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Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

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COUNCIL

Council

**DECISION OF THE COUNCIL AMENDING ANNEX B TO THE CODE OF
LIBERALISATION OF CAPITAL MOVEMENTS**

(adopted by the Council at its 924th Session on 23 April 1998 [C/M(98)10/PROV])

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THE COUNCIL,

Having regard to Article 5 a) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Code of Liberalisation of Capital Movements, hereinafter called "the Code";

Having regard to the Report by the Committee on Capital Movements and Current Invisible Transactions and the Committee on International Investment and Multinational Enterprises on Mexico's treatment of financial institutions established in non-NAFTA OECD countries [C(98)64];

DECIDES:

The following reservation by Mexico in Annex B to the Code shall be amended to read as follows:

List A, Direct Investment:
I/A

-- In the country concerned by non-residents:

Remark: The reservation applies only to:

- i) Acquisitions exceeding a total of 49 per cent of the equity of a Mexican company, which are subject to review if the total value of the assets of that company exceeds US\$ 50 million; this value will be raised to US\$ 75 million on 1 January 2000 and US\$ 150 million on 1 January 2003;*
- ii) Acquisition of land used for agriculture, livestock or forestry purposes; however "T" shares which represent the value of such land may be purchased up to a total of 49 per cent of the value of the land;*
- iii) Investment in:*
 - a) Retail trade in gasoline and distribution of liquefied petroleum gas;*
 - b) Supply of fuels and lubricants for ships, aircraft and railroad equipment exceeding a total of 49 per cent of equity;*
 - c) Construction of oil pipelines and other derivative products and oil and gas drilling exceeding a total of 49 per cent of equity, unless an authorisation is granted;*
- iv) Investment exceeding a total of 49 per cent in fishing, other than aquaculture, in coastal and fresh waters or in the Exclusive Economic Zone;*
- v) Investment exceeding a total of 49 per cent of equity in the manufacture and assembly of auto part, unless certain requirements are met¹;*

1. As of 1 January 1999, non-resident investors will be allowed to participate up to 100 per cent in this sector without prior authorisation.

- vi) *Investment in air, maritime and ground transport and related services including cabotage and port services, except:*
- a) *Participation up to a total of 25 per cent of equity in national air transport, specialised air services and aerotaxi; up to a total of 49 per cent in the administration of air terminals, and above 49 per cent provided an authorisation is granted;*
 - b) *Participation up to a total of 49 per cent of equity in interior navigation and coastal sailing, except tourist cruises and the exploitation of dredges and other naval devices for ports; in integral port administration and port pilot services for interior navigation; and in foreign commerce shipping and port services for interior navigation where participation may be authorised up to 100 percent;*
 - c) *Railroad related services; and participation up to 49 per cent in the capital stock of a railway concessionaire enterprise (full ownership may be authorised); and*
 - d) *Participation up to 49 per cent of equity in international ground transport of passengers, tourism and loading within Mexico and the administration of bus stations for passengers and auxiliary activities²;*
- vii) *Investment in radio and television broadcasting; investment exceeding a total of 49 per cent of equity in cable television, satellite communications, basic telephone services, newspapers for national distribution; and investment in cellular telephony where participation may be authorised up to 100 per cent;*
- viii) *Investment by a foreign government or state enterprise in any kind of communications or transports activities or direct or indirect investment by a foreign government or state enterprise, or direct or indirect investment in financial institutions, except for commercial banks, financial holding companies, securities specialists and securities firms where the restriction applies only to investment by entities that exercise governmental authority functions;*
- ix) *In the Restricted Zone, acquisition of real estate by branches established in the country by non-resident enterprises and investment in residential real estate by enterprises with foreign participation incorporated in the country;*
- x) *Investment aircraft building, assembly or repair, in shipbuilding and ship repairs, or in any activity requiring a concession other than railways, except through an enterprise incorporated in Mexico;*
- xi) *Investment in construction activities³, legal services and private education services exceeding a total of 49 per cent of equity, unless an authorisation is granted.*
- xii) *Investment in financial institutions, except under the following conditions:*

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2. Non-resident investors will be allowed to participate in these sectors up to a total of 51 per cent of equity as of 1 January 2001 and up to 100 per cent as of 1 January 2004.
 3. As of 1 January 1999, non-resident investors will be allowed to participate up to 100 per cent of equity in these activities without prior authorisation.

- a) *Ownership up to a total of 49 per cent of common stock in financial holding companies, commercial banks, securities brokerage firms and securities market specialists; up to a total of 49 per cent of the paid-in capital in insurance companies, financial leasing companies, factoring companies, general deposit warehouses, bonding companies and foreign exchange firms; and up to 49 per cent of the capital stock of limited scope financial institutions, securities advisory companies and managing companies of investment companies;*
- b) *Ownership of up to 49 per cent of the fixed stock of investment companies;*
- c) *Ownership of up to a total of 100 per cent of the common stock in credit information institutions and securities rating agencies;*
- d) *Ownership of at least 51 per cent of the common stock in a subsidiary of the following type: bonding companies, general deposit warehouses, foreign exchange firms, pension funds and managing companies and securities specialists, by non-resident financial institutions of the same general type of activities;*
- e) *Ownership of at least 99 per cent of the common stock in a subsidiary of managing companies of investment companies, and of the fixed stock of investment companies, by non-resident financial institutions of the same general type of activities;*
- f) *Ownership of at least 51 per cent of the common stock in a subsidiary of the following type: banks, securities firms, insurance companies, leasing companies, factoring companies and limited scope financial institutions (Sofoles), by non-resident financial institutions of the same general type of activities, subject until 31 December 1999 to:*
 - 1) *aggregate market share limits of, respectively: 13.6 per cent in 1998 and 15 per cent in 1999 of the net capital of banks, 18 per cent in 1998 and 20 per cent in 1999 of the global capital of securities firms, 11 per cent in 1998 and 12 per cent in 1999 of the gross solvency requirement of insurance companies for life and health, 11 per cent in 1998 and 12 per cent in 1999 of the gross solvency requirement of insurance companies for casualty, 18 per cent in 1998 and 20 per cent in 1999 of the net worth of leasing companies, 18 per cent in 1998 and 20 per cent in 1999 of the net worth of factoring companies, and 3 per cent of assets of Sofoles plus assets of banks; and*
 - 2) *individual size limits of 1.5 per cent of the sector's net capital for banks, 4 per cent of the sector's global capital for securities firms, and 1.5 per cent of the sector's solvency requirement for insurance companies for life and health and 1.5 per cent of the sector's solvency requirement for insurance companies for casualty;*
- g) *Ownership of at least 51 per cent and up to a total of 100 per cent of the common stock of:*
 - 1) *Existing banks, providing the institution to be acquired does not exceed 6 percent of the net capital of the banking sector; and*
 - 2) *Irrespective of any individual size limits or aggregate market share limits, existing financial institutions providing an authorisation is granted;*
- h) *If the sum of the authorised capital of commercial banks owned and controlled by investors from OECD countries, measured as a percentage of the aggregate net capital of all commercial banks in Mexico, reaches 25 per cent, Mexico may request consultations with the OECD Member countries on the potential adverse effects arising from the presence of commercial banks of the other OECD Member countries in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultation shall be completed*

expeditiously. In considering the potential adverse effects, the OECD Member countries shall take into account:

- 1) the threat that the Mexican payments system may be controlled by non-Mexican persons;*
 - 2) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange rate policy effectively; and*
 - 3) the adequacy of the provisions of the Codes with respect to financial services in protecting the Mexican payments system.*
- i) From 1 January 2000 to 31 December 2003, the Mexican authorities may freeze, only once and for a period of no more than three years, the aggregate market shares of subsidiaries of non-resident banks or securities firms if they exceed 25 percent of the net capital of the banking sector or 30 per cent of the global capital of the securities business sector, respectively;*
 - j) A non-resident financial institution authorised to establish or acquire a bank or a securities firm may also establish a financial holding company, and thereby establish or acquire other types of financial institutions;*
 - k) Foreign financial institutions may establish only one institution of the same type;*
 - l) Until 31 December 1999, subsidiaries of foreign financial institutions may not issue subordinated debentures, except those to be acquired by the parent company;*
 - m) Subsidiaries of foreign financial institutions may not establish branches, subsidiaries or agencies outside Mexico.*