
OECD CODE OF LIBERALISATION OF CAPITAL MOVEMENTS AND THE NATIONAL TREATMENT INSTRUMENT FOR FOREIGN CONTROLLED ENTERPRISES

This attachment describes Australia's observance of two Organisation for Economic Co-operation and Development (OECD) instruments on foreign investment. The *Code of Liberalisation of Capital Movements* is a legally binding agreement between OECD member countries, adopted in 1961. The *National Treatment Instrument for Foreign Controlled Enterprises* is part of the 1976 OECD Declaration on International Investment and Multinational Enterprises ('the Declaration'). The Declaration also includes a set of Guidelines for Multinational Enterprises ('the Guidelines').

The National Treatment Instrument sets out the principle of national treatment — that of according treatment to foreign-controlled enterprises operating in Member countries no less favourable than that accorded to domestic enterprises in like situations — and provides the means to promote and extend the application of this principle. Member countries agreed to notify to the OECD all government measures that constitute exceptions to National Treatment and to subject these measures to periodic review. The Guidelines lay down standards for the activities of multinational enterprises in OECD member countries, including the requirements for the disclosure of information.

The Declaration sets a standard of transparency for governments in two ways. Governments are required, through the National Treatment Instrument, to be transparent about all laws, regulations and policies concerning foreign investment. Governments are also required to promote the Guidelines, thereby encouraging multinationals to provide information on their structures, activities and policies.

This attachment does not cover standards promulgated by the World Bank or Asia-Pacific Economic Cooperation (APEC), or those instruments in the OECD and World Trade Organisation (WTO) that are related more to cross-border trade in services.

Code of Liberalisation of Capital Movements

Provision	Comment
Progressively abolish between one another restrictions on movements of capital.	Australia accepts this obligation, recognising the federal system of government, through the federal government's commitment to encourage the States and Territories to achieve liberalisation of operations covered by the Code. Australia has recorded exceptions for its foreign investment policy and a particular restriction on access to the Australian financial market. Since agreeing to the Code Australia has liberalised the scope of foreign investment policy and all of its reservations on access to the Australian financial market, except that relating to the issue in Australia of bearer securities by foreign governments.
Treat all non-resident owned assets in the same way.	Australia maintains a foreign investment policy that is non-discriminatory as to the source of country of investments.
Permit the liquidation of and transfer for all non-resident assets.	Australia has removed all exchange controls affecting capital outflows associated with foreign investments in Australia.
Preclude the introduction of new restrictions or reinstating abolished restrictions on specified items, including foreign direct investment.	Over the past decade Australia has not sought to tighten its foreign investment policy. All policy changes have been in a liberalising direction.
Extend liberalisation measures to members of the IMF.	The benefits of all liberalisations are made available to all non-resident investors.
Avoid new or more restrictive exchange restrictions on the movements of capital or the use of non-resident owned funds.	Australia has not sought to reintroduce exchange control restrictions since they were dismantled in the 1980s.

National Treatment Instrument for Foreign Controlled Enterprises

Provision	Comment
Recognising certain exceptions, accord to enterprises operating within their territories and owned or controlled directly or indirectly by nationals of another member country, treatment no less favourable than that accorded in like situations to domestic enterprises.	With some exceptions established foreign controlled enterprises are accorded national treatment. Australia has reported as exceptions: provisions of foreign investment policy that impact on investment by foreign controlled enterprises; official aids and subsidies for films; foreign aid; and five exceptions by States that impact on investment by established foreign controlled enterprises.
Notify within a defined period all measures constituting exceptions to national treatment and any subsequent modifications of those measures.	Australia has reported all measures, as published in Annex III of <i>National Treatment Instrument for Foreign Controlled Enterprises</i> , OECD, Paris, 1993. It includes for example the authorisation requirement for all acquisitions of real estate unless exempt by regulation.
Scope to refer to the OECD prejudicial measures by another member that are contrary to the undertakings with regard to national treatment.	In addition to periodic country views, countries are often asked to report to the OECD committees on recent changes to measures affecting foreign investment. Australia has participated in this review process.
Agree to examination of exceptions lodged by member countries, with the aim of making suitable proposals to assist members to withdraw their exceptions.	Australia has participated in, and been the subject of, periodic examinations by the OECD of its exceptions. At each review Australia has been able to withdraw a number of exceptions due to liberalisation measures taken during the period between reviews.