*
6. *Financial credits and loans may be underwritten or sold in more than one market, and denominated or drawn down in domestic currency or in any foreign currency or combination of foreign and domestic currencies, including composite currencies such as SDRs.*
7. *The contracting parties shall have the same freedom to establish terms and subsequently to vary them as applies under Section VIII (see note 3 to that Section).*
8. *Members may regulate the overall net foreign exchange positions of domestic financial institutions. Basel III-type liquidity ratios, even if differentiated by currency, are not considered restrictions under the Code.*
9. *Measures adopted as part of agreements among countries to reciprocate macroprudential measures, according to which a country applies the same, or equivalent, macroprudential measure as that activated in another country in order to address a risk related to specific exposures located in the other country concerned, fall outside the scope of the Code.*

## ***X. SURETIES, GUARANTEES AND FINANCIAL BACK-UP FACILITIES***

- i) In cases directly related to international trade or international current invisible operations, or in cases related to international capital movement operations in which a resident participates.
  - ii) In cases not directly related to international trade, international current invisible operations or international capital movement operations, or where no resident participates in the underlying international operation concerned.
- A. Sureties and guarantees:
1. By non-residents in favour of residents.
  2. By residents in favour of non-residents.
- B. Financial back-up facilities:
1. By non-residents in favour of residents.
  2. By residents in favour of non-residents.

**Remark:** Transactions and transfers under X(i)A and B shall be free if they are directly related to international trade, international current invisible operations or international capital movement operations in which a resident

participates and which do not require authorisation or have been authorised by the Member concerned.

**Supplementary explanatory notes:**

1. *Section X covers sureties and guarantees pledged as security for payment or performance of a contract, sometimes undertaken by a third party. Those related to international trade in goods and services include warranties or endorsements, performance bonds, and stand-by letters of credit.*
2. *Section X also covers “financial back-up facilities”, i.e. credit facilities used as a guarantee for independent financial operations. Examples of such facilities include stand-by letters of credit associated with a new issue of commercial paper, where the issuer’s ultimate repayment (to the investors) is guaranteed; and revolving underwriting facilities (RUFs) where a credit institution may guarantee (for the issuer) an issue of short-term securities in the market at agreed terms and conditions. New issues of securities would only give rise to reservations under the Sections of the Code dealing with the underlying operations.*
3. *These operations shall be permitted in domestic currency, in any foreign currency and in any combination of domestic and foreign currencies, including composite currencies such as SDRs.*

## **XI. OPERATION OF DEPOSIT ACCOUNTS**

- A. Operation by non-residents of accounts with resident institutions:
  1. In domestic currency.
  2. In foreign currency.
- B. Operation by residents of accounts with non-resident institutions:
  1. In domestic currency.
  2. In foreign currency.

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

**Supplementary explanatory notes:**

1. *Section XI covers the opening and operation of checking and savings accounts and other accounts not covered elsewhere under the Code. (Investment and securities accounts are covered by Sections IV and V, inter-bank deposits and certificates of deposit under Section V, and accounts needed to complete a commercial or financial credit or loan under Sections VIII and IX respectively.)*
2. *“Deposit” shall mean a sum of money paid on terms: a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by the person making it or receiving it or*

*by his order, and b) which are not referable to the provision of property or services or to the giving of security.*

3. *Members may maintain screening procedures to prevent evasion of their laws or regulations, including tax provisions.*
4. *Members may not, however, limit the amount placed in a deposit account, limit the purposes to which a deposit account may be put or limit the period in which deposits may be held in such accounts by residents or non-residents.*

## **XII. OPERATIONS IN FOREIGN EXCHANGE**

- A. In the country concerned by non-residents:
  1. Purchase of domestic currency with foreign currency
  2. Sale of domestic currency for foreign currency
  3. Exchange of foreign currencies
- B. Abroad by residents:
  1. Purchase of foreign currency with domestic currency
  2. Sale of foreign currency for domestic currency
  3. Exchange of foreign currencies

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

**Supplementary explanatory notes:**

1. *Items XII/A1, A2, B1 and B2 cover operations involving the exchange of domestic currency for foreign currency, whereas items XII/A3 and B3 cover operations involving the exchange of foreign currencies, including currency composite units of accounts such as SDRs.*
2. *Section XII covers operations in foreign exchange not linked to any underlying current or capital transaction and not covered elsewhere in the Code. It thus includes: forward cover operations for commercial, service or capital transactions, trading operations in the spot and forward markets for foreign exchange, and currency options and futures.*
3. *Any requirements concerning the repatriation and surrender of foreign exchange earned through exports, and any limits on the periods for the acquisition of foreign exchange required for import payments are considered restrictions and need to be reflected in reservations under Section XII.*
4. *The liberalisation of operations covered by Section XII does not imply the liberalisation of all other operations. If any other operations under the Code*

*are covered by a reservation, the Member concerned may restrict access to foreign exchange for the execution or completion of the operations in question, even if it has no reservation on Section XII of the Code.*

### **XIII. LIFE ASSURANCE**

Capital transfers arising under life assurance contracts:

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

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

**Supplementary explanatory notes:**

1. *The section covers transfers of capital and annuities certain in connection with life insurance contracts regardless of the amount involved or the guarantee period. Other transfers (e.g. premiums, pensions, annuities other than annuities certain) are governed by the Code of Liberalisation of Current Invisible Operations.*
2. *The term “capital” refers to a lump sum which consists of the single payment instead of a series of payments (e.g. death benefit option in which a beneficiary receives the death benefit as a single sum).*
3. *“Annuities certain” means annuities guaranteeing a given number of income payments either to the annuitant if he is alive to receive them or to any beneficiary designated by the insured and payable upon the annuitant's death or when the endowment matures.*
4. *Anyone can be named beneficiary, independently of the country of residence of the annuitant or of the beneficiary.*

### **XIV. PERSONAL CAPITAL MOVEMENTS**

- A. Family loans.
- B. Gifts and endowments.
- C. Dowries.
- D. Inheritances and legacies.

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

- E. Settlement of debts in their country of origin by immigrants.
- F. Emigrants' assets.

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

- G. Gaming.
- H. Savings of non-resident workers.

***Supplementary explanatory notes:***

1. *Section XIV covers transfers initiated on behalf of private persons and intended to benefit another private person, regardless of the existence of kinship, or a non-profit organisation, including a charitable or religious body.*
2. *Personal capital movements include transactions of property to which a promise of return to the owner with payment of interest is attached (loans, settlement of debts in their country of origin by immigrants), or transfers free of charge to the beneficiary (gifts and endowments, dowries, inheritances and legacies, emigrants' assets, gaming, savings of non-resident workers).*
3. *Any limitation on the transferred amount or to the kind of payments attached thereto should be reflected in reservations.*

## ***XV. PHYSICAL MOVEMENT OF CAPITAL ASSETS***

- A. Securities and other documents of title to capital assets:
  1. Import.
  2. Export.
- B. Means of payment:
  1. Import.
  2. Export.

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

***Supplementary explanatory notes:***

1. *Section XV covers physical movements of all capital assets, including gold. Operations in gold certificates, gold futures and the like are regarded as comparable to similar operations in the markets for silver and other commodities and are thus excluded from the Code.*
2. *The liberalisation obligations under Section XV extend only to operations otherwise unrestricted throughout the Code.*

## ***XVI. DISPOSAL OF NON-RESIDENT-OWNED BLOCKED FUNDS***

- A. Transfer of blocked funds.
- B. Use of blocked funds in the country concerned:
  1. For operations of a capital nature.

2. For current operations.
- C. Cession of blocked funds between non-residents.

***Supplementary explanatory note:***

*The obligation to liberalise blocked funds is unqualified.*

## 2.2 Operations covered by the Code of Liberalisation of Current Invisible Operations

### A. BUSINESS AND INDUSTRY

- A/1. Repair and assembly.
- A/2. Processing, finishing, processing of work under contract and other services of the same nature.  
**Remark:** In cases where goods are involved, liberalisation applies only if the importation of the goods concerned is liberalised by the Member ordering such processing, finishing, etc.
- A/3. Technical assistance (assistance relating to the production and distribution of goods and services at all stages, given over a period limited according to the specific purpose of such assistance, and including, for example, advice or visits by experts, preparation of plans and blueprints, supervision of manufacture, market research, training of personnel). See also Note 3 of the Notes following Annex A.
- A/4. Contracting (construction and maintenance of buildings, roads, bridges, ports, etc., carried out by specialised firms and, generally, at fixed prices after open tender).
- A/5. Authors' royalties. Patents, designs, trade marks and inventions (the assignment and licensing of patent rights, designs, trade marks and inventions, whether or not legally protected, and transfers arising out of such assignment or licensing). See also Note 3 of the Notes following Annex A.
- A/6. Salaries and wages (of frontier or seasonal workers and of other non-residents).  
**Remark:** Free transfer to the country of residence of the recipient. The amounts to be transferred shall be the net salaries and wages, i.e. after deduction of living expenses, taxes, social insurance contributions or premiums, if any.
- A/7. Participation by subsidiary companies and branches in overhead expenses of parent companies situated abroad and vice versa (i.e. overhead expenses other than those included under A/3 and A/5). See also Note 3 of the Notes following Annex A.

***B. FOREIGN TRADE***

- B/1. Commission and brokerage.  
Profit arising out of transit operations or sale of trans-shipment.  
Representation expenses.
- B/2. Differences, margins and deposits due in respect of operations on commodity terminal markets in conformity with normal commercial practice.
- B/3. Charges for documentation of all kinds incurred on their own account by authorised dealers in foreign exchange.
- B/4. Warehousing and storage, customs clearance.
- B/5. Transit charges.
- B/6. Customs duties and fees.

***C. TRANSPORT***

- C/1. Maritime freights (including chartering, harbour expenses, disbursements for fishing vessels, etc.)<sup>6</sup>

**Remark:** See Note 1 of the Notes following Annex A.

- C/2. Inland waterway freights, including chartering.
- C/3. Road transport: passengers and freights, including chartering.
- C/4. Air transport: passengers and freights, including chartering.  
Payment by passengers of international air tickets and excess luggage charges; payment of international air freight charges and chartered flights.  
**Remark:** Without prejudice to the provisions of Annex III. Receipts from the sale of international air tickets, excess luggage charges, international air freight charges and chartered flights.  
**Remark:** The transfer of these receipts to the head office of the air transport company concerned shall be free.
- C/5. For all means of maritime transport: harbour services (including bunkering and provisioning, maintenance, repairs, expenses for crews, etc.).

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<sup>6</sup>This item does not cover transport between two ports of the same State. Where such transport is open to foreign flags, transfers shall be free.

**Remark:** In the case of repairs, current maintenance, voyage and emergency repairs<sup>7</sup> (see also C/6). (See Note I of the Notes following Annex A)

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

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

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

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

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

C/6. Repair of ships.

**Remark:** Transactions other than those covered by C/5 (i.e. classification, conversion and other major repairs)<sup>8</sup> to the extent to which they do not constitute visible trade.

Repairs of means of transport other than ships and aircraft.

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

## ***D. INSURANCE AND PRIVATE PENSIONS***<sup>9</sup>

Prudential considerations

“Members may take regulatory measures in the field of insurance and pensions, including the regulation of the promotion, in order to protect the interests of policyholders and beneficiaries, provided those measures do not discriminate against non-resident providers of such services”.

D/1. Social security and social insurance.

**Remarks:**

1. Free transfer of:

<sup>7</sup>For definition of terms employed here and in the Remarks against C/6, see Note 2 of the Notes following Annex A.

<sup>8</sup>For definition of terms employed here and in the Remarks against C/5, see Note 2 of the Notes following Annex A.

<sup>9</sup> Cross-border provision of insurance and private pension services covers transactions and transfers concluded both on the initiative of the provider or the proposer.

- a) contributions and premiums in respect of social security or social insurance payable in another Member;
  - b) social security and social insurance benefits payable to an insured person or beneficiary residing in another Member or, for their account, to a social security or social insurance authority in that other Member.
2. If the transfer relates to an insurance considered as social insurance by only one of the Members concerned, the provisions according the more liberal treatment shall apply.
  3. Social insurance transactions carried out by private insurers shall also be subject to the provisions of Parts III and IV of Annex I.

Transactions <sup>10</sup> and transfers in connection with direct insurance (other than social security and social insurance).	)	<b>Remark:</b> Direct insurance transactions between insurers in one Member and insured in another Member, and transfers of premiums and contributions between insured and insurers in two different Members.
D/2. Insurance relating to goods in international trade.	)	Transfers by insurers in one Member of settlements and benefits paid or to be paid in another Member, and transfers of sums necessary for the enforcement of claims arising under an insurance contract. Within the limits specified in Part I of Annex I.
D/3. Life assurance.	)	
D/4. All other insurance.	)	
	)	

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

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

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

**Remarks:**

1. Authorisation within the limits specified in Part III of Annex I for insurers of other Members to establish themselves and to transact business.
2. Transfers between branches and agents of such authorised insurers and their head offices: within the limits specified in Part IV of Annex I.

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<sup>10</sup>Transaction shall be deemed to mean the conclusion of a direct insurance contract by a person in one Member with an insurer in another Member.

- D/7. Entities providing other insurance services.
- D/8. Private pensions.

## ***E. BANKING AND FINANCIAL SERVICES***

### **General remarks:**

1. Regarding operations in the country concerned, Members may take measures for the maintenance of fair and orderly markets and sound institutions and for the protection of investors or other users of banking or financial services, provided those measures do not discriminate against non-resident providers of such services.
2. Regarding operations abroad, Members may regulate on their territory the promotional activities of non-resident providers of such services.
3. Transactions and transfers concerning capital movements in connection with operations covered by Section E of this Code are governed by the Code of Liberalisation of Capital Movements.

- E/1. Payment services:

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

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

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

### ***Supplementary explanatory notes:***

1. *The term “cash cards and credit cards” refers mainly to cards that are issued by a financial institution and may be used to pay for goods and services, or to obtain cash or foreign exchange from a financial institution or an automated teller machine (ATM). In some cases, the use of the card will result in a direct or immediate charge to the holder’s account with a financial institution. In other cases, settlement may take place at the end of a short period (e.g. each month-end), or more extended credit may be available. Depending on their particular characteristics – and the country in which they are issued – these cards may also be referred to as “debit cards” or “charge cards”. (To the extent that credit cards are used to obtain credit, the operation in question would be a capital movement operation and would thus not be covered by the Current Invisibles Code.)*
2. *Requirements that international funds transfers take place through authorised resident agents with a view to strengthening the effectiveness of exchange controls, reducing tax evasion or gathering statistics is permitted*

*under Article 6 of the Current Invisibles Code. However, resident and non-resident operators should be free to choose the technique by which they make international transfers (i.e. telex, telefax, money transfer, etc.), even if the transfer is effected through an authorised resident agent.*

3. *The obligation to liberalise foreign payments services under Item E/1 only applies within the scope of permitted capital operations. Such operations, in particular the freedom to operate deposit accounts with non-resident banks, may be subject to reservations under the Capital Movements Code.*

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

Underwriting (syndication and distribution of new financial assets).

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

Financial market information, communications and execution systems.

**Supplementary explanatory notes:**

1. *“Underwriting” covers the syndication or distribution of new financial assets of all kinds, other than assets issued by Member governments. This item covers both public issues and private placements, in either domestic or foreign currency. The operations in question include all levels of management or participation in new issues, including the so-called “lead manager” and “co-lead manager” functions. Lead manager activities include sales to selling group members, stabilisation, over-allotment and group sales.*
2. *“Broker/dealer services” refers to all forms of intermediation on secondary markets for financial assets, including both those where the intermediary acts exclusively on behalf of a third party and those where he may buy, sell and hold assets for a time on his own account. This item concerns all kinds of assets (including securities and non-securitised claims), both government and private obligations, in domestic or foreign currency, and all forms of exchange (purchase, sale or swap).*
3. *For securities or other assets issued by governments, the intermediary function (underwriting and broker/dealer services) in the primary market must be considered to be performed on the account of the government, thereby falling outside the Code. In the secondary market, however, brokers or dealers in government-issued securities or other assets will generally be operating on their own account or on the account of non-governmental clients; these operations, therefore, fall within the scope of the Code.*

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

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

Settlement and clearing systems.

Custodial and depository services.

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

**Supplementary explanatory notes:**

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

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

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

E/4. Asset management.

Cash management.

Portfolio management.

Pension fund management.

Safekeeping of assets.

Trust services.

E/5. Advisory and agency services.

Credit reference and analysis.

Investment research and advice (including securities rating agencies).

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

**Supplementary explanatory note:**

*Operations concerning mergers, acquisitions, etc. mainly cover the provision of financial expertise and practical assistance (advice, representation, legal and accounting work) associated with the re-organisation of limited liability companies and the arrangement of venture*

*capital. Any lending or equity participation would be a matter for the Capital Movements Code.*

E/6. Fees, commissions and other charges.

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

***Supplementary explanatory note:***

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

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

## **F. INCOME FROM CAPITAL**

F/1.	Profits from business activity.	)	<b>Remark:</b> Does not apply to income deriving from capital acquired otherwise than in conformity with the laws covering the acquisition of capital.
F/2.	Dividends and shares in profits.	)	
F/3.	Interest (including interest on debentures, mortgages, etc.)	)	
		)	
F/4.	Rent.	)	

## **G. TRAVEL AND TOURISM**

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

No restrictions shall be imposed by Member countries on expenditure by residents for purposes of international tourism or other international travel. For the settlement of such expenditure, no restrictions shall be placed on transfers abroad by or on behalf

of travellers or on the use abroad of cash cards or credit cards, in accordance with the provisions of Annex IV. Travellers shall, moreover, be automatically permitted to acquire, export and import domestic and foreign banknotes and to use travellers' cheques abroad in accordance with the provisions of Annex IV; additional amounts in travellers' cheques and/or foreign banknotes shall be allowed on presentation of justification. Lastly, travellers shall be permitted to undertake foreign exchange transactions according to the provisions of Annex IV.

## H. FILMS

H/1. Exportation, importation, distribution and use of printed films and other recordings – whatever the means of reproduction – for private or cinema exhibition, or for television broadcasts.<sup>11</sup>

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

***Supplementary explanatory note:***

*Restrictions affecting foreign films for public television broadcasting are not subject to the obligations attached to Item H/1, while those in respect of private television broadcasting are covered.*

## J. PERSONAL INCOME AND EXPENDITURE

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

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

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

J/3. Immigrants' remittances.

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

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

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<sup>11</sup>The provisions of this item do not apply to Canada, which accordingly has neither obligations nor rights thereunder [OECD/C(61)89 of 12 December 1961 and C(63)154/FINAL of 3 March 1964].

- J/4. Current maintenance and repair of private property abroad.
- J/5. Transfer of minor amounts abroad.
- J/6. Subscriptions to newspapers, periodicals, books, musical publications. ) **Remark:** To the extent to which transactions in connection with these items do not constitute visible Trade.
- Newspapers, periodicals, books, musical publications and records. )
- J/7. Sports prizes and racing earnings.  
**Remark:** In accordance with the laws of the Members concerned.

### ***K. PUBLIC INCOME AND EXPENDITURE<sup>12</sup>***

- K/1. Taxes.
- K/2. Government expenditure (transfer of amounts due by governments to non-residents and in connection with official representation abroad and contributions to international organisations).
- K/3. Settlements in connection with public transport and postal, telegraphic and telephone services.
- K/4. Consular receipts.

### ***L. GENERAL***

- L/1. Advertising by all media.
- L/2. Court expenses.
- L/3. Damages.
- L/4. Fines.
- L/5. Membership of associations, clubs and other organisations.
- L/6. Professional services (including services of accountants, artists, consultants, doctors, engineers, experts, lawyers, etc.).

***Supplementary explanatory notes:***

1. *Residency or nationality conditions which are part of a local licensing requirement for suppliers of professional services have the effect of preventing the cross-border provision of professional services and are thus considered as restrictions under Item L/6. Equally, where membership in a local professional association is required as a condition for the right to*

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<sup>12</sup>The items in this section apply to transfers only.

*supply cross-border professional services, conditions of residency or nationality for membership should be recorded as restrictions.*

2. *Certain minimal forms of local presence requirements for non-resident professionals, such as the maintenance of a mailing address or local registration are, however, not regarded as restrictions under Item L/6.*
  3. *Where certain professional services are exclusively to be supplied by governmental bodies, so that no private supply at all is possible, nationality or residency requirements fall outside the scope of the Code's liberalisation obligations.*
  4. *Selective recognition agreements for professional qualifications are compatible with the Code's obligations, provided they are based on objective technical criteria, i.e. different treatment is based on different circumstances.*
- L/7. Refunds in the case of cancellation of contracts and refunds of uncalled-for payments.
- L/8. Registration of patents and trade-marks.

### Notes to Annex A of the Code of Liberalisation of Current Invisible Operations

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

followed in international trade and normal commercial considerations should alone determine the method and flag of shipment.

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

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

- **Current maintenance:** work which may conveniently be undertaken during a vessel's stay in port, which will contribute towards her general upkeep and efficiency, without being immediately necessary for her continued operation.
- **Voyage repairs:** work which is required during a voyage, due to the normal risks of the sea (e.g. weather damage) to enable the vessel to complete the voyage.
- **Emergency repairs:** similar to voyage repairs, but due to less normal causes, such as sudden machinery breakdown or collisions.
- **Classification:** the special work required to pass the survey which the Classification Society holds on each ship every four years.
- **Conversion:** the major operation of altering the size of a ship or the type, e.g. from steamer to motorship, from passenger/cargo to cargo ship, or from coal-burner to oil burner.

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

## Annexes to Annex A of the Code of Liberalisation of Current Invisible Operations

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

#### *Insurance and private pensions*

##### *Part I*

D/2. Insurance relating to goods in international trade<sup>13</sup>.

*Insurance contracts relating to goods in international trade shall be concluded freely between a proposer in a Member and the establishment of a foreign insurer, whether situated in the proposer's country of residence or in another Member. The transfers required for the execution of such contracts or for the exercise of rights arising therefrom shall be free.*

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<sup>13</sup> Item D/2 must be interpreted as covering the following sets of classes:

a) *International Transport in the following classes:*

*railway rolling stock and other transport: all damage to or loss of railway rolling stock and other transport and all liability arising out of their use.*

*aircraft and satellites: all damage and loss of aircraft.*

*ships (sea, lake and river and canal vessels): all damage or loss of river and canal vessels, lake vessels, sea vessels.*

*aircraft and satellites liability: all liability arising out of the use of aircraft and satellites (including carrier's liability).*

*liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)*

*road transports: all damage and loss of commercial land vehicles used for international business road transports and all liability arising out of their use (including carrier's liability)*

b) *Freight*

*goods in transit (including merchandise, baggage and all other goods): all damage to or loss of goods in transit or baggage, irrespective of the form of transport*

D/3. Life assurance.<sup>14</sup>

1. Transactions and transfers relating to life assurance between a proposer in a Member and a foreign insurer not established in the country of residence of the proposer shall be free.
2. Under existing contracts:
  - a) Transfers of premiums<sup>15</sup> due to non-resident insurers from residents shall be free. ) Such transfers shall be free also in the case of contracts under which the persons from whom premiums are due or the beneficiaries to whom disbursements are due were residents of the same country as the insurer at the time of the conclusion of the contract but have changed their residence since.
  - b) Transfers of pensions and annuities other than annuities certain<sup>16</sup> due to non-resident beneficiaries from resident insurers shall be free. )
3. Members in which premiums paid are allowed, totally or partially, as a deduction for tax purposes shall grant the same benefits whether the contract has been concluded with an insurer established on their territory or abroad.

## D/4. All other insurance.

4. Transactions and transfers between a proposer in a Member and a foreign insurer not established in the country of residence of the proposer, relating to insurance other than that covered under items D/2 and D/3, except group insurance and insurance which is compulsory in the country of residence of the proposer shall be free.
5. Transactions and transfers shall be free whenever it is not possible to cover a risk in the Member in which it exists.
6. Members in which premiums paid are allowed, totally or partially, as a deduction for tax purposes shall grant the same benefits whether the

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<sup>14</sup> Item D/3 includes pensions products or services offered by insurance companies.

<sup>15</sup> Transfers of capital and annuities certain in connection with life assurance contracts are governed by the Code of Liberalisation of Capital Movements (List A, item XIII).

<sup>16</sup> Transfers of capital and annuities certain in connection with life assurance contracts are governed by the Code of Liberalisation of Capital Movements (List A, item XIII).

contract has been concluded with an insurer established on their territory or abroad.

7. a) Transfers of amounts due in respect of indemnities to be settled abroad and paid or payable in execution of an insurance contract by an insurer acting on his own behalf or on behalf of his client shall be free.<sup>17</sup>
- b) Transfers of costs, subsidiary expenses or sums necessary for the exercise of any rights arising out of an insurance contract shall be free.
- c) Without prejudice to cases which are settled individually, each Member shall authorise insurers or their agents who are established in its territory and who settle claims under reciprocal arrangements to offset the payments made on each side and to transfer the balance thereof.

## *Part II*

### D/5. Reinsurance and retrocession.

1. Accounts relating to reinsurance operations, including the constitution and adjustment of guarantee deposits held by the ceding insurers, as well as accounts relating to cash losses, may be drawn up in the currency of the direct insurance contract, in the national currency of the ceding insurer or in the national currency of the acceptor, according to the provisions of the reinsurance treaty or agreement.
2. The settlement of balances resulting from the account referred to in paragraph 1 shall be authorised. Settlement may be made either by a set-off of any reciprocal credits of the ceding insurer and the re-insurer or (as agreed between the parties):

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<sup>17</sup> The following transfers in particular are included under this item (the list is not exhaustive, but includes the most frequent cases of transfer of insurance indemnities):

- transfers of indemnities payable by reason of the insured's liability;
- transfers of indemnities to cover physical damage to a ship, aircraft, motor vehicle or any other means of transport;
- transfers of indemnities under baggage insurance;
- transfers in payment of benefits covered by accident insurance (including individual insurances) or sickness insurance;

transfers to fulfil commitments arising from marine insurance not covered by the above paragraphs (provisional or final contributions in respect of general average, paid by the insurer on behalf of the ship's owner or the consignee of the goods or his agent, the transfer of interest on any bank security substituted for a provisional contribution, transfer of interest in respect of provisional contributions, the transfer of remuneration of assistance and salvage, etc.).

- a) by transfer to the country of residence of the creditor; or
  - b) by payment through a bank account opened in accordance with the provisions of paragraph 3 below; or
  - c) by transfer to another Member to the credit of a bank account opened in accordance with the provisions of paragraph 3 below if the contract stipulates that payment should be made in that Member's currency.
3. Re-insurers shall be authorised to open accounts in banks established in Members. These accounts may be credited with the amounts due to their holders arising out of reinsurance operations which are to be settled in accordance with the provisions of paragraphs 2 b) and c). They may be debited, at the choice of their holders, with the amounts due under any settlement in connection with reinsurance operations if it is made in accordance with the provisions of paragraphs 2 b) and c) and complies with normal practice. The balances of such accounts may also be transferred to the country of residence of the re-insurer holding the account in question.
  4. The provisions of paragraphs 1 to 3 shall apply also to retrocession operations.

### ***Part III***

D/6. Conditions for establishment and operation of branches and agencies of foreign insurers.<sup>18</sup>

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<sup>18</sup> The following definitions apply with respect to the activities and entities covered by D/6:

*Activities covered* are those relating to the concept of “production” of insurance services involving the writing of contracts. The activity of such “coverage” corresponds to the technical English term of “underwriting”, used in several English-speaking countries, and to the French “couverture”. The conditions for establishment and operation of entities performing only an intermediary, auxiliary or representative role are the subject of item D/7. “Insurance” refers to any product defined as such by the authorities of the home Member and is taken to include reinsurance.

*Entities covered* are domestic or foreign insurers expressly authorised or otherwise permitted to cover insurance risks. A foreign insurer is defined as an insurance enterprise having its headquarters in another Member, including subsidiaries of third country enterprises incorporated under the legislation of that other Member. “Branches and agencies of foreign insurers” are defined to include natural persons as well as legal entities entitled to cover insurance/reinsurance risks on behalf of the foreign insurer.

### *General*

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

### *Authorisations*

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

- a) The competent authorities shall make available to each insurer from another Member applying for authorisation a written statement setting out fully and precisely the documents and information that the applicant insurer must supply for the purpose of obtaining authorisation, and shall ensure that any procedures to be followed prior to the lodging of an application are straightforward and expeditious;
- b) Where in addition to legal, financial, accounting and technical requirements (e.g. requirements concerning the form of the undertaking, qualification of directors or managers, reinsurance arrangements, etc.) the grant of authorisation is also subject to other criteria, the competent authorities shall inform applicant insurers of such criteria at the time of their application, and shall apply these criteria in the same way to national insurers as to insurers from other Members. The grant of authorisation shall not be subject to the criterion of the needs of the national insurance market;
- c) The competent authorities shall decide on each application for authorisation by an insurer from another Member not later than six months from the date on which that application has been completed in all particulars and shall without further delay notify their decision to that insurer;
- d) Where the competent authorities ask an insurer from another Member for modifications to a completed application for authorisation, they shall inform that insurer of the reasons for seeking such modifications and shall do so under the same conditions as for a national insurer;
- e) Where an application for authorisation by an insurer from another Member is refused, the competent authorities shall advise that insurer of the reasons for their decision, and shall do so under the same conditions as for a national insurer;
- f) Where authorisation is refused, or where the competent authorities have not dealt with an application upon the expiry of the period of six months provided for under paragraph c) above, insurers from other Members shall have the same right of appeal as national insurers.

### *Membership of Associations with Regulatory Powers*

Members shall ensure that, in areas under their jurisdiction, discrimination on grounds of nationality is not practised in their jurisdiction as to conditions for membership in any professional association with regulatory powers, which membership is necessary in order to provide insurance services on an equal basis with domestic enterprises or natural persons, or which confers particular privileges or advantages in providing such services.

### *Financial Guarantees for Establishment<sup>19</sup>*

- a) Where financial guarantees of any kind are imposed for the establishment of a branch or agency of a foreign insurer, the total amount of such financial requirements shall be no more than that required of a national insurer to engage in similar activities.
- b) Any financial guarantee requirement may be applied to more than one branch or agency of a foreign insurer, but the total amount of the financial requirements to be furnished by the branches and agencies of the same foreign insurer, taken overall, shall be no more than that required of a national insurer to engage in similar activities.
- c) Any financial guarantee requirement may be met by payment in the currency of the host Member.

### *Controlled investments and deposits*

Members shall ensure that enterprises from other Members operating in their territory are not subject to provisions concerning the choice, valuation, including depreciation,

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<sup>19</sup>For the purposes of this Code, the term “financial guarantee” includes the assets constituting respectively the fixed or initial deposit, the adjustable deposit and the variable deposit, and also the technical reserves and any reserve of another description required under the respective national laws, insofar as the assets constituting such reserves are required to be kept in the country in which the insurer is carrying on business:

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

The technical reserves are the amounts which the insurer sets aside to cover his liabilities under contracts of insurance.

and changes of investments more burdensome than those applying to national insurers engaging in similar activities.

### *Transfers*

- a) The transfer of all amounts which the statutory or administrative controls governing insurance do not require to be kept in the country shall be free.
- b) The insurers from a Member who execute direct insurance transactions in another Member through one or more branches or through agents shall be authorised, insofar as such insurers, their branches or agents have no adequate funds available in that country, to transfer to that country such amounts as they require to continue to meet the legal liabilities and/or contractual obligations arising from such transactions.
- c) In accordance with item F/1 of the List of Current Invisible Operations, the transfer of profits arising out of direct insurance operations shall be free. Profits shall be understood to mean the surplus available after providing for liabilities in respect of all legal and/or contractual obligations.

### *Part IV*

#### *D/7. Entities providing other insurance services<sup>20</sup>.*

Transactions and transfers relating to intermediation services, auxiliary services and representation services between a proposer in a Member and a foreign provider shall be free.

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- <sup>20</sup> a) Auxiliary services such as consultancy, actuarial, risk assessment and claim settlement services.
- b) “Representatives: An insurer from one Member operating in another Member may appoint as his representative any person who is domiciled and actually resident in that other Member, irrespective of his nationality.”  
 “Representative Offices: An insurer from one Member shall be permitted to establish a representative office in another Member; a representative office shall be permitted to promote cross-border insurance services authorised in the host Member, on behalf of its parent enterprise.”
- c) The item includes the cross-border provision of services by a foreign provider and the conditions for the establishment and operation of branches and agencies of foreign providers for the services covered by D/7.

*D/8. Private pensions*<sup>21</sup>.

- Transactions and transfers relating to private pensions between a proposer in a Member and a foreign provider shall be free.
- Members in which contributions paid are allowed, totally or partially, as a deduction for tax purposes shall grant the same benefits whether the contract has been concluded with a provider established on their territory or abroad.”

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<sup>21</sup> a) Private pensions are defined as: products or services offered by any entities, other than insurance companies, authorised or otherwise permitted in its home country to provide pensions products or services, through funded schemes (even partly) and operating as a private (or assimilated) entity.

b) Private pensions apply both to pensions related to the exercise of a professional occupation by the proposer and to pensions that are not in any way connected to a professional occupation.

c) The item includes the cross-border provision of services by a foreign provider and the conditions for the establishment and operation of branches and agencies of foreign providers for the services covered by D/8.

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

### *Conditions for the establishment and operation of branches, agencies, etc. of non-resident investors in the banking and financial services sector*

#### GENERAL

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

#### AUTHORISATIONS

2. Where the establishment of banks, credit institutions, securities firms, or other financial enterprises is made subject to authorisations:
  - a) The competent authorities shall make available to each non-resident enterprise applying for authorisation a written statement setting out fully and precisely the documents and information that the applicant must supply for the purpose of obtaining authorisation, and shall ensure that any procedures to be followed prior to the lodging of an application are straightforward and expeditious.
  - b) Where in addition to legal, financial, accounting and technical requirements (e.g. requirements concerning the form of the undertaking, qualifications of directors or managers, etc.) authorisation is also subject to other criteria, the competent authorities shall inform applicant enterprises of such criteria at the time of their application and shall apply these criteria in the same way to both domestic and non-resident enterprises.
  - c) The competent authorities shall decide on each application for authorisation from a non-resident enterprise not later than six months from the date of which the application has been completed in all particulars and shall without further delay notify the enterprise of their decisions.
  - d) Where the competent authorities ask a non-resident enterprise for modifications to a completed application for authorisation, they shall inform the enterprise of the reasons for seeking such modifications and shall do so under the same conditions as for a domestic enterprise.

- e) Where an application for authorisation by a non-resident enterprise is refused, the competent authorities shall advise the enterprise of the reasons for their decision and shall do so under the same conditions as for a domestic enterprise.
- f) Where authorisation is refused, or where the competent authorities have not dealt with an application upon the expiry of the period of six months provided for under sub-paragraph c) above, non-resident enterprises shall have the same right of appeal as domestic enterprises.

### *REPRESENTATION*

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

### *REPRESENTATIVE OFFICES*

- 4.
  - a) An enterprise from one Member country may establish a representative office in another Member country, subject to advance notification to the other Member country.
  - b) A representative office shall be permitted to promote business on behalf of its parent enterprise.

### *Supplementary explanatory note:*

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

### *SELF-EMPLOYED INTERMEDIARIES*

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

### *MEMBERSHIP OF ASSOCIATIONS OR REGULATORY BODIES*

6. Members shall be responsible for assuring that discrimination by nationality is not practised in their jurisdiction as to conditions for membership in any private professional association, self-regulatory body, securities exchange or market, or other private association, membership in which it is necessary to engage in banking or financial services on an equal basis with domestic enterprises or natural persons, or which confers particular privileges or advantages in providing such services.

#### *Supplementary explanatory note:*

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

### *PRUDENTIAL CONSIDERATIONS*

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

#### *Supplementary explanatory notes:*

1. *This comprehensive obligation covers a variety of measures including – but not restricted to – those most commonly practised at the present time, namely minimum capital requirements, legally binding financial guarantees provided by parent enterprises and asset pledges which are sometimes required of the branches and agencies of foreign financial institutions.*
2. *Member countries are required to permit access by branches of non-resident financial institutions to central bank refinancing facilities available in the normal course of ordinary business on the same conditions as resident financial institutions. The obligations do not extend to access by branches of non-residents to lender-of-last-resort facilities.*

### *FINANCIAL REQUIREMENTS FOR ESTABLISHMENT*

8. a) Where financial requirements of any kind are imposed for the establishment of a branch or agency of a non-resident enterprise to engage

in banking or financial services, the total amount of such financial requirements shall be no more than that required of a domestic enterprise to engage in similar activities.

- b) Any financial requirement may be met by payment in the currency of the host country.
- c) Any financial requirement may be applied to more than one branch or agency of a non-resident enterprise, but the total of the financial requirements to be furnished by all the branches and agencies of the same non-resident enterprise shall be no more than that required of a domestic enterprise to engage in similar activities.
- d) Whenever a ratio or other measure is used for prudential or other purposes, for example, for assessing the liquidity, solvency or foreign exchange position of a branch or agency of a non-resident enterprise, full account shall be taken of the total amount of any financial requirements that have been met in the establishment of such branches or agencies and of any financial contribution of the same nature that has been provided in excess of such requirements.
- e) Whenever a ratio measure is used for prudential or other purposes, the ratio applied to the branches or agencies of non-resident enterprises shall be no less favourable than that applied to domestic enterprises, and shall not differ in any way other than in the replacement of paid-up capital for domestic enterprises by the total amount of any financial requirements that have been met in the establishment of branches or agencies of non-resident enterprises and of any financial contribution of the same nature that has been provided in excess of such requirements.
- f) Any other measures used for prudential or other purposes shall be no less favourable to the branches and agencies of non-resident enterprises than to domestic enterprises.

***Supplementary explanatory notes:***

1. *As the definition of minimum capital requirements, financial guarantees, asset pledges, etc. may vary from country to country and over time, the term “financial requirements” is used to refer to all such measures.*
2. *Where financial requirements take the form of minimum capital requirements, and where additional financial guarantees are also required, the total amount of financial requirements referred to in paragraph 8c) is meant to include both the minimum capital requirements and the financial guarantees provided when the latter are of a legally-binding nature.*

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

#### *Air transport*

C/4. Air transport; passengers and freights, including chartering. Payment by passengers of international air tickets and excess luggage charges; payment of international air freight charges and chartered flights.

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

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

### ***International movement of banknotes and travellers' cheques, exchange of means of payment by travellers and use of cash cards and credit cards abroad***

#### *1. Import of domestic banknotes*

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

#### *2. Export of domestic banknotes*

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

#### *3. Import of travellers' cheques and foreign banknotes*

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

#### *4. Export of travellers' cheques and foreign banknotes*

##### *a) Residents*

When leaving a Member State, resident travellers shall be automatically permitted to acquire and to export in a proportion left to the traveller the equivalent of at least 1 250 units of account per person per journey in travellers' cheques, regardless of the currency in which they are denominated, and in foreign banknotes. No request for justification shall be made concerning such acquisition and export. Under this provision, foreign exchange dealers shall be free, within the limits of their national regulations, to obtain foreign banknotes and to sell them to travellers. The present provision does not imply any obligation for the authorities themselves to provide such

travellers' cheques or foreign banknotes either directly to the travellers or to foreign exchange dealers.

#### b) Non-residents

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

#### 5. *Exchange of means of payment: non-residents*

Exchange into Member States' currencies.

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

- i) means of payment in the currency of another foreign Member State which can be shown to have been lawfully imported; and
- ii) domestic banknotes which can be shown to have been acquired against such means of payment in the currency of another foreign Member State during their stay.

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

#### 6. *Use of cash cards and credit abroad*

The principle of the free use of cash cards and credit cards abroad provided for under Section 6 of the Code does not imply any obligation for the agencies issuing cash cards or credit cards to amend the rules governing the use of such cards for the settlement of expenditure relating to travel or stays abroad or for obtaining cash abroad.

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

### *Films*

#### *Aid to production*

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

#### *Screen quotas for printed films for cinema exhibition*

2. For full-length films made or dubbed in the language of the importing country, internal quantitative regulations may be maintained in the form of screen quotas requiring the exhibition of films of domestic origin during a specific minimum proportion of the total screen time actually utilised over a specified period of not less than one year.<sup>22</sup>
3. Original versions of feature films produced in other Member States in a language foreign to that of the importing country shall be:
  - i) excluded from the calculation of the screen quota for domestic films; or
  - ii) admitted for exhibition in specialised cinemas which, as a general rule, are not obliged to observe the screen quotas; or
  - iii) admitted for exhibition in cinemas other than those mentioned in ii) under a global screen quota instead of a screen quota applying to individual cinemas.
4. Short information or documentary films produced in other Member States shall gradually be excluded from the calculation of the screen quota for domestic films.

#### *Freedom from duties, deposits or taxes*

5. Printed films shall not be subject to any duties, deposits or taxes which discriminate against imported films.
6. Short information or documentary films produced in other Member States shall enjoy certain of the benefits if any, granted to domestic films in this

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<sup>22</sup>. Any screen quotas as defined in this provision shall be calculated on the basis of screen time per cinema per year or the equivalent thereof. With the exception of screen time reserved for films of domestic origin, screen times shall not be allocated formally or in effect among sources of supply.

category (e.g. substantial prize awards according to merit, or tax relief on showing).

7. Provided they are intended solely for non-commercial exhibition and are imported by organisations approved by the competent authorities of the country concerned for the purpose of importing such films free from import duties and import taxes, the following categories of films produced in other Member States shall be free from those duties and taxes:
- a) newsreels, at least for two copies of each subject;
  - b) educational, scientific or cultural film recognised as such by:
    - i) the importing and the exporting country;
    - ii) or the Fédération Internationale des Archives du Film (FIAF);
  - c) tourist publicity films, provided they comply with the conditions laid down in Articles 13 c) and 14 of the Annex to the Decision of the Council dated 20th February, 1968, concerning administrative facilities in favour of international tourism [C(68)32] (see Notes over page).

### *Co-production*

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

### *Notes*

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

1. Article 13 c) of the annex to the Decision of the Council of 20th February, 1968, concerning the importation of tourist publicity documents and articles [C(68)32], lays down that, subject to the conditions laid down in Article 14 of the Annex to the Decision, the following articles (inter alia) shall be admitted temporarily free of import duties and import taxes, without entering into a bond in respect of those duties and taxes, or depositing those duties and taxes, when imported from one of the States chiefly for the purpose of encouraging the public to visit that State, inter alia to attend cultural, touristic, sporting, religious or professional meetings or demonstrations held in that State:
- Documentary films, records, tape recordings and other sound recordings intended for use in performances at which no charge is made, but excluding those whose subjects lend themselves to commercial advertising and those which are on general sale in the State of importation.

2. Article 14 of the Annex to the Council Decision lays down that the facilities provided in Article 13 shall be granted on the following conditions:
  - a) The articles must be dispatched either by an official tourist agency or by a national tourist publicity agency affiliated therewith. Proof shall be furnished by presenting to the customs authorities of the State of import a declaration made out in accordance with the model in Appendix I of the Decision, by the dispatching agency. A list of official national tourist agencies in Member States is given in Appendix II of the Decision.
  - b) The articles must be imported for, and on the responsibility of, either the accredited representative of the official national tourist agency of the State of dispatch, or of the correspondent appointed by the aforesaid agency and approved by the customs authorities of the importing State. The responsibility of the accredited representative or the approved correspondent includes, in particular, the payment of the import duties and taxes which will be chargeable if the conditions laid down in the Decision are not fulfilled.
  - c) The articles imported must be re-exported without alteration by the importing agency. If the articles granted temporary free admission are destroyed in accordance with the conditions laid down by the customs authorities, the importer shall nevertheless be freed from the obligation to re-export.
3. Finally, Article 14 provides that the privilege of temporary free admission shall be granted for a period of eighteen months from the date of importation or for such further period as the customs authorities may in special circumstances allow.

## Appendix 1.

### Interpretation of the Insurance and Private Pensions Provision of the Code of Current Invisible Operations

Section	Interpretation
<b>D</b> <b>General: Insurance &amp; private pensions</b>	<p>The term “regulatory measures” designates all measures taken for the protection of policyholders, insured persons and beneficiaries. These measures include prudential safeguards in the stricter sense, i.e. rules on solvency, technical provisions and investments, as well as prudential measures in a broader sense, relating for example to contract law, intermediation, etc. They also include measures relating to promotion. Promotion covers promotional activities related to all activities covered by the insurance and private pensions provisions of the Code and is exclusive of individualised pre-contractual contacts between the proposer and the intermediary/insurance undertaking. Included under promotion are advertisements by media or Internet. Promotion should be distinguished from intermediation and underwriting. As Items D/1 to D/8 in the annex cover regulatory measures related to specific areas in the field of insurance, any reservation concerning measures in these areas are to be lodged with the specific item in question.</p> <p>The term “resident provider of a Member” designates a domestic provider as well as a branch established by a foreign provider in this Member’s territory. In case a foreign provider has a branch within a Member’s territory but carries out activities otherwise than by using this branch, these activities are deemed to be carried out by a non-resident provider.</p> <p>Cross-border provision of insurance and private pensions services covers transactions and transfers concluded both on the initiative of the insurer or the proposer (the latter denoted as “correspondence insurance”).</p>
<b>D/1</b> <b>Social security and social insurance</b>	<p>The obligations of the Code do not restrict the right for a Member to impose an affiliation to their social security system under certain conditions of residence or activity on their territory.</p> <p>Item D/1 does not cover the supply of insurance related to government benefit arrangements, such as social security, by foreign companies.</p>
<b>D/3</b> <b>Life assurance</b>	<p>Item D/3 covers the whole cross-border provision of insurance services, regardless of whether the insurance contract was placed abroad at the</p>

Section	Interpretation
	<p>initiative of the insurer or the policyholder (the latter denoted as “correspondence insurance”).</p> <p>Item D/3 relates only to foreign insurers not established in the country of residence of the proposer, while restrictions to eventual reservations concerning the treatment of branches established in the country of residence of the proposer should be lodged in item D/6 of the Code and against the relevant provisions of the <i>Code of Liberalisation of Capital Movements</i>.</p>
<b>D/4 Other insurance</b>	<p>Item D/4 covers the whole cross-border provision of insurance services, regardless of whether the insurance contract was placed abroad at the initiative of the insurer or the policyholder (the latter denoted as “correspondence insurance”).</p> <p>Item D/4 relates to foreign insurers not established in the country of residence of the proposer, while restrictions to eventual reservations concerning the treatment of branches established in the country of residence of the proposer should be lodged in the item D/6 of the Code and against the relevant provisions of the <i>Code of Liberalisation of Capital Movements</i>.</p>
<b>D/6 Conditions of establishment and operation of branches and agencies of foreign insurers</b>	<p>Item D/6 applies to services in connection to both insurance and reinsurance activities. According to European legislation, an authorisation is necessary for branches established in a Member and belonging to undertakings whose head offices are outside the EU. The requirements for such undertakings are not deemed to be globally superior to those imposed on insurers from EU jurisdictions, so that reservations based on the EU legislation are thus not necessary (i.e., equivalency of treatment). A similar conclusion was reached as concerns Switzerland whose requirements are very comparable to the ones of the EU.</p> <p>As regards branches of reinsurance companies, the same principles apply. Insofar as the setting up of a national reinsurance undertaking is subject to a licensing procedure, the requirement of an authorisation for the establishment of a branch by a foreign reinsurer is not as such contrary to the obligations of the Code and does thus not call for a reservation, if the conditions for this authorisation are not globally superior to the ones applicable to national reinsurers.</p> <p>The existence of registration or licensing requirements for general managers of foreign branches and agencies in the field of insurance are not contrary to the Code insofar as these requirements are not globally superior to those applicable to domestic providers.</p>
<b>D/7 Entities providing other insurance services</b>	<p>Item D/7 applies to services in connection to both insurance and reinsurance activities.</p> <p>The scope of Item D/7 covers:</p> <ul style="list-style-type: none"> <li>• both the activities of entities providing other insurance services under the establishment regime and the freedom to provide cross-border services; and,</li> </ul>

Section	Interpretation
	<ul style="list-style-type: none"> <li>• all activities under the freedom to provide services whether service provision is on the initiative of the provider or the beneficiary of the service.</li> </ul> <p>Auditing services are not to be considered as other insurance services, since similar services are provided to all kinds of firms and are not specific to insurance. No reservation is thus needed in this respect.</p> <p>The enumeration of auxiliary services in the footnote of Item D/7 in Annex I to Annex A is considered to be exhaustive, the auxiliary services covering thus only consultancy, actuarial, risk assessment and claims settlement services.</p> <p>Following the new chapter D on prudential considerations, the existence of regulatory measures, including licensing requirements, in the field of intermediation, auxiliary and representation services are not contrary to the Code insofar these measures do not discriminate against non-resident providers of such services. No reservations are thus needed for regulatory but not discriminatory measures.</p> <p>The existence of registration or licensing requirements for the provision of services of Item D/7 is not contrary to the obligations of the Code insofar that this registration is not subject to conditions globally superior to those applicable to domestic providers.</p>
<b>D/8 Private pensions</b>	<p>The provisions of Item D/8 should:</p> <ul style="list-style-type: none"> <li>• cover the activities of entities other than insurance companies whether under the establishment regime or under the freedom to provide cross-border services;</li> <li>• cover all activities under the freedom to provide services contracted between a proposer in one Member and an entity established in another Member whether on the initiative of the entity concerned or on the initiative of the proposer; and,</li> <li>• apply both to pensions related to the exercise of professional occupation by the proposer and to pensions that are not in any way connected to a professional occupation.</li> </ul> <p>The term “transfer” employed in the first bullet point of Item D/8, similar to the Items D/3 paragraph 1 and D/4 paragraph 4, is to be interpreted in the sense of transfers of premiums and benefits arising from the pension contracts. Portfolio transfers from a resident provider to a non-resident provider are not dealt with under Item D/8.</p> <p>The existence of registration or licensing requirements for private pension fund managers and trustees are not contrary to the Code insofar as these requirements are not globally superior to those applicable to domestic providers.</p>

## Appendix 2.

### Comparative table regarding the provisions of the OECD Codes and the General Agreement on the Trade in Services (GATS)

(from Report to Council C(95)54)

Subject	OECD Codes	GATS
<b>1. Participation</b>	30 Member countries	About 125 signatories
<b>2. Coverage</b>	Not all services yet (except for establishment)	All, including future services
– Establishment	Yes	Yes, as “commercial presence” for the purpose of supplying services.
– Cross-border trade	Yes	Yes
– Movement of persons	No	Yes
– Consumption abroad	Yes	Yes
– Government procurement	No	No, but further negotiations on specific disciplines required
– Monopolies	No, but some references in country reviews	Yes
– Services supplied under Government authority	No, except if by government-owned enterprise	No, unless supplied on a commercial basis and/or in competition with other service suppliers
– Private practices	No, but some references in country reviews	No, except if by delegation of power; otherwise: consultation

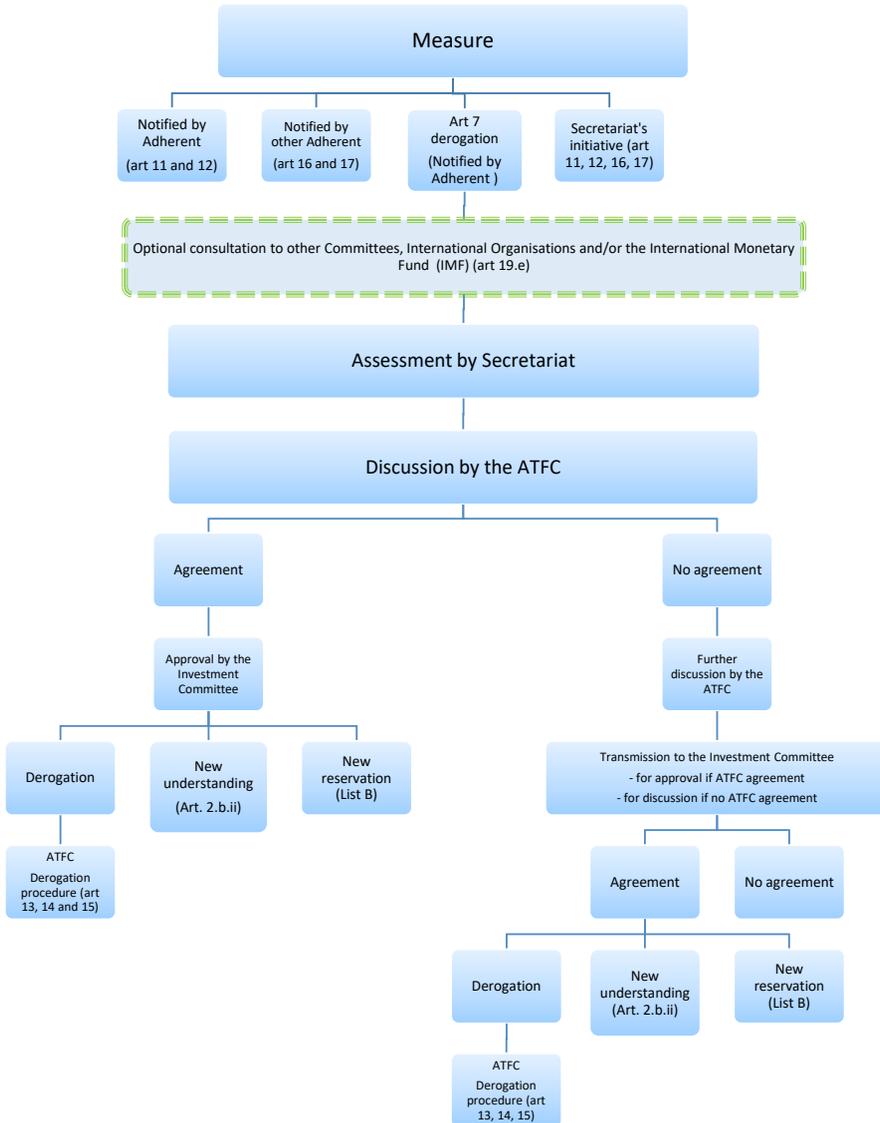
Subject	OECD Codes	GATS
– Subsidies	No, but may fall under the purview of Article 16 of the Code	Yes, can be subject to commitments and are subject to MFN; negotiations on specific disciplines planned
– Sub-national measures	Yes, but important exceptions for certain countries	Yes, but, like any other measures, may be subject to limitations
<b>3. Obligations</b>	Yes, all are general	Yes, but only few – among them the MFN clause – apply from the outset
– MFN/non-discrimination	Yes	Yes
– MFN exceptions	Limited to: <ul style="list-style-type: none"> <li>– Art. 10 (customs or monetary systems)</li> <li>– Annex E (reciprocity-existing investment measures)</li> <li>– For prudential measures, e.g. on the basis of mutual recognition of standards</li> </ul>	Limited to: <ul style="list-style-type: none"> <li>– National MFN exemption lists established</li> <li>– Art. V (economic integration)</li> <li>– Fin. Services Annex: prudential measures and selective recognition of standards</li> </ul>
		In addition, Art. VII on recognition allows countries to accord recognition of qualifications etc. selectively, as long as this is done on the basis of objective criteria and in accordance with the conditions set out in Article VII.
– Transparency	Yes <ul style="list-style-type: none"> <li>– Notification to OECD of all measures having a bearing on Codes</li> <li>– Publication by OECD</li> <li>– All restrictions must be listed as reservations</li> </ul>	Yes <ul style="list-style-type: none"> <li>– Measures relating to trade in services must be published at the national level</li> <li>– Notification to WTO only of measures in sectors for which specific commitments made</li> <li>– Publication by WTO of schedules</li> <li>– Restrictions only listed in schedules as limitations in sectors/sub-sectors where specific commitments made</li> </ul>
– Standstill	Yes <ul style="list-style-type: none"> <li>– Precautionary reservations almost eliminated (reservations must reflect actual</li> </ul>	Yes, but not as general obligation: applies only to the extent that a Member has made a specific commitment to that effect (obligation not to aggravate the situation or “consolidation”)

Subject	OECD Codes	GATS
	<p>regulatory situation); no backsliding</p> <ul style="list-style-type: none"> <li>- Balance-of-payments exception in Article 7c)</li> </ul>	<ul style="list-style-type: none"> <li>- Precautionary limitations allowed (limitations may be more restrictive than actual regulatory situation), backsliding possible</li> <li>- Any commitment can, after three years, be withdrawn in exchange for another, subject to the specific procedures and conditions of Article XXI</li> <li>- Balance-of-Payments exception in Article XII</li> <li>- General standstill for certain measures in understanding on financial services</li> </ul>
<ul style="list-style-type: none"> <li>- Rollback</li> </ul>	<p>Yes, general obligation spelled out in the Codes according to which all restrictions discriminating against non-residents are to be gradually eliminated</p> <ul style="list-style-type: none"> <li>- “Ratchet effect” through the combined operation of standstill on the one hand and of prompt notification of new liberalisation measures and corresponding amendment of reservations, on the other hand</li> <li>- Progress to be encouraged through periodic review and peer pressure</li> <li>- Unilateral liberalisation expected and promoted</li> </ul>	<p>Yes, but not as a general obligation. Member countries agree, however, to participate in periodic negotiations which aim at a higher overall degree of liberalisation and may cover all sectors.</p> <ul style="list-style-type: none"> <li>- Progress to be achieved principally through negotiated exchange of concessions.</li> <li>- Unilateral liberalisation between negotiation rounds may be taken into account during the following round.</li> </ul>
<ul style="list-style-type: none"> <li>- Liberalisation standard</li> </ul>	<p>National treatment concept implicit</p> <p>National treatment achieved, in principle, if absence of discrimination between residents and non-residents</p> <p>Concept of equivalent treatment for branches</p>	<p>National treatment/market access</p> <p>National treatment achieved if competitive opportunities for foreign services and service suppliers no less favourable than for domestic services and services suppliers; this may require either formally identical or formally different treatment</p>

Subject	OECD Codes	GATS
– Domestic regulations (non-discriminatory)	No, except Article 16	Domestic regulations have to respect certain criteria: they are subject to the provisions of Article VI which applies where specific commitments have been made, except for paragraphs 2 and 4 which apply generally
– Liberalisation of Capital Movements	Yes, all capital movements	Where specific commitments made, obligation to admit, without limitations, capital inflow needed for establishment or which is part of service itself; coverage of other capital movements possible where restrictions would affect negatively trade in services
– Payments and transfers	Yes	Yes, but only where specific commitments made
– Repatriation of profits and dividends	Yes	Not excluded; GATS may protect such operations through Article XI as related to a services transaction covered by specific commitments
<b>4. Institutional provisions</b>		
– Specialised body to monitor application	Investment Committee	Council for Trade in Services
– Country reviews	Yes, including monitoring of obligations	Yes, in the framework of the examination of trade policies
<b>5. Enforcement</b>	Yes, through: <ul style="list-style-type: none"> <li>– Peer pressure</li> <li>– Possibility of OECD Council addressing recommendations to offending Member</li> </ul>	Yes, through legally binding dispute settlement procedure (state-to-state) starting with efforts for amicable settlement. Possibility of retaliation at the issue of the procedure
Annex: Scheduling technique	Top-down	Bottom-up with some top-down elements

## Appendix 3.

### Process of assessment of measures under the Codes <sup>23</sup>



<sup>23</sup> Chart is for illustrative purposes only.



This publication presents the full text of the OECD Codes of Liberalisation User's Guide. The purpose of this User's Guide is to contribute to a better understanding of the principles and procedures of the OECD Code of Liberalisation of Capital Movements and Code of Liberalisation of Current Invisible Operations. It also provides detailed explanations of the coverage of the Codes and may therefore serve as a manual for Codes users.

This edition contains the most recent changes approved under the review of the Codes (2016-2019) as updated by the OECD Investment Committee and noted by the OECD Council as of May 2019.

[www.oecd.org/investment/codes.htm](http://www.oecd.org/investment/codes.htm)

