This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

OECD © 2020
Foreword

This review is based on the report prepared by the OECD Secretariat to support the review
of Costa Rica undertaken by the OECD Investment Committee, as part of the process for
Costa Rica’s accession to the OECD.

The OECD Council decided to open accession discussions with Costa Rica on 9 April
2015. Following an in-depth technical review process that involved an evaluation by
22 OECD Committees, the OECD Council decided to invite Costa Rica to become the
38th Member of the Organisation on 15 May 2020.

Pursuant to the Roadmap for the Accession of Costa Rica to the OECD Convention, the
Investment Committee was one of the 22 OECD Committees requested to evaluate Costa
Rica’s willingness and ability to implement the OECD legal instruments within the
Investment Committee’s competence, as well as its policies and practices as compared to
OECD best policies and practices in the field of investment.

The accession review of Costa Rica was based on the following information:

- Costa Rica’s Initial Memorandum presenting its preliminary position vis-à-vis all
  OECD legal instruments;
- The responses delivered by Costa Rica to the Investment Committee accession
  questionnaire in July 2016, November 2016, December 2016, February 2017 and
  August 2017;
- Information collected during the OECD Secretariat’s missions to Costa Rica on
  16-20 January 2017, 12-16 June 2017 and 14-17 August 2018;
- Notes prepared by the OECD Secretariat: (i) Selected Key Issues for the
  Accession Review of Costa Rica; (ii) Financial Services in Costa Rica:
  Establishment and cross-border trade (E and D items of Annex A to OECD Code
  of Liberalisation of Current Invisible Operations); (iii) Costa Rica’s Differentiated
  Reserve Requirement: Position under the OECD Code of Liberalisation of Capital
  Movements;
- Further information provided by the Costa Rican authorities to the Investment
  Committee during the accession review discussion of Costa Rica on selected
  issues under the OECD Investment Instruments on 10 March 2017, the first full
  accession review of Costa Rica under the OECD Investment Instruments on 20
  October 2017, and the update on Costa Rica’s Accession on 25 October 2018;
- Costa Rica’s replies to the letters from the Chair of the Investment Committee
  summarising the outcomes of each meeting and the priority recommendations of
  the Committee;
- An OECD Secretariat report which was revised following each accession review
  meeting;
- The review of Costa Rica by the Committee on Financial Markets concerning the
  parts of the Codes of Liberalisation dealing with banking and financial services;
- The review of Costa Rica by the Insurance and Private Pensions Committee and its Working Party of Governmental Experts on Insurance concerning Codes’ obligations in the area of insurance and private pensions;
- The review of Costa Rica by the Corporate Governance Committee (CGC) concerning Codes’ obligations in the area of the banking sector;
- The appraisal of recent macroeconomic and financial developments and of relevant aspects of competition policy has been developed in coordination with the Secretariat of the Economic Development and Review Committee and the Competition Committee.

In accordance with paragraph 14 of the Accession Roadmap, the Investment Committee agreed to declassify this review and publish it under the authority of the Secretary-General in order to allow a wider audience to become acquainted with its content.

This review was prepared by Andrea Marín Odio and Winfrid Blaschke under the supervision of Ana Novik of the OECD Directorate for Financial and Enterprise Affairs. It has been edited for publication.¹

¹ This review was finalised on the basis of information available as at 20 March 2020, date of the approval of the final version of the OECD Secretariat report by the Investment Committee.
# Table of Contents

Abbreviations and acronyms

1. Introduction and summary
   1.1. Accession Review Procedure
   1.2. Costa Rica’s position under OECD legal instruments relating to investment

2. FOREIGN DIRECT INVESTMENT
   2.1. Foreign direct investment (FDI) trends in Costa Rica
   2.2. General legal framework for foreign direct investment
   2.3. Sector specific regulations in non-financial sectors
   2.4. Special incentives to attract foreign investment
   2.5. International investment agreements
   2.6. Intellectual property rights and other selected aspects of the broader framework for investment

3. OTHER CAPITAL MOVEMENTS
   3.1. Macroeconomic and financial policy context
   3.2. Horizontal measures
   3.3. Capital Inflows
   3.4. Capital outflows
   3.5. Derivatives (covered under items VI and XII)
   3.6. Non-operative temporary safeguards on convertibility

4. FINANCIAL SERVICES: ESTABLISHMENT AND CROSS-BORDER TRADE
   4.1. Overview of the financial sector
   4.2. Banks, securities firms and other non-bank intermediaries
   4.3. Insurance and private pensions

5. CURRENT INVISIBLE OPERATIONS OTHER THAN FINANCIAL SERVICES
   5.1. Current transfers and payments
   5.2. Trade in non-financial services

6. OECD BENCHMARK DEFINITION OF FOREIGN DIRECT INVESTMENT

7. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES
   7.1. Experience and Performance of the Costa Rican National Contact Point (NCP)
   7.2. Recommendations of the Council on Due Diligence
   7.3. Policies to promote Responsible Business Conduct

Annex 1 Relevant OECD Legal Instruments and Core Principles for the Investment Committee’s Accession Review of Costa Rica

Annex 2 Costa Rica’s reservations to the Code of Liberalisation of Capital Movements

Annex 3 Costa Rica’s reservations to the Code of Liberalisation of Current Invisible Operations
Annex 4 Costa Rica’s updated list of reservations under the National Treatment instrument . 107

A. Exceptions at national level .................................................................................................................. 107
B. Exceptions by territorial subdivisions .................................................................................................. 108

Annex 5 Costa Rica’s updated list of Other Measures Reported for Transparency under the National Treatment Instrument .................................................................................................................. 109

A. Measures Reported for Transparency at the Level of National Government .................................. 109
B. Measures reported for transparency at the level of territorial subdivisions ........................................ 109

Annex 6 FDI Regulatory Restrictiveness Index ......................................................................................... 111

Annex 7 Costa Rica’s action plan for implementation of the policy decision to allow branches of foreign banks, May 2019 ......................................................................................................................... 113

Annex 8 Additional considerations made by Costa Rica for transparency purposes .......................... 116

Tables

Table 2.1. Costa Rica- 2014 FDI inward positions by sector ................................................................. 19
Table 2.2. Costa Rica -FDI Inward Positions by Counterpart (2017; USD million).............................. 19
Table 2.3. Costa Rica – FDI Outward Positions by Counterpart (2017; USD million) ....................... 19
Table 4.1. Costa Rica -Financial system and economy ......................................................................... 61
Table 4.2. Costa Rica - Financial institutions and market share of the banking system (2019).......... 64
Table 4.3. Costa Rica -Players in the insurance market – December 2018........................................... 71

Figures

Figure 2.1. Costa Rica- FDI inflows and outflows, 2000-2017 (USD million) ........................................ 18
Figure 3.1. Costa Rica –GDP growth and GDP per Capita 1995 – 2016 .............................................. 44
Figure 3.2. Costa Rica –FX Reserves ..................................................................................................... 44
Figure 3.3. Costa Rica - Private savings in foreign currency (%) and Inflation (%) ............................... 45
Figure 3.4. Costa Rica – Capital Inflow Movements (USD Billion) ..................................................... 49
Figure 3.5. Costa Rica – FDI Inflow (USD Billions) ............................................................................. 49
Figure 3.6. Costa Rica– Portfolio Inflow (USD Billions) ....................................................................... 49
Figure 3.7. Costa Rica – Capital Outflow Movements (USD Billion) .................................................. 53
Figure 3.8. Costa Rica – FDI Outflow (USD Billions) .......................................................................... 53
Figure 3.9. Costa Rica– Other Outflow (USD Billions) ........................................................................ 53
### Abbreviations and acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARESEP</td>
<td>Public Services Regulatory Authority</td>
</tr>
<tr>
<td>ATFC</td>
<td>Advisory Task Force on the Codes of Liberalisation</td>
</tr>
<tr>
<td>BFIs</td>
<td>Banks and Financial Intermediaries</td>
</tr>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
</tr>
<tr>
<td>BMD4</td>
<td>Benchmark Definition of Foreign Direct Investment, 4th edition</td>
</tr>
<tr>
<td>BoP</td>
<td>Balance of Payments</td>
</tr>
<tr>
<td>BOT</td>
<td>Build-Operate and Transfer</td>
</tr>
<tr>
<td>CLCIO</td>
<td>Code of Liberalisation of Invisible Operations</td>
</tr>
<tr>
<td>CLCM</td>
<td>Code of Liberalisation of Capital Movements</td>
</tr>
<tr>
<td>CONASSIF</td>
<td>National Council of Supervision of the Financial System</td>
</tr>
<tr>
<td>COPROCOM</td>
<td>Competition Commission</td>
</tr>
<tr>
<td>DR-CAFTA</td>
<td>Dominican Republic - Central America - United States Free Trade Agreement</td>
</tr>
<tr>
<td>ESPH</td>
<td>Empresa de Servicios Públicos de Heredia</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FX</td>
<td>Foreign Exchange</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>IA</td>
<td>International Agreement</td>
</tr>
<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
</tr>
<tr>
<td>ICE</td>
<td>Costa Rican Electricity Institute</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>INS</td>
<td>National Insurance Institute</td>
</tr>
<tr>
<td>IOSCO</td>
<td>International Organisation of Securities Commissions</td>
</tr>
<tr>
<td>IPR</td>
<td>Intellectual Property Rights</td>
</tr>
<tr>
<td>MEIC</td>
<td>Ministry of Economy, Industry and Commerce</td>
</tr>
<tr>
<td>NCP</td>
<td>National Contact Point</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>NSRP</td>
<td>National Policy on Social Responsibility</td>
</tr>
<tr>
<td>NTi</td>
<td>National Treatment instrument</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OPC</td>
<td>Pension Operating Companies</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnerships</td>
</tr>
<tr>
<td>PTA</td>
<td>Preferential Trade Agreement</td>
</tr>
<tr>
<td>RBC</td>
<td>Responsible Business Conduct</td>
</tr>
<tr>
<td>SIMSDI</td>
<td>Survey of Implementation of Methodological Standards for Direct Investment</td>
</tr>
<tr>
<td>SINPE</td>
<td>Sistema Nacional de Pagos Electrónicos</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium Size Enterprises</td>
</tr>
<tr>
<td>SOE</td>
<td>State-Owned Enterprise</td>
</tr>
<tr>
<td>SUGEF</td>
<td>General Superintendency of Financial Institutions</td>
</tr>
<tr>
<td>SUGESE</td>
<td>General Superintendency of Insurance</td>
</tr>
<tr>
<td>SUGEVAL</td>
<td>General Superintendency of Securities</td>
</tr>
<tr>
<td>SUPEN</td>
<td>Pensions Superintendency</td>
</tr>
<tr>
<td>SUTEL</td>
<td>Superintendency for Telecommunications</td>
</tr>
<tr>
<td>TRIPs</td>
<td>WTO Agreement on Trade Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>TUAC</td>
<td>Trade Union Advisory Committee</td>
</tr>
<tr>
<td>WGIIS</td>
<td>Working Group on International Investment Statistics</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
</tr>
<tr>
<td>WPRBC</td>
<td>Working Party on Responsible Business Conduct</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
1. Introduction and summary

1.1. Accession Review Procedure

In the Roadmap for the Accession of Costa Rica to the OECD Convention (the “Accession Roadmap”, [C(2015)93/FINAL], excerpt at Annex 1), the Investment Committee was requested to evaluate the willingness and ability of Costa Rica to implement the substantive OECD legal instruments within the Committee’s competence and evaluate Costa Rica’s policies and practices as compared to OECD best policies and practices in the field of investment, with reference to the corresponding Core Principles set out in the Appendix to the Accession Roadmap.

The Accession Roadmap sets out the following Core Principles in the investment area:

- Full compliance with the principles of non-discrimination, transparency and ‘standstill’, in accordance with the OECD Codes of Liberalisation and the National Treatment Instrument of the OECD Declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);
- An open and transparent regime for FDI, restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;
- Liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;
- No restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;
- Relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;
- Fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;
- Effective enforcement of intellectual property rights;
- Key commitments under investment protection and other international agreements;
- Evidence of a commitment to implement the Guidelines for Multinational Enterprises, in particular the existence of a National Contact Point that operates in accordance with the provisions set out in the Decision of the Council on the OECD Guidelines for Multinational Enterprises, and of commitment to the various international instruments cited in the Guidelines;
- Completion of the OECD Survey of Implementation of Methodological Standards for Direct Investment (based on the Benchmark Definition of Foreign Direct Investment, 4th edition – BMD4 2008) and agreement to report data for the
compilation of the OECD International Direct Investment Yearbook, in accordance with the timetable and template agreed by Members.

The Committee agreed that its subsidiary body, the Working Party on Responsible Business Conduct, would review the position of the candidate countries under the Decision of the Council on the OECD Guidelines for Multinational Enterprises, in order to provide an opinion on 1) whether the candidate country has shown the willingness and ability to set up and maintain an effectively functioning National Contact Point (NCP) that operates in accordance with the provisions set out in the Decision of the Council on the OECD Guidelines for Multinational Enterprises (the Guidelines), and 2) evidence of the candidate country’s commitment to implement the Guidelines and the related Council Recommendations, as well as its commitment to the various international instruments cited in the Guidelines.

The Committee noted that its subsidiary body, the Working Group on International Investment Statistics, would review the position of the candidate countries under the Fourth Edition of the OECD Benchmark Definition of Foreign Direct Investment and associated reporting requirements, notably their responses to the OECD Survey of Implementation of Methodological Standards for Direct Investment (SIMSDI) and their agreement to report data on FDI trends in accordance with the timetable and template agreed by Members.

The Committee also noted that, in accordance with the Accession Roadmap, the accession reviews of the Committee on Financial Markets (CMF) and the Insurance and Private Pensions Committee (IPPC) would address the candidate countries’ positions regarding the financial services obligations of the Codes of Liberalisation in their respective areas of competence.

The Investment Committee’s Report on Costa Rica’s position under the OECD Investment Instruments presents the full account of the Investment Committee’s examination of Costa Rica.

1.2. Costa Rica’s position under OECD legal instruments relating to investment

This section presents the summary of Costa Rica’s position under the OECD legal instruments in the investment field, including Costa Rica’s position on the Codes of Liberalisation. It also presents the Committee’s evaluation of Costa Rica’s position under the investment instruments specifically listed in the Accession Roadmap.

a) Summary of Costa Rica’s position


Costa Rica accepts all of the following OECD investment instruments:

- Decision of the Council on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307];
- Decision of the Council on Conflicting Requirements being imposed on Multinational Enterprises [OECD/LEGAL/0261];
• Decision of the Council on International Investment Incentives and Disincentives [OECD/LEGAL/0213];
• Recommendation of the Council on Member Country Exceptions to National Treatment and Related Measures concerning Access to Local Bank Credit and the Capital Market [OECD/LEGAL/0255];
• Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures in the Category of Official Aids and Subsidies [OECD/LEGAL/0250];
• Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector [OECD/LEGAL/0247];
• Recommendation of the Council concerning Member Country Exceptions to National Treatment and National Treatment related Measures concerning Investment by Established Foreign-Controlled Enterprises [OECD/LEGAL/0233];
• Recommendation of the Council on Member Country Measures concerning National Treatment of Foreign-Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order and Essential Security Interest [OECD/LEGAL/0226];
• Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to National Security [OECD/LEGAL/0372];
• OECD Declaration on International Investment and Multinational Enterprises [OECD/LEGAL/0144];
• Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [OECD/LEGAL/0386];
• Recommendation of the Council on the OECD-FAO Guidance For Responsible Agricultural Supply Chains [OECD/LEGAL/0428];
• Recommendation of the Council on the Due Diligence Guidance For Meaningful Stakeholder Engagement in the Extractive Sector [OECD/LEGAL/0427];
• Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [OECD/LEGAL/0437];
• Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443];
• Recommendation of the Council on the Policy Framework for Investment [OECD/LEGAL/0412];
• Recommendation of the Council on the OECD Benchmark Definition of Foreign Direct Investment [OECD/LEGAL/0363];
• Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [OECD/LEGAL/0349], with a specified timeframe for implementation (2020);
• Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production of Films [OECD/LEGAL/0063];

• Declaration on Sovereign Wealth Funds and Recipient Country Policies [OECD/LEGAL/0365];

• Convention on the Protection of Foreign Property [OECD/LEGAL/0084].

Costa Rica accepts the following OECD investment instruments with the noted reservations or exceptions:

• Decision of the Council adopting the Code of Liberalisation of Capital Movements [OECD/LEGAL/0002]: Costa Rica accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Capital Movements (Annex 2).

• Decision of the Council adopting the Code of Liberalisation of Current Invisible Operations [OECD/LEGAL/0001]: Costa Rica accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Current Invisible Operations (Annex 3).

• Third Revised Decision of the Council concerning National Treatment [OECD/LEGAL/0263]: Costa Rica accepts this Decision subject to a list of proposed exceptions to the National Treatment instrument (NTi) (Annex 4). Costa Rica also updates the list of other measures reported for transparency under the instrument (Annex 5).

b) The Codes of Liberalisation

i) Summary of Costa Rica’s position

Costa Rica has endorsed the objectives and principles of the Code of Liberalisation of Capital Movements (CLCM) and the Code of Liberalisation of Current Invisible Operations (CLCIO), hereafter referred together as “the Codes”. Costa Rica’s acceptance of the obligations of the Codes is subject to reservations, which are listed in Annexes 2 and 3. The Report examines the conformity of measures maintained by Costa Rica with the Codes, as well as the implications of Costa Rica’s proposed adherence to the Codes. Costa Rica’s proposed position under the Codes can be summarised as follows:

In the field of inward direct investment, Costa Rica is among countries with an open FDI regime, as reflected in a score under the OECD FDI Regulatory Restrictiveness Index that is below the OECD average (Annex 6).

There are no trans-sectoral restrictions, except for real estate. Sectoral restrictions concern mainly incorporation in Costa Rica, which is required for several activities, and limits on foreign ownership in road transport (international passenger and freight), electricity, telecommunications with regards to joint ventures with Empresa de Servicios Públicos de Heredia (ESPH), public accounting, and private security services. Restrictions also apply in the mining sector.

Following the call from the Investment Committee to eliminate reservations that either do not typically fall within the purview of the Codes or are uncommon among Codes’ Adherents, Costa Rica has proposed to eliminate the initially proposed restrictions in areas such as fishing, air transport, finance for mining, private services in ports, and concessions of public works in case of a tie when awarding a concession. In light of the Constitution
of Costa Rica and the fact that the Accession Agreement will be ratified by the Legislative Assembly, the absence of a reservation means that liberalisation benefits will be extended to all Codes Adherents at the time of Costa Rica’s accession to the Organisation.  

For other capital flows, Costa Rica maintains an open capital account. It does not impose prior approval or quotas on inward and outward portfolio investments in shares, bonds and money market securities, commercial and financial credits, and other capital operations covered by the CLCM.

Initially, Costa Rica notified a number of horizontal measures that could entail restrictions to capital flows. They included: (i) an unremunerated compulsory deposit requirement for non-resident funds; (ii) a tax on non-residents’ financial assets; (iii) a reserve requirement differentiated in foreign currency; (iv) a fixed-income tax applying a discriminatory treatment between residents and non-residents; and (v) restrictions for subsidiaries abroad of Costa Rican Financial Groups and Financial Conglomerates to conduct operations in colones.

The first two measures were introduced in 2014, through Law 9227 (Law for Discouraging Foreign Capital Inflows), in the aftermath of the global financial crisis. Law 9227 sought to mitigate risks stemming from the dollarization of the economy, as well from potential surges in inflows and then so-called sudden stop crises. However, it was never operational. Following further discussions in the Investment Committee, and as part of Costa Rica’s commitment to the Codes’ principles of transparency and standstill, Law 9227 was abrogated in December 2018 through the adoption of Law 9635 (Law for the strengthening of public finances).

As for the reserve requirement differentiated in foreign currency, on 16 June 2019 Costa Rica enacted for the first time a differentiated rate, setting the reserve requirement to 15% for foreign currency and 12% for local currency (colones). The measure aims to stimulate credit in local currency (as counter-cyclical monetary policy) and reduce dollarization. On 12 September 2019, the Advisory Task Force on the Codes of Liberalisation (ATFC) discussed this measure and advised the Investment Committee that Costa Rica does not need to lodge reservations for the measure at this specific point in time. The ATFC considered, however, that any substantial changes to the measure and the evolving macroeconomic and financial context of the country (notably the rate of the measure and the evolution of dollarization) may alter this assessment over time.

The discriminatory tax on non-residents’ fixed-income was declared non-operative on 20 September 2017 by the General Comptroller (C213-2017), following the advice of the Investment Committee. Additionally, in December 2018, through Law 9635, Costa Rica eliminated the discriminatory treatment between residents and non-residents, by establishing the same tax rate (15%) to both remittances and income tax in Costa Rica.

For the latter measure (restrictions for subsidiaries abroad of Costa Rican Financial Groups and Financial Conglomerates to conduct operations in colones), with the purpose of aligning to OECD best policies and practices, the Costa Rican authorities eliminated this restriction through the Law on Cross-border and Consolidated Supervision of Banking Groups (Law 9746), approved by the Legislative Assembly on 15 October 2019.

---

2 Through its Accession Agreement, which is a legally binding treaty in international law, Costa Rica will accept all OECD legal instruments in force, including the Codes with only the reservations set out in the Agreement. Pursuant to Article 7 of the Costa Rican Constitution, international treaties, upon their approval by the Legislative Assembly, have higher authority than domestic laws.
No reservations have consequently been proposed for any of these horizontal measures.

The Costa Rican authorities have also eliminated the prohibition on the sale or exchange of derivatives and structured products by non-residents, thereby further reducing its list of reservations, as recommended by the Investment Committee. Specifically, Costa Rica modified its Securities Law (7732) to allow for trading in operations in negotiable instruments and non-securitised claims (albeit not for foreign-currency derivatives). A bill of law to this effect was adopted by the Legislative Assembly on 17 September 2019. Thus, only a reservation for operations in foreign-currency negotiable instruments and non-securitised claims (derivatives) and foreign currency options and futures has been proposed.

Further to the Investment Committee’s recommendations to this effect, Costa Rica has also modified its Securities Regulation to eliminate any preferential treatment to non-resident credit rating agencies of guaranteed capital funds and discriminatory provisions for the purchase of non-resident real estate investment funds. Additionally, it eliminated all discriminatory provisions for the purchase of securities abroad by the Costa Rican Stock Exchange.

Costa Rica maintains some measures intended to address prudential concerns and risk diversification, which are not uncommon among Adherents. Measures concern restrictions for financial institutions to invest in real estate and real estate-backed securities abroad; for transactions abroad of non-bank financial institutions; and on the acquisition of foreign assets for private pension funds.

Finally, pursuant to the Organic Law of the Central Bank, Costa Rica is entitled to establish temporary restrictions on convertibility (obligation to canalise all foreign currency operations through the Central Bank, and repatriation and surrender requirements) in case of severe disturbances on its Balance of Payments (BoPs). At present, these restrictions are not operative. However, the Costa Rican authorities acknowledge that, following the adherence of Costa Rica to the Codes, the powers of the Government and of the Central Bank to reinstate the temporary restrictions on convertibility, when circumstances so warrant, can be exercised in accordance with the safeguard provisions of the Codes, namely Article 7 and its List B facility.

In the field of exchange controls, the free convertibility of the domestic currency enables residents and non-residents to freely carry out payments and transfers in connection with current international transactions, as well as with permitted capital account transactions. Costa Rica accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund (IMF) since January 1946.

In the field of financial services, Costa Rica’s restrictions on establishment originally concerned branching for financial institutions, including banks, financial and insurance intermediaries and private pensions. Branching is allowed for insurance, collective investment fund managers and collective investment fund portfolio management services.

Following the Investment Committee’s encouragement to assess the feasibility of relaxing restrictions for non-resident banks to carry out banking activities in Costa Rica through local branches, the Costa Rican authorities presented to the Legislative Assembly a bill of law authorising the provision of banking services by branches of foreign banks, subject to equivalent prudential regulations and standards as subsidiaries.

On 14 August 2019, the law authorising the establishment and operation of branches of foreign banks (Law 9724) was enacted. Consequently, non-residents are authorised to
provide banking services by way of branches in Costa Rica. No reservation has therefore been proposed in this area.

Regarding cross-border trade in financial services, Costa Rica maintains freedom for residents to avail themselves of banking and financial services when abroad. With the exception of insurance, cross-border provision of banking and most financial services by non-residents in Costa Rica is not allowed. Restrictions apply for: the provision of foreign exchange payment services; banking and investment services, including public offering of intermediation services for securities or financial instruments; credit granting and financing to non-residents by local non-bank financial institutions; underwriting and broker/dealer services; custodial services; collective investment fund portfolio management services; pension fund management; trust services for infrastructure projects; and public offering of advisory services on securities or financial instruments.

For cross-border provision of insurance, following the recommendation of the Investment Committee to this effect, Costa Rica has committed to extend to all Codes Adherents, at the time of Costa Rica’s accession to the Organisation, liberalisation for the provision of the following operations covered by the CLCIO: operations for insurance relating to goods in international trade (item D/2); life assurance for insurance not available in the Costa Rican market (D/3); all other insurance (D/4) for surplus lines; and intermediation and auxiliary services (D/7).

Additionally, in order to address the recommendation of the Investment Committee to further liberalise other outstanding issues, Costa Rica eliminated the requirement for companies wishing to provide cross-border insurance and intermediation services to provide a financial guarantee.

Finally, Costa Rica clarified that, according to Article 16 of the Insurance Market Regulatory Law and as a result of the Accession Agreement entered into with the OECD, all Codes’ Adherents will be allowed to establish representative offices in Costa Rica’s territory, to promote the cross-border insurance of those services authorised to deliver in the country, from the date of Costa Rica’s accession to the OECD.

Costa Rica maintains restrictions on cross-border trade in non-financial services, which are not unusual among Adherents, in the area of cabotage in Costa Rican waters, international road transport, quotas for foreign films and professional services.

As recommended by the Investment Committee, Costa Rica has eliminated all reciprocity requirements for the granting of permits to supply international passenger transportation and for the provision of professional services for dentists, accountants, pharmacists, geologists, journalists, veterinarians, optometrists, doctors and other medical branches.

c) Declaration on International Investment and Multinational Enterprises: Guidelines for Multinational Enterprises and the Decision of the Council on the OECD for Multinational Enterprises

Summary of Costa Rica’s position

Costa Rica adhered to the Declaration on International Investment and Multinational Enterprises (Investment Declaration) and to the Decision of the Council on the OECD Guidelines for Multinational Enterprises (the Decision) on 30 September 2013. According to the Decision, all countries adhering to the Guidelines are required to set up a National Contact Point (NCP). NCPs are created to further the effectiveness of the Guidelines, and adhering countries are required to make human and financial resources available to their
NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices. In addition to promoting the Guidelines, NCPs contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances.

NCPs are required to operate in accordance with the “core criteria” of visibility, accessibility, transparency and accountability set out in the Decision. Consistent with the core criteria and in accordance with the guiding principles for specific instances, set out in the Decision, NCPs should handle specific instances in a manner that “is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.”

Since its creation in 2013, the Costa Rican NCP is based in the Investment Division of COMEX. The NCP is endowed with sufficient human and financial resources to fulfil its responsibilities and benefits from high-level political support. With the entry into force of the Decree on 5 February 2018, the institutional arrangements of the NCP have been revised to clarify its structure and to engage a range of government entities and stakeholders more systematically in its work. The NCP is now composed of the Director of the Investment Division, two advisers from COMEX - who act as the technical secretariat of the NCP-, and focal points from the Ministries of Economy, Industry and Commerce, Labour and Security, Environment and Energy and Justice and Peace. The Decree also provides for the establishment of a stakeholder advisory board, consisting of representatives from business, academia, workers' organisations and NGOs.

In particular in the past two years, the NCP has undertaken significant actions to engage broadly with all relevant ministries, as well as companies, business associations, NGOs and unions through promotional and awareness raising activities. Stakeholders understand the role of the NCP; however, further efforts are needed to engage with workers' organisations to ensure effective access to the NCP. In this regard, the NCP is encouraged to continue to highlight, for example on its website and in its rules of procedure, the comparative advantage of its specific instance procedure relative to the numerous other grievance mechanisms available in Costa Rica and highlight its accessibility, extra-territorial reach and its solution-oriented approach. With the adoption of the Decree, the NCP is also encouraged to reflect the new structure in the rules of procedure, define how other government ministries would be involved in the handling of specific instances and clarify whether the NCP can call on external assistance to carry out good offices.

**Recommendations of the Council on Due Diligence**

As noted above, Costa Rica accepted all OECD legal instruments aimed at supporting the implementation of the Guidelines.

Costa Rica, through its NCP, has taken and is planning measures to implement the above Recommendations of the Council. So far, the NCP has focussed mainly on the OECD-FAO Guidance on Responsible Agricultural Supply Chains, considering the importance of the agricultural sector in Costa Rica. The Government is aware of the remaining challenges in handling social and environmental issues in the sector. The NCP can play an important role in addressing these issues through multi-stakeholder engagement and the promotion of the OECD-FAO Guidance.

**Policies to Promote Responsible Business Conduct**

There exists an increasing understanding of the importance of RBC in Costa Rica among business, government and other stakeholders. This understanding of RBC has evolved
from an emphasis on environmental awareness to also include other aspects of corporate responsibility. The term social responsibility most commonly used seems to align broadly with the concept of RBC as outlined in the Guidelines covering the areas of environment, labour, human rights, anti-corruption and transparency. Government and leading companies see sustainability as a way to create value and enhance competitiveness. Maintaining the increasing interest in RBC, as well as raising understanding on supply chain due diligence, also among domestic companies and SMEs will be key.

Costa Rica has put policies and regulations in the areas covered by the Guidelines in place and has committed to the various international instruments cited in the Guidelines. In June 2017, the Government has adopted a National Social Responsibility Policy (NSRP), which represents an overarching policy framework for RBC. There is a significant level of collaboration and coordination between different ministries and other actors. The NCP has played an important role in integrating existing efforts and promote policy coherence. The measures foreseen to implement the NSRP and the current efforts to develop a National Action Plan on Business and Human Rights also take into account the NCP's dual role in promoting the Guidelines and acting as a grievance mechanism for cases of alleged corporate misconduct. The abovementioned Decree tasks the NCP to work in coordination with the Social Responsibility Advisory Council responsible for implementing and monitoring the NSRP.

The Government has undertaken efforts to promote RBC in its role of economic actor, specifically through its free trade agreements, procurement activities and a range of voluntary certification programmes. In particular, in the area of environment, government policies and incentive structures to promote RBC are advanced. In order to strengthen the uptake of RBC by SOEs, it will be important to ensure that the objectives of the NSRP are being integrated into new policies for SOEs.

d) OECD Benchmark Definition of Foreign Direct Investment

The Working Group on International Investment Statistics (WGIIS) examined Costa Rica’s position under the Benchmark Definition of Foreign Direct Investment and compliance with related reporting requirements and concluded its technical assessment positively.

e) Principles for Private Sector Participation in Infrastructure.

Costa Rica accepted the guidelines in the Council Recommendation on Principles for Private Sector Participation in Infrastructure, with a specified timeframe for implementation (end of 2020), and its position has been evaluated as being in line with the content of the Recommendation.
2. FOREIGN DIRECT INVESTMENT

2.1. Foreign direct investment (FDI) trends in Costa Rica

FDI flows into Costa Rica have consistently increased over the past two decades. They reached a historical peak in 2014 of USD 3.3 billion (6.3% of GDP), falling around 7.6% by 2017. The aggregate statistics on the asset/liability basis show an increase in the FDI inflows of 8% on a yearly basis (compound annual growth rate) from 2009, when FDI inflows reached a post-crisis low of USD 1.6 billion.

FDI inflows have increased every year since 2000 with the exception of 2009, which witnessed a drop as a result of the global financial crisis, and slight decreases in 2012 and 2015. FDI outflows have remained low compared to inflows, with an erratic trend since 2005. After a two-year increase, they dropped in 2008 to USD 197 million and maintained a low average until the period 2012-2013, when outflows grew to USD 800 million. In 2014, they declined to their pre-crisis level, and the level has since maintained.

**Figure 2.1. Costa Rica- FDI inflows and outflows, 2000-2017 (USD million)**

![Inward FDI Flows and Outward FDI Flows](chart)


The most recent reported data regarding the breakdown by sector of activity (2014)\(^3\) shows a strong focus of foreign investors on manufacturing (36%) and other service activities (27%), consistent with the country’s strategy of FDI attraction in advanced manufacturing, clean technology, life sciences and knowledge processing services.\(^4\) Real Estate activities have also been important recipients of inward stocks (22%), with smaller

---

\(^3\) The detailed FDI statistics by industry and by country cited in this section were reported to the OECD in early 2016.

participation in other areas such as natural resources (6%), and financial services (5%) (Table 2.1).

Table 2.1. Costa Rica- 2014 FDI inward positions by sector

<table>
<thead>
<tr>
<th>FDI inward positions</th>
<th>USD million (2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>24381</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>8783</td>
</tr>
<tr>
<td>Other service activities</td>
<td>6610</td>
</tr>
<tr>
<td>Real estate activities</td>
<td>5281</td>
</tr>
<tr>
<td>Agriculture, forestry and fishing</td>
<td>1380</td>
</tr>
<tr>
<td>Financial and insurance activities</td>
<td>1319</td>
</tr>
<tr>
<td>Wholesale and retail trade; repair of motor vehicles and motorcycles</td>
<td>1009</td>
</tr>
<tr>
<td>Unallocated</td>
<td>0</td>
</tr>
</tbody>
</table>


FDI inward positions mostly come from advanced economies outside the region or relatively large economies within the Latin American region. On immediate counterpart basis, the United States accounts for the largest at 28%, and tops six counterparts collectively by approximately 40% of FDI inward stocks to Costa Rica. While FDI outward positions are mostly held in the Central American region. Nicaragua, Guatemala and Panama collectively account for 42% of FDI outward positions by immediate counterpart (Tables 2.2 and 2.3).

Table 2.2. Costa Rica - FDI Inward Positions by Counterpart (2017; USD million)

<table>
<thead>
<tr>
<th>Country</th>
<th>Immediate Counterpart</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>19,924</td>
<td>28%</td>
</tr>
<tr>
<td>Spain</td>
<td>2,490</td>
<td>3%</td>
</tr>
<tr>
<td>Mexico</td>
<td>1,872</td>
<td>3%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1,443</td>
<td>2%</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1,395</td>
<td>2%</td>
</tr>
<tr>
<td>Colombia</td>
<td>1,372</td>
<td>2%</td>
</tr>
</tbody>
</table>


Table 2.3. Costa Rica – FDI Outward Positions by Counterpart (2017; USD million)

<table>
<thead>
<tr>
<th>Country</th>
<th>Immediate Counterpart</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nicaragua</td>
<td>955</td>
<td>16%</td>
</tr>
<tr>
<td>Guatemala</td>
<td>907</td>
<td>15%</td>
</tr>
<tr>
<td>Panama</td>
<td>650</td>
<td>11%</td>
</tr>
<tr>
<td>United States</td>
<td>117</td>
<td>2%</td>
</tr>
<tr>
<td>Colombia</td>
<td>70</td>
<td>1%</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>68</td>
<td>1%</td>
</tr>
</tbody>
</table>


2.2. General legal framework for foreign direct investment

Costa Rica has an open and transparent legal regime for foreign investment. Although it does not have a specific law on the subject, the investment regime is adequately regulated by the current legal framework (OECD, 2013). Main legislations governing foreign investments are the Constitution of 1949, the Civil Code (Law 63 of 1887), and the Commercial Code (Law 3284 of 1964).

Article 19 of the Constitution states that "foreigners have the same individual and social rights and duties as Costa Ricans", recognising the principle of non-discrimination between nationals and foreigners. The Constitution also guarantees the fundamental right to private property and protection against unlawful expropriation (Article 45).

Rules pertaining to expropriation have been further developed in the Expropriations Law 7495 of 1995 and through reiterated jurisprudence of the Constitutional Court. They guarantee the non-discriminatory right for both national and foreign investors not to be deprived of their property unless there is a legally proven public interest, which must be demonstrated following due process of law. Compensation must not only be adequate, but also paid prior to the act of expropriation. Other regulations concerning expropriation and compensation are provided in the bilateral investment treaties (BITs) and in investment chapters of the preferential trade agreements (PTAs) signed by Costa Rica.

By interpretation of the Constitutional principles of non-discrimination (art. 19), autonomy of free will (art. 28), property rights (art. 45) and freedom to conduct business (art. 46) - which have been expanded by the Costa Rican Constitutional Court as the guiding principles of contractual freedom - as well as articles 1022, 1023 and 627 of the Civil Code, it is understood that when there is no law, ethical rule or other type of provision expressly forbidding or regulating a private transaction, a private act is permitted.

The Costa Rican authorities have confirmed that, according to these Constitutional principles, a number of operations covered under the Codes are considered to be authorised for private investors, since the absence of any specific regulation or moral rule forbidding a private act enables its conclusion in the country.

The country does not differentiate between investors on account of the value of their investment or the origin of their capital and does not impose screening or approval mechanisms for new investments.

Special incentive regimes have also been established to attract targeted investments (see further details in section Special incentives to attract foreign investment).

Costa Rican legislation does not impose conflicting requirements on enterprises established in the country and accords with the Decision of the Council on Conflicting Requirements being imposed on Multinational Enterprises, to which Costa Rica adhered on 30 September 2013. The Costa Rican authorities note that so far, the government has not received any complaints from enterprises on conflicting requirements that may arise from Costa Rican laws and regulations.

Transparency, consultation and accountability in public-decision making

The Costa Rican legal framework includes transparency provisions that call for the publication of draft laws and most regulations in advance, as well as consultation processes.

All laws are enacted by the Legislative Assembly after a process of consultation of stakeholders and general audiences; open voting and publication of the draft and final law

---


7 See a further explanation of these principles in the Constitutional Court resolution No. 01188 of 1999.
is done in the Official Journal (Diario Oficial La Gaceta) as well as on the Legislative Assembly’s website.

Concerning regulations, each regulatory entity decides on a case-by-case basis about means of publication and the method and scope of consultation. In all cases, the institution could limit or prevent consultation by claiming reasons of public interest or urgency (Law 6227 of 1978).

Regulations of the Costa Rican financial system have additional transparency mechanisms through online consultation and review processes between the corresponding Financial Superintendence and the National Council of Supervision of the Financial System (CONASSIF). This process entails the participation of stakeholders and regulated members.

Publication of laws and regulations in the Official Journal (published online) is a mandatory requirement for their entry into force. All laws and jurisprudence are made available at the webpage of the National System of Current Legislation (SINALEVI), which is the most reliable source of information on the Costa Rican legal system.

**Real Estate**

Land located in the maritime-terrestrial zone, coastal urban areas and border regions is considered state-owned and subject to restrictions under Costa Rican law. These areas comprise:

- **Maritime-terrestrial zone**: the 200-meter strip located along the entire length of the Atlantic and Pacific coast lines, measured from the ordinary high tide line; as well as all islands located within Costa Rican territorial waters (Maritime Zone Law 6043 of 1977);
- **Coastal urban areas**: areas within the 200-meter strip located along the entire length of the Atlantic and Pacific coast lines, measured from the ordinary high tide line, that have been declared as densely populated before 2014 (Coastal Urban Areas Law 9221 of 2014);
- **Border regions**: an area of 2,000 meters wide alongside Costa Rica’s borders with Nicaragua and Panama (Law of Lands and Colonisation 2825 of 1961).

Besides certain specific territories that are currently under private domain and have a legitimate title, it is not possible for either Costa Ricans or foreigners to own land (for residential or business purposes) in these three segments.

A concession (which is time-bound and protected by a guarantee of the right to property⁸) or a permit of use (a unilateral authorisation by the state to use public land⁹) is required to perform any type of activity in the totality of coastal urban areas, border regions, and for

---

⁸ A concession grants the right of use and enjoyment of the state-owned property to the concessionaire. In case of early termination, by reasons not attributable to the concessionaire, the local government must pay a compensation equivalent to the value of the constructions and improvements to the property. Concessions can only be granted in areas with an approved urban regulatory plan (Law 6043 of 1977, articles 38, 41 and 55).

⁹ A permit of use is a unilateral act of the Public Administration, which grants exclusive use of a public domain property. It is of precarious nature, which means that the Public Administration can revoke it at any time without liability to the Administration, based on reasons of convenience and public interest. The revocation must be justified and a reasonable period shall be given to the permit holder to comply with the order (Law 6227 of 1978, article 154 and Executive Decree 33411 of 2006, article 169).
the maritime-terrestrial zone, in islands and the area comprised of the last 150 meters after the initial 50 meters from ordinary high tide line.

Concessions shall be granted to or held by residents only, in the case of persons, or by companies incorporated in Costa Rica and with a majority ownership of Costa Ricans. Permits of use are granted for areas where there is no approved regulatory zoning plan, and therefore no concessions are allowed. Together with the same requirements as for concessions, they have additional nationality requirements for persons.

According to the Costa Rican authorities, these measures respond to the defence of sovereignty and protection of natural heritage. Since residency and nationality requirements are considered to ensure that concessions and permits of use are granted to persons or companies with a bond to the land, which will be more likely to protect it, as these areas are considered special protection zones under the ownership of the State.¹⁰

The measure that restricts acquisition of land, by both nationals and foreigners in the maritime-terrestrial zone, coastal urban areas and border regions, applies on a non-discriminatory basis to both residents and non-residents and, as such, it is not a restriction under the CLCM.

The restrictions for foreigners, non-residents and foreign-owned or controlled companies to obtain a concession and/or a permit of use for the use of state-owned land comprise both real estate investments (covered under item III/A of the CLCM), as well as the measures restricting access by non-residents to land for business purposes (covered under item I/A of the CLCM).

These measures have been reflected in a proposed reservation under each of these items of the CLCM, and listed under the NTi’s list of exceptions.

**Essential security interests**


At the time of Costa Rica’s adherence to the Declaration on International Investment and Multinational Enterprises, the Costa Rican authorities reflected the following measure under the NTi list of measures noted for transparency based on public order and essential security considerations:

"Based on Article 7 of Law No. 2825 of 14 October 1961 and Article 3 of Regulation No. 10 of 28 April 2008, territories within a width of 2 kilometres from the borders with Nicaragua and Panama are considered national reserve and as such remain under state control. These territories are administered by the Rural Development Institute, and authorizations may be granted for farming, commercial, industrial,

---

¹⁰ Constitutional Court resolution No. 2988-1999, resolution No. 11351-2010 and resolution No. 7077-2013.
housing and public service purposes. In the case of legal entities, if the capital stock is owned by foreigners in more than 50%, its stockholders must have permanent residency status in Costa Rica.”

The Committee welcomes Costa Rica's willingness to place the measures restricting access by non-residents and foreign-owned or controlled companies to obtain a concession for the use of land in border regions both for real estate investments and for business purposes under the disciplines of the Codes, by lodging corresponding proposed reservations under the CLCM, and to list them under the NTi’s list of exceptions. This is in conformity with the Council’s encouragement to use the essential security interest provisions of the OECD investment instruments with restraint, and to bring measures taken for national security considerations under the disciplines of the Codes and the NTi whenever possible.

Finally, Costa Rica maintains measures motivated by public order and essential security considerations for private security and surveillance services, which are further discussed below under the heading Sector specific regulations in non-financial sectors.

**Monopolies and concessions**

In addition to notifying exceptions to national treatment, the NTi requires that monopolies and concessions be reported, as they constitute market access limitations for private investors, including foreign investors.

The Costa Rican authorities reported the existence of the following public monopolies: (i) exploration and exploitation of geothermal activities; (ii) import, refinery and wholesale distribution of crude oil and its derivatives; (iii) production and marketing of ethyl alcohol for the elaboration of alcoholic beverages; (iv) water supply and public sewage services; (v) social service of postal communication of letters classified as letters and cards according to the Universal Postal Union; (vi) lottery sale services; (vii) electricity transmission; (viii) basic traditional telephony (for fixed telecommunications). Costa Rica’s list of measures reported for transparency purposes under the NTi reflects these monopolies (see Annex 5).

Concessions play a central role in the provision of services that are considered "public services" in Costa Rica. They are regulated under different laws, however all concessions are issued for a limited duration and the fees for the provision of the service may be regulated by the state.

As of December 2018, services considered as public and therefore subject to a concession are:

- Electric energy supply, including generation, transmission, distribution and commercialization.

---

11 Regulation No. 10 was abrogated and replaced by Decree 39688 of 2016. The new regulation added the following requirements to obtain a concession for the use of these lands: concessions may be granted as long as they do not affect the natural patrimony of the state, the maritime terrestrial zone, waters of public domain and sources of water, areas with mineral resources, archaeological patrimony, indigenous territories or areas subject to a special regime. A foreign natural person must have permanent resident status in Costa Rica, and prove it through a certification issued by the General Directorate of Migration and Alien Affairs. A juridical person must be domiciled in Costa Rica and more than 50% of its capital stock must be owned by Costa Rican nationals, regardless of their residency.

12 Political Constitution of 1949, Article 121.14; Law 7593 of 1996, Articles 3 and 5; Law 8641, Article 1; and Law 7768, Article 6.
• Supply of sewage and water services, including drinkable water, collection, treatment and evacuation of sewage, residual and pluvial waters.
• Installation, operation, and maintenance of hydrant services.
• Supply of fuels that are derivatives from hydrocarbons, including petroleum, asphalts, gas and naphtha, destined to supply national demand in distribution stations, as well as the derivatives from petroleum, asphalts, gas and naphtha destined to the final consumer.
• Irrigation and drainage services.
• Remunerated public transport of persons, except for air transportation.
• Maritime and air services in national ports.
• Freight transport by railroad.
• Collection and treatment of solid and industrial wastes.
• Social services of postal communication.

In Costa Rica’s first submission to the OECD Secretariat, it was reported that the list of “public services” is an open list for which Costa Rica may include additional services in case they have an “importance for the sustainable development of the country, and are qualified as such by the Legislative Assembly”.13

Following the Accession Review on selected issues in March 2017, the Costa Rican authorities explained that to declare a new service as “public” it is necessary to fulfill specific criteria previously determined by law14 and to follow an open and transparent process by the Legislative Assembly (Law 7593 articles 3, 25, and 82; Constitutional Court Decision 9676-2001). Moreover, the state shall guarantee at all times an efficient and equal provision of the service, which can adapt to any change in the legal regime or the social need it satisfies (Law 6227 article 4).

The Costa Rican authorities further note that any future determination of a public service will be bound by their obligations under the OECD investment instruments. Therefore, no discriminatory treatment between residents and non-residents or among Codes’ Adherents will be possible.

The Investment Committee considered that the list of public services subject to be provided under concession in Costa Rica should not be considered to be precautionary or an open list under the Codes, since the determination of a new public service will require: (i) compliance with specific characteristics previously determined by law; (ii) a public and transparent process of enactment of a new law by the Legislative Assembly15; and (iii) compliance with Costa Rica’s non-discrimination obligations under the Codes.

Furthermore, the Costa Rican authorities reported restrictions in two laws governing concessions: (i) Law 7762 of 1998, which regulates concessions of public works and concessions of public works with public services; and (ii) Law 7494 of 1995, which

---

13 Political Constitution of 1949, article 121.14, Law 7593 article 3.
14 The legal criteria a service must comply with to be considered public are continuity, regularity, uniformity, generality and obligatory nature (Constitutional Court resolution 9676-2001 of the Constitutional Court).
15 Opinion C-142-2002 of 6 June 2002 Attorney General of the Republic: “it is through the law that the people, whose power to legislate was delegated to the Legislative Assembly, qualifies certain activities as public services and establishes, among other things, the procedures that must be followed for the establishment of tariffs and prices of those services. The law is the only instrument authorised to create powers of empire.”
regulates the granting of concessions that use the public procurement process, including some telecommunications and waste management services.

**Law 7762, concessions of public works and concessions of public works with public services**

Law 7762 regulates all concessions of public works (i.e. immovable public goods) and public works that include public services (i.e. immovable public goods plus the exploitation of its service for a fee). Concessions are common in the following sectors: railroads, public roads, road and maritime transport services, marinas, ports, airports and its services.

Concessions under Law 7762 can be granted up to a maximum of 50 years. Residents and non-residents can participate in a bid. During Costa Rica’s first accession review on 20 October 2017, the Costa Rican authorities informed the Committee of two restrictions under this law:

- Once a concession is awarded, the adjudicatory is obliged to incorporate through a nationally incorporated company sociedad anónima (article 31);
- In case of a tie in the bid for a concession, the "Costa Rican tenderer" shall be awarded the contract over the foreigner (article 28).

The Investment Committee considered that the requirement of incorporation in Costa Rica after being awarded a concession under Law 7762 does not need to be reflected in Costa Rica's proposed list of reservations, as the creation of an enterprise would seem the common form of establishment for foreign investment in these sectors.

With regards to the preferential treatment in favour of the “Costa Rican tenderer” in case of a tie, the Costa Rican authorities explained that this provision in the law has never been applied in practice, since the authorities need to first consider a series of parameters before awarding a concession, rooted in the constitutional principles of free participation and unrestricted access (Constitutional Court resolution 998-98). There has never been a case of a tie between two tenderers -neither between nationals nor between national and foreigners-. The authorities explained that the application of this provision has always been avoided in previous tenders, where additional parameters to resolve a potential tie without resorting to nationality requirements have been included.

Furthermore, this provision has not prevented inward direct investment in concessions under Law 7762. Currently, all existing concessions under this Law have been awarded

---

16 Regulated under article 17.d) and Chapter VII of Title I, Book I of the Commerce Code, Law 3284. Sociedad anónima or S.A. is a limited liability corporation composed by nominative stocks, a Board of Directors and one auditor. There are no restrictions for foreign participation in S.A.

17 The parameters under Article 28 of Law 7762 to grant a concession shall be established in the procuring documents considering: i) The current value of the revenues of the concession; ii) the tariff; iii) the term of concession; iv) the amount of the state subsidy required by the offeror; v) the payments offered to the state; vi) the minimum income that the state will need to guarantee; vii) the score obtained in the technical evaluation; viii) the proposal to reduce user tariffs, reduce the term of the concession or extraordinary payments to the state. Only in case of a tie on the parameters established in the procuring documents, will the national offer prevail.

18 Additional parameters included in previous tenders are: i) the lowest tariff per container movement; ii) the offer that contributes the most to the regional development; iii) the most experienced bidder; iv) an auction process between the bidders.
to foreign concessionaries, either participating independently or via consortium with Costa Rican companies (Table 2.4).

Table 2.4. Costa Rica - Concessions awarded under Law 7762, as of December 2018

<table>
<thead>
<tr>
<th>Concession</th>
<th>Concessionaire</th>
<th>Consortiums with foreign capital from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highway San José-Caldera</td>
<td>Autopistas del Sol, S. A.</td>
<td>Spain</td>
</tr>
<tr>
<td>Container terminal of Moín Port</td>
<td>APM Terminals, S. A.</td>
<td>The Netherlands</td>
</tr>
<tr>
<td>Daniel Oduber Airport</td>
<td>CORIPORT S.A.</td>
<td>United States and Canada</td>
</tr>
<tr>
<td>Bulk terminal of Puntarenas Port</td>
<td>Sociedad Portuaria- Puerto</td>
<td>Colombia and Chile</td>
</tr>
</tbody>
</table>

Moreover, the Costa Rican authorities noted that simple incorporation suffices to be considered “Costa Rican tenderer” without any equity restrictions. Since incorporation of an enterprise is deemed as the standard procedure for investment in concessions for public works and public services, and following the Investment Committee’s encouragement to modify or eliminate this provision, Costa Rica has eliminated this provision from the list of proposed reservations.

Law 7494, regulating the granting of concessions that use the public procurement process, including some telecommunications and waste management services

Law 7494, which regulates procedures for public procurement by the state, also provides the framework for the granting of concessions in some areas, such as concessions for telecommunications services (when they require use and exploitation of the radio electric spectrum) and for waste management services. At the Accession Review on selected issues of March 2017, the Costa Rican authorities informed the Committee of two restrictions under this law:

- According to Article 5, participation of foreign companies and individuals is allowed on the basis of reciprocity (“se regirá por el principio de reciprocidad”).
- In case of equal conditions regarding quality, availability and price, Costa Rican Small and Medium Enterprises (SMEs) shall prevail over any tenderer (Executive Decree 33305 of 2006, Articles 14).

After further analysis, with regards to the reciprocity provision, the Costa Rican authorities have clarified that even when the provisions of Article 5 are drafted in a broad manner, they only apply to procurement processes related to the purchase of products manufactured in Costa Rica and not to the provision of services, for which free participation and unrestricted access to both Costa-Rican controlled or domiciled and foreign-controlled or domiciled enterprises is required by a constitutional provision (Decision 998-98 of the Constitutional Court).

Therefore, the reciprocity requirement in this law applies to activities that do not fall within the scope of the Codes and does not raise issues under the Codes.

---

19 Domestic law provides no preference to national providers of services. Article 29 of Law 7494 and Executive Decree 33411, provides that benefits shall apply to products manufactured in Costa Rica according to Law 7017 (Incentives for National Industry).
With regards to the preferential treatment granted to Costa Rican SMEs, Costa Rica informed that the measure is intended to promote local productive development through affirmative action in favour of Costa Rican SMEs. Moreover, this provision only applies to government procurement (and not to concessions), which is outside the scope of the Codes.

Therefore, no reservation is needed for measures related to discriminatory treatment based on nationality in favour of Costa Rican SMEs.

**Private sector participation in infrastructure**


The Costa Rican legal framework provides for private participation in infrastructure through a fragmented system. As a general rule, participation is allowed through competitive bidding or concessions, ruled by Laws 7762 and 7494 explained in the *Monopolies and concessions* section, as well as through commercial instruments such as infrastructure trusts, build-operate and transfer contracts (BOT) and interest management. Also, in 2016 Costa Rica formalized the Regulation for Public Private Partnerships (PPP), to strengthen the contractual mechanisms for developing infrastructure (Executive Decree 39965-H-MP).

In the OECD Economic Survey of Costa Rica, it was noted that Costa Rica's transport infrastructure sector has long suffered from insufficient and ineffective investment and maintenance spending, resulting in a congested and poor-quality transport network which hampers productivity, environmentally-sustainable growth and regional development, as well as negatively affects the population’s well-being. Major challenges hindering sector performance are, among others: excessive institutional fragmentation; absence of an infrastructure-project pipeline; poor project preparation and slow project execution due to no cost benefit analyses; unclear project selection criteria; insufficient stakeholder engagement and resistance to unlock private-sector expertise.

To tackle these issues, the Costa Rican authorities have informed that they are currently working on strengthening PPP regulation to establish clear guidelines and procedures for the execution of infrastructure projects under the modality of PPPs. For example, in 2018 the Procedure for the Determination of Fiscal Risks and Contingencies in Projects of Public-Private Partnerships (Executive Decree No. 41042-H) entered into force. In addition, an online public platform called *Mapa de Inversiones* was created to make available basic information of key infrastructure projects being developed or in the pipeline. No infrastructure project has been yet started under PPP regulation.

**Corporate organisation and key personnel**

Costa Rica notified the following nationality and residency requirements for key personnel:

---


Transport (water): At least 10% of the crew on Costa Rican registered vessels used for international traffic that call on Costa Rican ports shall be Costa Rican nationals, provided that such trained personnel are available domestically (Law 12 of 1941, article 41);

Road Transport (freight): Enterprises supplying motorised freight transportation services must be directed by Costa Rican nationals (Executive Decree 15624-MOPT of 1984, article 8);

Mining: Only individuals can constitute metallic mining co-operatives, and 75% of its members must be Costa Rican nationals (Law 6797, articles 8 and 72 to 75).

Private security (including surveillance, investigation services and private security training schools): All personnel responsible for their organisation, operation and management must be Costa Rican residents (Law 8395, articles 13, 14 and 45).

At the time of Costa Rica’s adherence to the Declaration on International Investment and Multinational Enterprises (2013), the Costa Rican authorities reflected the measures for water transport, road freight and mining under the NTi list of measures noted for transparency.

In order to stand by the best practices of the OECD, the Costa Rican authorities have agreed to include the measures limiting non-resident participation in road freight, mining cooperatives and private security as a reservation to item I/A of the CLCM and as an exception to the NTi.

The measure regarding key personnel for water transport applies to both Costa Rican-controlled and foreign-controlled enterprises and, being non-discriminatory, is not considered a restriction under the CLCM. The measure has been listed under other measures reported for transparency under the NTi.

2.3. Sector specific regulations in non-financial sectors

Electricity (generation, transmission and commercialisation)

Costa Rica maintains a public monopoly in the transmission of electricity through the state-owned company (Instituto Costarricense de Electricidad, ICE). Besides special authorisations to municipal companies, co-operatives and via concession as detailed below, ICE is the only entity authorised to transmit and sell electricity in Costa Rica for commercial purposes.

Private firms, individuals and co-operatives can generate and sell to ICE, up to 30% of the country's demand of electricity (Law 7200, articles 7 and 20). The Costa Rican authorities have informed that these activities are considered as public services and thus subject to a special protection regime.

ICE can only buy energy from private companies owned at least 35% by Costa Rican nationals (article 3). Therefore, there is a restriction for participation by non-residents in electricity generation.

In addition, public municipal companies and co-operatives are authorised to generate, distribute and commercialise electricity to cover the demand of their circumscriptions (Law 8345). The Heredia Public Services Company (Empresa de Servicios Públicos de
**Heredia - ESPH** is a municipal public company that generates and distributes electricity in the region of Heredia. According to Law 7789, participation of foreign persons or foreign firms in public or private companies entering into joint ventures with ESPH is limited to a maximum of 49% of the capital stock (article 15).

The measures limiting participation by non-residents in electricity generation, and in joint ventures with ESPH, have been reflected in proposed reservations under item I/A of the CLCM and its corresponding entry under the list of exceptions to the NTi.

**Mining or exploration of ores other than hydrocarbons**

Costa Rica has a long-term policy aimed at sustainable development and the protection of natural resources. The Constitution of Costa Rica states that all deposits of coal, oil, other hydrocarbons, radioactive minerals and wells existing within the national territory shall not be permanently removed from State ownership (Articles 6 and 121.14). Additionally, the deposits of coal, natural gas, oil or any hydrocarbon; radioactive minerals, thermal sources, geothermic and ocean thermal energy sources; hydroelectric energy sources; the sources and mineral waters, underground and surface waters are reserved to the state. They may only be exploited by the state or via concession.

According to the Costa Rican authorities, since most mines are currently located in areas declared as special wildlife protection reserves or in private lands under the environmental services system, mining is considered as a high-risk activity with an impact on the conservation of local natural resources.

In order to protect environmentally sensitive areas, and consistent with the country's policy for sustainable development, Costa Rica approved in 2010 a reform to the Mining Code (Law No. 6797) to ban “all activities of exploration and exploitation of open-pit metallic mining in the national territory” (Article 8bis) and to prohibit mining exploitation in national parks, biological and forest reserves, wildlife refuges, and the cantons of Abangares, Osa and Golfito (Article 8). Also, it declared a national moratorium, still ongoing, for oil exploration and exploitation until 15 September 2021 (Executive Decree No. 36693 of 2011). Both the ban and the moratorium are applicable to residents and non-residents equally.

In March 2017, the Committee took note of Costa Rica’s explanation regarding its long-term policy choice and invited the country to inform the Committee on future plans to regulate concessions for strip or open-pit metallic mining activities after the end of the moratorium in 2021. In July 2017, Costa Rica clarified that the moratorium is only for oil exploration and exploitation, and that open-pit metallic mining is prohibited by law (Law No. 8904). In the case of oil exploration and exploitation, authorities have presented on 05 December 2017 a bill of law to the Legislative Assembly (No. 20641) to permanently ban the exploration and exploitation of hydrocarbons in the country, both for residents and non-residents. The bill of law is currently progressing through the legislative process and is expected to be adopted before the end of the year.

The Costa Rican government allows for the participation of the private sector in other mining activities. Recognition, exploration, exploitation and benefit of mineral resources and mineral substances require a concession. The Costa Rican authorities have confirmed that the conditions for granting concessions in mining do not discriminate between Costa Rican nationals and foreign investors.
Non-residents can obtain concessions for mining. Once a concession is awarded, non-residents are required to register a local domicile and maintain their accounting records in the territory (Law 6797, article 71). According to the Costa Rican authorities, this is for efficient control, supervision and accountability of the concessionary’s activities.

Since the domicile requirement does not exceed what is necessary for prudential purposes to place residents and non-residents on an equal footing for supervision, it is regarded as equivalent treatment and therefore not subject to a reservation under the Codes.

The Mining Code (Law 6797) allows individuals who reside near mining areas to create metallic mining co-operatives, which can apply for a concession for small-scale mining activities for family subsistence or artisanal purposes. The Costa Rican authorities have noted that these co-operatives are voluntary associations of persons, which can be established exclusively in the cantons of Abangares, Osa and Golfito by autochthonous populations. Participation in mining co-operatives for foreigners is restricted to 25% of the members (article 74).

These measures are similar to those of other Codes’ Adherents for the protection of natural resources and autochthonous populations. This restriction on participation of foreigners in mining co-operatives is reflected in a proposed reservation under item I/A of the CLCM and in the list of exceptions under the NTi.

In addition, Costa Rica has notified a restriction on any mining activities for (i) foreign governments, leaders of foreign governments and companies whose shareholders or representatives are the aforementioned leaders or their relatives; (ii) Costa Rican leaders of state and high-level officials (Law 6797, article 9).

The Investment Committee invited Costa Rica to confirm that current applicable restrictions for the granting of concessions in mining do not discriminate between Costa Rican nationals and foreign investors. In their reply, the Costa Rican authorities explained that the mining sector is considered politically sensitive in the region; therefore, historically it has been decided to limit the participation of heads of state, government officials and foreign governments. Restrictions under article 9 of Law 6797 do not extend to foreign state-owned companies.

Therefore, the measure restricting participation by foreign governments and leaders of foreign governments gives rise to a proposed reservation under item I/A of the CLCM and is reflected in Costa Rica's list of exceptions to the NTi.

Finally, in accordance with the country’s long-term policy choice towards sustainable development and protection of natural resources, the Costa Rican authorities have explained that they wish to reserve local financing in mining to nationals.

According to article 70 of the Mining Code, the Costa Rican banks combined cannot finance more than 10% of the total investment of enterprises of foreign capital or with more than 50% foreign ownership, which are investing in mining exploration or exploitation. This financing restriction dates from the creation of the Mining Code (1982), when only state-owned banks were allowed in the country. Its purpose was to focus local investment towards other priorities, such as education and infrastructure.

Although this measure, in theory, could hinder access to local financing for non-residents prior to incorporation in the country, in practice it does not have such effects, as foreign investors in the mining sector do not typically rely on local financing. This restriction is a post-establishment measure, does not involve capital flows from domestic banks to non-incorporated foreign investors and is outside of the scope of the Codes. For transparency
purposes, the Costa Rican authorities have requested to reflect this measure under the list of exceptions to the NTi, under Section IV “Access to Local Finance”.

**Fishing**

Fishing in the territorial waters of Costa Rica or its Exclusive Economic Zone can only be carried out by vessels registered in Costa Rica and with a Costa Rican flag.

However, non-residents may invest in fisheries through an enterprise incorporated in Costa Rica (Decree 12737 of 1981) or by registering a vessel flying the Costa Rican flag of any scale. Non-residents can register a vessel as vessel representatives (*agente naviero*) by (i) acquiring a Costa Rican company owner of a vessel, (ii) appointing a legal representative in the country, or (iii) through a local branch (Decree 12568 of 1981, article 12.b, and Decree 26883 of 1998, article 64).

Special exceptions apply for foreign-flagged vessels conducting purse-seine fishing (*pesca cerquera*) of tuna, which are allowed to fish in the Exclusive Economic Zone, subject to additional technical requirements (Decree 23943 of 1995).

These measures do not constitute a restriction on investment in Costa Rica by non-residents or a departure from national treatment for foreign-controlled enterprises incorporated under Costa Rican law and therefore need not be reflected in proposed reservations nor in the list of exceptions to the NTi.

**Telecommunications**

Before 2008, telecommunication services were reserved exclusively for the state-owned monopoly ICE. In the context of the DR-CAFTA, Costa Rica adopted commitments to open up the regime to private participation, except for basic traditional telephony. The new General Telecommunications Law 8642 opened the market in mobile services, internet services, and private networks.

To provide telecommunication services that require use of spectrum, it is necessary to obtain a concession for the use and exploitation of the radio electric spectrum frequencies. According to article 12 of Law 8642, concessions will be granted through the procurement procedure stated in Law 7494, explained in section *Monopolies and concessions*, and follow the principles of non-discrimination of article 8.b) of Law 8642.

Non-residents can also invest in telecommunications through joint ventures with the municipal enterprise ESPH, which provides telecommunication services in the region of Heredia. According to Law 7789, participation of foreign persons or foreign firms in public or private companies entering into joint ventures with the ESPH is limited to a maximum of 49% of the capital stock (article 15).

The restriction limiting participation by foreigners in companies investing in telecommunications with the ESPH is reflected in a proposed reservation under item I/A of the CLCM and a corresponding entry under the list of exceptions of the NTi.
**Transport**

**Land transport (passengers)**

Costa Rica maintains a measure having a bearing under the Code for domestic passenger road transportation services (regular route), which is considered a public service, and therefore, provision of services is subject to a 7-year renewable concession (Law 3503, Articles 1 and 21). In case of a tie in the bid to obtain a concession, the Costa Rican company or person will be preferred over the foreigner (Law 3503, Article 6).

The Costa Rican authorities reassured the Committee that the discriminatory preference to nationals in case of a tie when awarding a concession has never been applied in practice. There has never been a case of tie between two tenderers -neither between nationals nor between national and foreigners- where article 6 of Law 3503 was invoked. Additionally, the Costa Rican authorities noted that simple incorporation suffices to be considered “Costa Rican tenderer” without any equity restrictions, while incorporation of an enterprise is deemed as the standard procedure for investment in concessions for public transport. No reservation is proposed under item I/A of the CLCM or entry under the list of exceptions of the NTi.

During the review, and as an effort to further liberalise investment in land transport, through Decree 42072 of 2019, Costa Rica enacted on 12 December 2019 a modification to the international passenger road transportation services regulation Executive Decree 41404 of 2018. The reform eliminates the previous equity restrictions for permit-holders, which before required them to be majority-owned enterprises (at least 60%), either by Costa Rican nationals or by other Central American nationals (El Salvador, Guatemala, Honduras, Nicaragua and Panama). Following the reform, residents and non-residents, irrespective of their nationality, can invest in international passenger road transportation companies, either through a branch, a non-resident company or a fully-owned Costa Rican company.

**Land transport (freight)**

Freight transportation between two points in Costa Rica is reserved to either Costa Rican nationals or firms incorporated in Costa Rica that are managed by Costa Rican nationals and which are majority-owned (at least 51%) by Costa Rican nationals (Executive Decree 15624-MOPT of 1984, Article 8 and Law 7557, Article 166.d).

Following the first accession review on selected issues, the Costa Rican authorities explained that these restrictions are part of its international commitments acquired for the Central American integration scheme.

The Central American Uniform Customs Code (RECAUCA III, approved by the Legislative Assembly via Law 8360) provides that international land operators cannot carry out local transportation services (Article 136).

The restriction on investment in land transport (freight) is reflected in a proposed reservation under item I/A of the CLCM and in the list of exceptions under the NTi. As the measure does not allow the full scope of land transport (freight) services to be provided in Costa Rica by third party country providers, it is also recorded as a reservation under item C/3 of the CLCIO and discussed in Chapter Current Invisible Operations Other than Financial Services.
Air transport

Since August 2007, investment in the air transport sector is open to non-residents. Previously, Law 5150 established nationality requirements for ownership and control of Costa Rica’s air transport. In 2007, the Constitutional Court derogated all discrimination between foreigners and nationals (Article 179 of Law 5150), allowing non-residents to establish and operate air services in Costa Rica (Decision No. 11156-07).

Law 5150 establishes that certificates for air transport will be granted to: (i) enterprises incorporated in Costa Rica, (ii) if the enterprise is not incorporated in Costa Rica, these certificates will be granted subject to treaties or agreements on civil aviation. In the absence of treaties or agreements, the granting of such certificates must be in accordance with the principle of reciprocity and comply with the corresponding technical and legal requirements\(^\text{23}\) (Law 5150, Articles 149, 150.b) and 156.4).a).

The Committee invited Costa Rica to confirm that preferential treatment stemming from reciprocity requirements for the provision of certificates for air transport for non-resident enterprises would be extended to all Codes Adherents upon Costa Rica’s accession to the OECD.

The Costa Rican authorities noted that reciprocity requirements in this sector are aligned with the best practices concerning air navigation issued by the International Civil Aviation Organization (ICAO). Moreover, Costa Rica is committed to give an equal treatment to all Codes’ Adherents, subject to their compliance with the corresponding technical procedure. No reservation is proposed for this measure.

Certificates for agricultural aviation (application of agrochemicals in plantations) are reserved for Costa Rican companies with at least 51% Costa Rican capital stock (Executive Decree 315 20 of 2003, article 13).

The Costa Rican authorities informed that this restriction for investment in agricultural aviation is of impossible application, due to the 2007 decision of the Constitutional Chamber of the Supreme Court stated above, which abolished all discrimination against foreigners in air transport.\(^\text{24}\) No reservation under the Codes is proposed for this measure.

Finally, following the call from the Committee to reduce the list of proposed reservations, Costa Rica communicated that both residents and non-residents, bearing a certificate for air transport, are allowed to register aircrafts for commercial purposes in the National Aircraft Registry without any limitation (Executive Decree 4440 of 1975, Article 20).

Therefore, no reservation is proposed for investment in air transport.

Port services

Non-resident investment in port services in Costa Rica is authorised for enterprises established in Costa Rica.

Following the recommendation from the Investment Committee to revise, with a view of eliminating, some of Costa Rica’s initially proposed reservations, Costa Rica clarified that

\(^{23}\) Costa Rica has ratified bilateral air services agreements with the following Codes Adherents: Belgium, Canada, Chile, Germany, Mexico, the Netherlands, Spain, the United Kingdom and the United States.

\(^{24}\) Decision No. 11156-07 of the Constitutional Chamber of the Supreme Court of Justice.
there is no incorporation requirement and that non-residents can invest in port services in Costa Rica through a branch, or agency or subsidiary. Therefore, it is proposed that no reservation is lodged for the provision of port services\textsuperscript{25} by non-resident’s in Costa Rica.

**Private security and surveillance services**

According to Law 8395 of 2003, firms supplying private investigation, security and surveillance services, as well as private security training schools, must be owned by Costa Rican nationals and be incorporated locally either as enterprises or associations (article 13).

The Costa Rican authorities have indicated that these provisions related to ownership of private security firms are regarded as sensitive with respect to national security concerns, and proposed to reflect this restriction in a proposed reservation under item I/A of the CLCM and as a corresponding exception under the NTI.

Costa Rica’s willingness to place the measure on private security services under the discipline of the Codes, by lodging a corresponding proposed reservation under the CLCM, and to list it under the NTI’s list of exceptions should be noted. This is in conformity with the OECD Council’s encouragement to use essential security interest provisions of the OECD instruments with restraint and to bring the measure under the disciplines of the Codes whenever possible.

**Tourism services**

Investment in tourism and eco-tourism services is open to non-residents.

Costa Rica has notified specific restrictions for small-scale rural eco-tourism investment (turismo rural comunitario) conducted by family or community groups. In order to obtain the eco-tourism incentive, these rural enterprises should be registered as local personal associations (non-profit) or rural zone self-managing co-operatives (Law 8724 of 2009).

This measure does not amount to a residency or nationality requirement, and therefore it does not need to be reflected in Costa Rica's proposed list of reservations, as this is a technical condition to effectively verify that the service is community-owned and rural.

**Audio-visual services**

According to Law 6220 of 1978, only enterprises incorporated in Costa Rica can provide services as media and advertising agencies. Incorporation must take the form of a sole proprietorship/personal company (sociedad personal) or an enterprise of capital with nominative stock.

The incorporation requirement is considered important by the Costa Rican authorities to ensure attribution of liability and foster media for national culture. It is reflected in a proposed reservation under item I/A of the CLCM.

\textsuperscript{25} Port services include sale of drinkable water to ships, ship chandler services, sludge, solid waste of ships extraction, private security services, shuttle fuel, maintenance and painting of ships inspection and checking of goods within port facilities.
Professional services

There are limitations for non-residents to invest in commercial companies of public accounting. Enterprises providing these services must be locally incorporated and registered in the Professional Association (Law 1038 of 1947 and Law 1269 of 1951). Also, they must be majority owned and controlled by resident professionals incorporated in Costa Rica as Certified Public Accountants (Executive Decree 13606 of 1982). A minimum of five years of residence in the country prior to incorporation is required to register as a Certified Public Accountant (Law 1038, article 3.f)).

The incorporation and residency requirements for shareholders of public accounting firms are reflected in a proposed reservation under item I/A of the CLCM and as a corresponding entry under the NTi list of exceptions.

2.4. Special incentives to attract foreign investment

Costa Rica maintains a number of incentive regimes to attract targeted investments. While access to these regimes is available to both foreign and domestic investors, Costa Rica considers that they have proved to be effective policy tools to attract FDI into the country. They are:

- **Free Zone Regime (FZR)**: Reported as one of the most successful policy tools that Costa Rica has enacted to attract FDI. The FZR grants tax breaks for investments made in the country by companies located under the regime. For 2016, production under the FZR represented 43% of Costa Rica’s total exports. If described by sector, they represented 46% of the total of goods exports and 39% of the total of services exports.

- **Inward Processing Regime**: It enables goods to enter the national customs territory and benefit from the full suspension of taxes, including customs duties, if they are re-exported after being subjected to a process of transformation, repair, reconstruction, assembly, or incorporated in machinery and/or other devices.

- **Drawback Regime**: Customs regime granted by the General Customs Authority, which allows the reimbursement of amounts effectively, paid or deposited on account of taxes if the product is exported within twelve months since the date of import.

- **Tourism Development Incentives Regime**: Targeted especially for: accommodation, international and national air transport of tourists, aquatic transport of tourists, receptive tourism of travel agencies, and rental of vehicles to foreign and national tourists.

---

26. According to Supplementary explanatory note 4 to item I/A of the CLCM, "...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.”


28. Central Bank official data.

29. Governed by the General Customs Law (Law No. 7557 of 20 October 1995), the Regulations to the General Customs Law (Executive Decree No. 25270 of 14 June 1996) and the Regulations to the Inward Processing Regime (Executive Decree No. 40198-COMEX-H of 13 December 2016), and their amendments.

30. Governed by the General Customs Law.

Costa Rica has recognised the value of the OECD checklist for Foreign Direct Investment Incentive Policies in raising awareness and adequate assessment of tax incentives, the level of tax burden imposed on businesses, and investment promotion objectives. It also embraces the principles developed by the OECD Tax and Development Programme to enhance transparency and governance of tax incentives for investment in developing countries, promote the management and administration of tax incentives for investment in a transparent and consistent manner, and to limit discretion and to increase accountability.

2.5. International investment agreements

**Agreements in force**

Costa Rica is a member of the World Trade Organization (WTO) since its inception (1 January 1995). Notifications and commitments under various WTO agreements, including *inter alia* balance-of-payments, GATS, trade-related investment measures and intellectual property rights protection have served to enhance the transparency and predictability of Costa Rica’s regulatory framework for trade and investment.


<table>
<thead>
<tr>
<th>Treaty party</th>
<th>Current Status</th>
<th>Date of signature</th>
<th>Entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>In force</td>
<td>21 May 1997</td>
<td>01 May 2001</td>
</tr>
<tr>
<td>Canada</td>
<td>In force</td>
<td>18 March 1998</td>
<td>29 September 1999</td>
</tr>
<tr>
<td>Chile</td>
<td>In force</td>
<td>11 July 1996</td>
<td>23 June 2000</td>
</tr>
<tr>
<td>China</td>
<td>In force</td>
<td>24 October 2007</td>
<td>20 October 2016</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>In force</td>
<td>28 October 1998</td>
<td>05 March 2001</td>
</tr>
<tr>
<td>France</td>
<td>In force</td>
<td>08 March 1984</td>
<td>18 June 1999</td>
</tr>
<tr>
<td>Germany</td>
<td>In force</td>
<td>13 September 1994</td>
<td>24 April 1998</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>In force</td>
<td>21 May 1999</td>
<td>01 July 2001</td>
</tr>
<tr>
<td>Paraguay</td>
<td>In force</td>
<td>29 January 1998</td>
<td>25 May 2001</td>
</tr>
<tr>
<td>Qatar</td>
<td>In force</td>
<td>25 January 2010</td>
<td>27 January 2014</td>
</tr>
<tr>
<td>Korea</td>
<td>In force</td>
<td>11 August 2000</td>
<td>26 August 2002</td>
</tr>
</tbody>
</table>

Costa Rica has been a participant in the negotiations on the Agreement on Trade in Environmental Goods (EGA) and the Trade in Services Agreement (TISA) (Table 2.6).

Table 2.6. Costa Rica - Trade agreements concluded

<table>
<thead>
<tr>
<th>Party to the agreement</th>
<th>Status</th>
<th>Date of signature</th>
<th>Entry into force</th>
<th>Type/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dominican Republic Central America and United States (CAFTA-DR)</td>
<td>In force</td>
<td>5 August 2004</td>
<td>1 January 2009</td>
<td>PTA/Investment chapter</td>
</tr>
<tr>
<td>Canada</td>
<td>In force</td>
<td>23 April 2001</td>
<td>07 November 2002</td>
<td>PTA (separate BIT signed)</td>
</tr>
<tr>
<td>Caribbean States Community (CARICOM)</td>
<td>In force</td>
<td>9 March 2004</td>
<td>15 November 2005</td>
<td>PTA/Investment chapter</td>
</tr>
<tr>
<td>Central America</td>
<td>In force</td>
<td>13 December 1960</td>
<td></td>
<td>Common Market</td>
</tr>
<tr>
<td>Chile</td>
<td>In force</td>
<td>18 October 1999</td>
<td>15 February 2002</td>
<td>PTA (separate BIT signed)</td>
</tr>
<tr>
<td>China</td>
<td>In force</td>
<td>7 April 2010</td>
<td>1 August 2011</td>
<td>PTA (separate BIT signed)</td>
</tr>
<tr>
<td>Colombia</td>
<td>In force</td>
<td>22 May 2013</td>
<td>1 August 2016</td>
<td>PTA/Investment chapter</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>In force</td>
<td>16 April 1998</td>
<td>7 March 2002</td>
<td>PTA/Investment chapter</td>
</tr>
<tr>
<td>EFTA (Switzerland, Norway, Iceland and Liechtenstein)</td>
<td>In force</td>
<td>24 June 2013</td>
<td></td>
<td>PTA/Investment chapter</td>
</tr>
</tbody>
</table>
Main features of Costa Rica’s agreements

Costa Rica has followed a pre-establishment approach in its PTA s, including commitments through Annexes on non-conforming measures (existing and future). In its BITs, it has included provisions related to admission of investment in accordance with national laws and regulations (post-establishment approach).

Despite these different approaches and coverage, substantive provisions which are generally included in both instruments are National Treatment, Most-Favoured Nation, minimum standard of treatment, fair and equitable treatment and full protection and security, protection against unlawful expropriation, guarantees for free and undelayed transfers related to investments, and provisions that prevent discrimination in cases of strife or civil disturbances. Recent agreements, particularly PTAs, have included provisions confirming Costa Rica’s right to adopt, maintain or enforce non-discriminatory regulatory measures related to the protection of environment, health and safety.

Although most BITs include only a broad reference to “Fair and equitable treatment”, in most of Costa Rica’s PTAs this concept is clarified as a standard of customary international law which forms part of a broader concept of minimum standard of treatment. Its text includes explicit obligations not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process of law embodied in the principal legal systems of the world.

In addition, investment chapters in both PTAs and BITs include an asset-based definition of investment with open lists and examples. As to the definition of investor, natural persons possessing the nationality of a Party and legal persons with substantive activities in the Party are covered. In addition, PTAs recognise the Parties and its enterprises as investors as long as they attempt to make, are making, or have made an investment in the territory of another Party.

Costa Rica has included State-State and Investor-State dispute settlement provisions in most of its investment and trade agreements.
2.6. Intellectual property rights and other selected aspects of the broader framework for investment

**Intellectual property rights**

Costa Rica is committed to respecting high standards of intellectual property right (IPR) protection both at regional and multilateral levels. It is a Party to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and to the World Intellectual Property Organization (WIPO), as well to a range of international agreements for IPR protection (Table 2.7).

<table>
<thead>
<tr>
<th>Table 2.7. Costa Rica - International intellectual property right treaties ratified</th>
<th>Year of ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations</td>
<td>1971</td>
</tr>
<tr>
<td>Berne Convention for the Protection of Literary and Artistic Works</td>
<td>1978</td>
</tr>
<tr>
<td>Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms</td>
<td>1982</td>
</tr>
<tr>
<td>Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement – WTO)</td>
<td>1995</td>
</tr>
<tr>
<td>Paris Convention for the Protection of Industrial Property</td>
<td>1995</td>
</tr>
<tr>
<td>Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and Geographic Indications</td>
<td>1997</td>
</tr>
<tr>
<td>Patent Co-operation Treaty</td>
<td>1999</td>
</tr>
<tr>
<td>WIPO Copyright Treaty</td>
<td>2000</td>
</tr>
<tr>
<td>WIPO Performances and Phonograms Treaty</td>
<td>2000</td>
</tr>
<tr>
<td>International Union for the Protection of New Varieties of Plants (UPOV Convention)</td>
<td>2008</td>
</tr>
<tr>
<td>Trademark Law Treaty</td>
<td>2008</td>
</tr>
<tr>
<td>Beijing Treaty on Audio-visual Performances</td>
<td>Not yet in force, signed 2012</td>
</tr>
<tr>
<td>Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled</td>
<td>2017</td>
</tr>
<tr>
<td>Geneva Act on the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and Geographic Indications</td>
<td>Not yet in force, signed 2015</td>
</tr>
</tbody>
</table>

Source: Costa Rica, National Registry (2017)
At the domestic level, IPR protection is embedded in the Constitutional framework. Costa Rica has developed legislation that provides for protection of copyright and related rights, patents, industrial designs, trademarks, geographical indications, plant varieties, undisclosed information, including test data protection. Nonetheless, challenges for their effective implementation remain, which are described in the paragraphs below.

Costa Rican main IPR laws go beyond the TRIPS Agreement. They are:

a) **Trademarks:** The Law on Trademarks and Other Distinctive Signs and its Regulation includes the possibility to grant protection to collective trademarks and to incorporate sound and scent marks.

b) **Geographic indications:** The Law on Trademarks and Other Distinctive Signs and the Regulation for the Protection of Geographical Indications and Appellations of Origin grants sui generis protection to all sorts of products.

c) **Patents:** The Law on Patents and its Regulation and Article 80 of the Biodiversity Law guarantee protection for any invention for all technology fields. Applicable legal exceptions to patent protection are those contained in Article 27.3 of the TRIPS Agreement. In addition, Costa Rica is a signatory to the Patent Cooperation Treaty, whereby registration procedures are equal to those available in the member countries to such agreement.

d) **Test data protection:** The Undisclosed Information Law and its Regulation grants five years of protection for undisclosed information of pharmaceutical products and ten years of protection for agrochemical products. The test data protection covers new products only, which are those that do not contain a chemical component that has been previously approved in the country.

e) **Copyrights and related rights:** The Copyright and related rights Law and its Regulation grant a minimum protection period of 70 years after the death of the author, performer or producer and for broadcasting organisations. Costa Rica limits the liability of Internet Service Providers in cases where third parties infringe copyrights and related rights through their networks. Other copyright laws are: Law on Secured Transactions, which allows IPR to be pledged as collateral to obtain access to credit; Regulations to counteract illegal use of software in public institutions.

f) **Integrated Circuits:** The Law for the Protection on the Design System for Integrated Circuits and its Regulation provides tools to protect the IP and the investment undertaken by companies that achieve technological developments.

---

32 Article 47.
34 Executive Decree 33743 of 14 March 2007.
36 Law 7788 of 30 April 1998.
39 Executive Decree 36880 of 18 October 2011.
40 Law 9246 of 7 May 2014.
g) Enforcement: IP rights can be enforced through administrative, civil and criminal mechanisms available under the Law on Enforcement of Intellectual Property Rights.43

According to the 2016 Market Openness Review of Costa Rica, there are pending challenges regarding IPR enforcement in the country, in particular in terms of copyright piracy and trademark counterfeiting. To address this situation, the Costa Rican authorities have taken action through the Economic Crimes Prosecution Office of San Jose to prosecute infringements, and adopted ex-officio border measures through the Costa Rican Customs regarding counterfeiting and piracy.

**Competition**

Article 46c of the Costa Rican Constitution recognises that actions taken by the state to avoid or impede any monopolistic tendency or practice are to be considered a matter of public interest. Private monopolies as well as any act that threatens or restricts the freedom of commerce, agriculture or industry are prohibited.

Through Law 7472 of 1994, Costa Rica provides for the protection of the rights and legitimate interests of the consumer, the protection and promotion of the process of competition, and free concurrence through the prohibition of monopolies, monopolistic practices and other restrictions on the efficient operation of the market, as well as the elimination of unnecessary regulations for economic activities (Article 1).

The OECD Competition Committee identified four main challenges for Costa Rica’s competition regulation, namely:

- The institutional design of the competition agency (notably in terms of its autonomy and independence);
- the resourcing of the competition agency;
- the current market and sector exemptions from competition law; and
- international cooperation.

As a result, Costa Rica adopted Law 9736 on 18 November 2019 aimed at strengthening the key public agency for competition in the country - the Competition Commission (COPROCOM). The new framework grants COPROCOM further administrative, budgetary and functional independence, enhances its resourcing and creates the conditions for effective engagement in international co-operation. The new law establishes a special procedure of investigation and sanction of anti-competitive behaviour and a new merger control regime, both in accordance with the international best practices. The latter will be applied by both COPROCOM and the Superintendence of Telecommunications (SUTEL).

Costa Rica has been working to develop stronger co-ordination and oversight for the Costa Rican State-Owned Enterprises (SOEs) and improve their corporate governance in the context of the Working Party on State Ownership and Privatisation Practice’s accession review of Costa Rica against the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The Working Party review is also advocating that the Costa Rican government take steps to promote a more level playing field between SOEs and private sector companies that compete in the same sectors (for example in banking and insurance).

---

3. OTHER CAPITAL MOVEMENTS

3.1. Macroeconomic and financial policy context

During the 1980s, Costa Rica faced a Balance of Payments (BoPs) crisis, an accelerated increase in public debt (from USD 643 million in 1976 to USD 2254 million in 1980), and a consequent drop in the Central Bank’s international reserves (from USD 200.6 million in 1977 to –USD 135.2 million in 1980).

Following this economic crisis, Costa Rica adopted an outward-looking development strategy in tandem with an economic model based on open markets, diversifying exports and attracting FDI. Costa Rica has been successful in attracting FDI, both manufacturing and high tech, and receives the most FDI per capita in the Central American region. Costa Rica formally liberalised the capital account in 1992, by removing restrictions on capital movements, including those on capital registry. In 1995, the country eliminated restrictions on the purchase and sale of currency, via a reform to the Organic Law of the Central Bank.

After the 1980s crisis, GDP per capita has been increasing steadily. GDP growth has been strong for the period, slowing in 1996 but then bouncing back, similarly following the global financial crisis of 2008 (Figure 3.1).

The services sector has been a significant driver of growth in recent years, increasing in importance relative to manufacturing. Currently Costa Rica enjoys a large trade surplus in services, due to the strong performance of tourism and professional services. Services account for more than half of Costa Rica’s GDP and have helped narrow Costa Rica’s trade deficit in recent years (from -4% in 2016 to around -2.61% of GDP by 2018). The current account deficit is mostly covered by FDI inflows.

---

45 Ibid.
In recent years, the Central Bank’s policy has moved to a more market driven position on exchange rate determination. Pursuing exchange rate flexibility was part of the move toward an open capital account on the part of the Costa Rican authorities.

Following 23 years of a crawling-peg exchange rate regime to the US dollar and a currency band regime, in 2015 the authorities adopted a de jure floating regime. The Central Bank allows the currency to be freely determined by foreign currency supply and demand but it may participate in the market in order to meet its own foreign currency requirements and those of the nonbank public sector and, at its discretion, to avoid dangerous fluctuations in the exchange rate.

Prior to floating the currency, the Central Bank built up substantial foreign reserves trying to defend the exchange rate band. This was at a substantial cost, as the Central Bank was in a position of negative equity (a legacy of fiscal problems of the 1980s). The international reserves of the Central Bank amounted to USD 6.7 billion (June 15, 2017), or 11.3% of GDP. In 2017, however, the reserves decreased by USD 855 million (June 15, 2017) as the Central Bank conducted operations in foreign exchange (FX) markets to reduce volatility and to supply net requirements of foreign exchange to the nonbank public sector (Figure 3.2).

In conjunction with the de jure exchange rate regime, the Central Bank pursues the introduction of an inflation targeting regime. The regime is gaining in recognition and credibility, with low inflation rates in recent years. The move toward an inflation targeting regime was approved in 2005 and is in the process of full adoption. In 2015-2016 the target was 4% (+/- 1%) and was reduced to 3% (+/- 1%) for 2018, following a period of low inflation. However, the implementation of such a policy remains challenging against the backdrop of a highly dollarized economy.

Dollarization presents risks to the economy as it limits the central bank’s capacity to act as a lender of last resort in foreign currency, it increases the risks of banks insolvency
associated with exchange rate fluctuations and it reduces the effectiveness of monetary policy. The high level of dollarization means that movements in the FX market could have substantial effects on the price level in Costa Rica. Currency mismatches and unhedged positions represent serious risks to the economy. Costa Rica should also assess the fiscal risks linked to the unlimited state guarantee of deposits in state-owned banks.\(^6\)

The high levels of financial dollarization are attributed to the legacy of high inflation, together with the crawling peg exchange rate regime. Conditions in global financial markets following the crisis facilitated this behaviour. Since 1995, dollarization has come down, with the share of savings in foreign currency at 36.5% in 2016, down from 57% in 2001 (Figure 3.3). As of December 2018, the average level of dollarization in the financial system was around 40% for assets, credit, deposits and liabilities.

![Figure 3.3. Costa Rica - Private savings in foreign currency (%) and Inflation (%)](chart)


Following the global financial crisis, there was a renewed increase in the dollarization of bank liabilities, mainly attributed to the availability of cheaper foreign currency funding for banks, the high liquidity in foreign markets and the local opportunity created by high intermediation margins in the state-owned banks. However, since 2016, there has been a trend of depreciation of the colón, and the authorities note an increase in dollarization of deposits but a reduction on the credit side. Furthermore, the authorities have increased capital and provision requirements for credit in dollars to discourage those not generating dollars from borrowing in dollars.

The Central Bank executed a number of macroeconomic and macroprudential measures to mitigate risks stemming from credit dollarization. The Central Bank included short-term external debt operations (2011) and new operations of long-term external debt (2015) in the minimum legal reserve calculation. The legal reserve requirement applies to all financial institutions for deposits and funds received, with a maximum limit of 15%. In June 2019, the Board of Directors of the Central Bank introduced differentiated reserve requirements by currency, by reducing it for colones to 12% and maintaining it at 15% for foreign currency instruments. The measure aims to further discourage financial dollarization. Additional information on this measure can be found in Section 4.2.

The Central Bank has taken other policy measures to restore the attractiveness to save in financial instruments denominated in local currency, such as raising its monetary policy rate (from 1.75% in March to 5.25% in November 2018) or allowing the Central Bank to raise deposits through its electronic platforms, Central Directo and Sistema Nacional de Pagos Electrónicos (SINPE).

Along with dollarization, a main risk to the economy is the weak fiscal position. In response to the global financial crisis, the authorities introduced, from 2009, a fiscal stimulus package, which dampened the potential negative effects on the domestic economy. However, the expansionary fiscal package remains in place and is now adding considerably to the public debt.

Despite the authorities’ consolidation efforts in the past years and the Central Bank’s repeated assertions of the urgency for the country to agree on a solution to the structural issues in public finances, the fiscal deficit remains high. In 2017 the fiscal deficit enlarged to -6.2% of GDP, the worst performance in three decades, and the primary balance to -3.1% of GDP\(^\text{47}\). The Government that took office on 8 May 2018 therefore focused its efforts in providing sustainability to public finances and containing government expenditure. The most important step towards fiscal consolidation of public finances was the approval of Law 9635, which seeks, among other aspects, to increase tax revenue through reforms to the income and sales taxes, together with an amnesty, whilst simultaneously containing expenditure. In this regard, Law 9635 introduces steps to address fragmentation in public employment and controls on the wages of public officials, as well as a fiscal rule that links the growth of current spending to the growth of nominal GDP. Although the effects of this law had a modest impact in the closing of 2018’s fiscal year, the set of actions reduced the fiscal deficit to -5.9% of GDP. Although the primary balance remained at -3.1% of GDP, the public debt of the Central Government closed in 53.55% of GDP, this is, 1.85% less than the 55.40% level originally estimated.

### 3.2. Horizontal measures

The Costa Rican authorities maintain a horizontal measure that could entail restrictions to capital flows: a reserve requirement differentiated in foreign currency. The measure applies across a number of items from items IV (Operations in securities on capital markets) to XI (Operation of deposit accounts) of the CLCM.

Initially, Costa Rica had notified the Committee of three additional horizontal measures that had an impact on capital flows: the Law for discouraging foreign capital inflow (No. 9227), a fixed-income tax applying a discriminatory treatment between residents and non-residents, and restrictions for subsidiaries abroad of Costa Rican Financial Groups and Financial Conglomerates to conduct operations in colones.

Law 9227 introduced an unremunerated compulsory deposit for non-resident funds in the form of a non-interest bearing deposit; as well as a tax on non-resident’s financial assets. The law applied across a number of items in the CLCM and was created as a response to dollarization and with the purpose of discouraging the use of external resources to finance domestic operations, by making it more costly, and therefore less profitable.

Due to a further change in the local and international market conditions that made Law 9227 obsolete, its measures were never effectively applied. Following further discussions in the Investment Committee, and as part of Costa Rica’s commitment to the Codes’\(^\text{47}\)

---

principles of transparency and standstill, Law 9227 was abrogated in December 2018 through the adoption of Law 9635 (*Law for the strengthening of public finances*).

As for the fixed-income tax applying a discriminatory treatment between residents and non-residents, through this same Law 9635, Costa Rica abrogated article 59.h) of the *Income Tax Law* (No. 7092), which imposed a higher tax on fixed income paid to non-residents (15% instead of 8%). The tax to be paid on “interest, commissions and other financial expenses, as well as for the leasing of capital goods paid or credited by persons or companies domiciled in Costa Rica to entities or persons domiciled abroad” is now set at 15% for both residents and non-residents.

Finally, through the enactment of the Law on Cross-border and Consolidated Supervision of Banking Groups (No. 9768) on 04 November 2019, Costa Rica eliminated the restriction for subsidiaries abroad of Costa Rican Financial Groups and Financial Conglomerates to carry out operations or payment services in local currency, colones (Law 7558, Article 147; SUGEF Regulation 8-08, Article 63).

This last provision, which responded to a very specific issue of supervision abroad of Costa Rican banks, was eliminated following the Committee’s invitation to consider modifying or eliminating the restriction for subsidiaries abroad of Costa Rican Financial Groups and Financial Conglomerates to conduct operations in colones.

No reservation has been proposed for any of these measures.

**Reserve requirement differentiated in foreign currency**

Article 62 of the Organic Law of the Central Bank of Costa Rica (Law 7558 of 1995) requires financial institutions to maintain an unremunerated minimum reserve requirement in the Central Bank. Article 63 of the Organic Law establishes the minimum reserve requirements for deposits and funds received, with a maximum limit of 15%. It also provides the possibility of differentiating the level of the reserve requirement, between deposits or funds received in local and foreign currencies. There is no differentiation in the percentage of the reserve requirement by instrument, although differentiation by currency can be applied.

According to Article 80, the Board of Directors of the Central Bank may increase the legal reserve requirements above the 15% limit established in Article 63, up to a maximum of 25%, during a maximum of six months. The Central Bank will pay an interest over the excess, equal to the basic passive rate for colones and the LIBOR rate for foreign currency. This faculty applies to the possibility of increasing the reserve requirement for both local and foreign currency.

The Costa Rican reserve requirement is mandatory on all deposits, liabilities and external debt of financial institutions operating in Costa Rica (including banks -public and private-, non-bank financial institutions, savings and loan co-operatives), regardless of their ownership or residency (Articles 62, 63, 80 of Law 7558, and resolutions 5496-2011 and

---

48 Regulated by Law 7558, Costa Rican Financial Groups are locally incorporated holding companies which own at least 25% of the capital of different institutions engaged in providing financial services, either locally or abroad. The holding company is accountable on the appropriate Superintendency for the operations of each institution.

49 Financial Conglomerates can be understood as the Financial Groups of Costa Rican public banks. Like private Financial Groups, subsidiaries abroad of public banks are not subject to monetary control by Costa Rica’s Central Bank
5686-2015 of the Board of Directors of the Central Bank). The Costa Rican authorities have informed the OECD Secretariat that once branching of foreign banks is allowed in the country (reform currently in progress), the measure would apply to foreign banks’ branches as well.

Since 1995, the Costa Rican Central Bank has used the minimum reserve requirement for deposits and funds, as per Articles 62 and 63, as one of the main tools of monetary policy. The instrument was initially set at the highest level (15%) for both Local Currency Unit (LCU) and foreign currency. From 1999, it was reduced gradually until it reached a minimum rate of 5% in 2002. Over 2003-2005, it was again raised gradually, until it reached 15% in August 2005. Between 2005 and May 2019, the requirement was kept constant at 15% for both LCU and foreign currency-denominated operations—therefore without a differentiated treatment in relation to the currency of the operation.

On 31 May 2019, the Board of Directors of the Central Bank of Costa Rica agreed to apply a currency-differentiated reserve requirement on financial institutions’ liabilities, with a differentiated rate for Local Currency Unit (LCU), set at 12%, and foreign currency, at 15% (Comunicado de Política Monetaria 5-2019, 3 June 2019).

In the context of Costa Rica’s accession process to the OECD, the country submitted its position under the OECD investment instruments, where it proposed not to lodge reservations covering the measure firstly as a differentiated treatment in relation to the currency of the operation was never applied, and secondly, as in the context of the review of the Codes the Investment Committee had not reached a conclusion on the conformity of currency-based measures, including reserve requirements differentiated by currency, under the CLCM.

The revised Code and User’s Guide provide that restrictions on the foreign currency liabilities of financial institutions should be assessed on a case-by-case basis. In particular, the review resulted in a new understanding with respect to certain country-specific measures related to financial institutions’ foreign currency liabilities as reflected in Supplementary Explanatory Note 12 to Item IV of Annex A of the CLCM which provides that: “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”. Costa Rica’s measure falls in this category.

On 12 September 2019, the ATFC discussed this measure together with the Costa Rican authorities.

The ATFC considered the following elements in its analysis of Costa Rica’s currency-differentiated reserve requirement: (i) the scope and calibration of the measure, (ii) the impact of the measure on the operations covered by the CLCM, (iii) the rationale for the measure, and (iv) the exchange rate environment.

Further to this analysis, the ATFC invited the Committee to:

a) decide that the outcome of the case-by-case assessment, conducted as per the User’s Guide Supplementary Explanatory Note 12 to Item IV of Annex A, is that, when it becomes a Codes Adherent, Costa Rica does not need to lodge reservations for the measure at this specific point in time;

b) note that any substantial changes to the measure and the evolving macroeconomic and financial context of the country may alter this assessment over time;
c) recall that, as a Codes Adherent, Costa Rica will have an obligation to notify the Committee of any changes to the measure and to the conditions that lead to its enactment, and recall that the measure could be reviewed by the Committee including as a result of a reference by another Member or the OECD Secretariat pursuant to Article 16 of the CLCM.

### 3.3. Capital Inflows

Costa Rica has experienced consistently positive capital inflows for the past decade and half, largely driven by constant inflow of direct investment as well as varying, yet large portfolio inflows.

*Figure 3.4. Costa Rica – Capital Inflow Movements (USD Billion)*

![Graph showing capital inflows](image)

*Source: IMF (2018) and OECD calculations (2018).*

Costa Rica’s FDI inflows are mostly in equity, though the share of debt instruments has seen some growth since 2010s. Most of the FDI flows originate from the United States as well as Spain and Mexico. Portfolio inflows to Costa Rica comprise primarily debt securities, and mostly in the form of long-term debt securities issued by the Central Government. The latter inflows have been very volatile, in particular after the global financial crisis.

*Figure 3.5. Costa Rica – FDI Inflow (USD Billions)*

![Graph showing FDI inflows](image)

*Source: IMF (2018) and OECD calculations (2018).*

*Figure 3.6. Costa Rica – Portfolio Inflow (USD Billions)*

![Graph showing portfolio inflows](image)

*Source: IMF (2018) and OECD calculations (2018).*
Real Estate

Regulations on real estate operations necessary to carry a direct investment, including acquisition of commercial real estate by non-residents wishing to establish an enterprise in Costa Rica, fall within the scope of item I/A. They are dealt with in the Chapter on Foreign Direct Investment, under Real Estate.

As for other real estate operations, the Costa Rican legislation restricts the granting of a concession or a permit of use to perform any type of activity, including the building of real estate, by foreign non-residents, in coastal urban areas, border regions, and for the maritime terrestrial zone, in islands and the area comprised by the last 150 meters after the initial 50 meters from ordinary high tide line.

Restrictions for non-residents and foreign-owned or controlled companies to obtain a concession or a permit of use for the use of state-owned land comprise both real estate investments (covered under item III/A,1 of the CLCM), as well as the measures restricting access by non-residents to land for business purposes (covered under item I/A of the CLCM) and have been reflected in proposed reservation under each of these items of the CLCM.

Securities and other financial market instruments (items IV to VII)

There are no restrictions on the admission abroad of domestic securities, the sale of securities abroad by residents or the purchase by non-residents of domestic securities (items IV/A,C(1),D(2); V/A,D(2); VI/A,C(1),D(2); and VII/A,C(1),D(2) of the CLCM) other than those noted in section Horizontal measures above and the following reservation:

- IV/C (1) concerning the purchase of shares and other securities of a participating nature which may be affected by laws on inward direct investment, as discussed in the Chapter on Foreign Direct Investment.

Operations by residents abroad

The Costa Rican authorities have confirmed that there are no restrictions for the issuance of securities abroad by Costa Rican residents. Also, that there are no restrictions for the sale of Costa Rican securities abroad.

Operations by non-residents in the country concerned

Costa Rica requires both residents and non-residents to carry out their transactions through an authorised broker or bank (intermediary), subject to the supervision of the General Superintendency of Securities SUGEVAL (Law 7732 of 1997, Article 2). The Costa Rican authorities have noted that this requirement is intended to ensure compliance with securities laws and regulations, which guarantee the rights of investors such as access to relevant information. These requirements are in line with remarks under items IV, V, VI and VII of the CLCM to the extent that Members may require that “such transactions and transfers must be carried out through authorised resident agents”.

---

50 In particular this covers: road transport (freight), electricity, telecommunications with regards to joint ventures with ESPH and private security (including surveillance and investigation services, and private security training schools).
Credits and deposits (items VIII to XI)

Concerning items VIII to IX of the CLCM, restrictions apply to the granting of credits, financial credits and loans by non-residents to residents, if the relationship is concluded and serviced in the jurisdiction of Costa Rica.

No restrictions apply if the relationship is concluded and serviced in the jurisdiction of the foreign provider. These operations are allowed due to the absence of any specific regulation forbidding the private transaction. As explained in the Chapter on Foreign Direct Investment, section General legal framework for foreign direct investment, by interpretation of the Constitutional principles of non-discrimination (art. 19), autonomy of free will (art. 28), property rights (art. 45) and freedom to conduct business (art. 46), they are considered to be authorised.

However, as detailed below in the Chapter on Financial Services: Establishment and Cross-Border Trade, the cross-border provision of most financial services by non-residents, including the granting of credits, financial credits and loans, is not allowed in Costa Rica. This entails that non-resident financial institutions cannot offer and promote in the country’s jurisdiction their services as grantors of credits, financial credits and loans to residents.

Restrictions for the cross-border provision of financial services by non-residents in the country have been reflected in proposed reservations to items E/2 and E/7 of the CLCIO. No reservation for capital movements is proposed under the CLCM.

In order for resident banks to receive deposits and operate current accounts and saving sections, they need to meet the following requirements known as “peaje bancario” or “banking toll” (Law 1644, articles 59 and 76):

a. Maintain a minimum loan balance with the state-owned banks managing the development credit fund “Fondo de Crédito para el Desarrollo” of 17% of total short-term deposits (30 days or less). In case private banks wish to transfer this toll exclusively in colones, the percentage is of only 15%.

b. Alternatively, establish at least four agencies or offices in different rural regions of the country, dedicating at least ten percent of all short-term deposits (30 days or less) to credits for programs reviewed and approved by the development credit fund.

According to the Costa Rican authorities, the “peaje bancario” was established when the country decided to allow the private sector to operate current accounts. Since state-owned banks are considered key for investment in development projects and promotion of financial growth in rural areas, legislators created a “toll” to private banks as a way of allowing competition, without seriously impacting the performance of development goals or the provision of services in rural regions.

The minimum loan balance can be transferred to the state-owned banks either in the same currency and the same proportion in which the short-term deposit has been made, or exclusively in colones. In case private banks decide to assume the exchange rate risk and make the transfer exclusively in colones, they would receive an incentive in the form of a 2% reduction of the toll.

The Costa Rican authorities clarified that the objective of the preferential toll is to encourage deposits in local currency to the fund, due to the high demand for loans in colones from the development credit fund, typically by unhedged debtors (SMEs for small projects focused on priority sectors of the local economy). However, even in the presence
of an incentive, to date no private bank has used this option and instead prefer to pay either a 17% banking toll or to open branches in rural regions of the country.

Measures such as the banking toll are currently being reviewed by the OECD Committee on Financial Markets, where Costa Rica has been asked, in general, to take additional measures to level the playing field between private and state-owned financial institutions to improve the competitive conditions of the banking market.

While the preferential banking toll of 15% might create a disincentive for banks to conduct operations in foreign-currency, the Costa Rican authorities have reported that in reality it has never been used by any bank. Moreover, the measure applies to all private banks, resident and non-resident alike. In light of this, the Costa Rican authorities have proposed not to lodge a reservation for this measure.

Costa Rica notified that for operations covered under item X (Sureties, guarantees and financial back-up facilities), it required guaranteed capital funds to be granted by resident banks or insurers, or non-resident banks with a credit rating of investment grade issued by a rating agency recognised as national by the U.S. Securities and Exchange Commission (SEC) or its subsidiaries (Regulation 762 of 2008, article 67).

As part of Costa Rica’s efforts to further align itself with OECD best practices, the authorities confirmed that this provision was abrogated on 12 July 2018, in order to eliminate any reference to specific credit rating agencies.

All forms of discrimination for guaranteed capital funds were eliminated and no reservation is therefore required.

Regarding item XI (Operations of deposit accounts), non-residents can freely open deposit accounts in local and foreign currency without any restriction.

For transparency, the authorities wish to record that only institutions that are authorised to grant financial services in the country are allowed to open reserve deposit accounts within the Central Bank (Law 7558, Articles 60, 62, 68). As currently Costa Rica does not allow non-resident banks to offer financial services in the country, non-residents financial institutions are unable to open reserve deposit accounts in the Central Bank. This measure does not fall under the purview of the CLCM.

In addition, the Costa Rican authorities reported the existence of an unlimited state guarantee only covering state-owned banks for all senior liabilities (Law 1644, Article 4). On 12 February 2020 Costa Rica enacted Law No. 9816, creating a deposit insurance mechanism for non-state banks, either domestic or foreign-owned.

**Other operations**

The Costa Rican authorities have noted that they maintain no measures in force concerning inflow operations corresponding to operations covered by the CLCM under items XIII (Life assurance), XIV (Personal capital movements), XV (Physical movement of capital assets), or XVI (Disposal of non-resident-owned blocked funds).

Measures concerning items XII (Operations in foreign exchange) and item VI (Other operations in negotiable instruments and non-securitised claims) which have no natural correspondence with an inflow or an outflow operation are considered under section 3.5 below.
3.4. Capital outflows

Over the past two decades, Costa Rica has gradually increased its international investment assets, especially through consistently positive FDI outflows as well as mostly positive other outflows (Figure 3.7).

![Figure 3.7. Costa Rica – Capital Outflow Movements (USD Billion)](image)


Costa Rica’s FDI outflows are mainly in debt instruments, although large equity investments have been made in some quarters, mostly to its neighbouring economies. Other outflows from Costa Rica are mostly in the form of currency and deposits, mainly from banking and corporate sectors.

![Figure 3.8. Costa Rica – FDI Outflow (USD Billions)](image)


![Figure 3.9. Costa Rica – Other Outflow (USD Billions)](image)


**Real Estate**

With regards to the purchasing of real estate abroad, the following Costa Rican financial institutions cannot invest in real estate, neither abroad nor locally:

- except if the investment in real estate is for the purpose of acquiring own premises.
The Costa Rican authorities have indicated that investing in real estate and real estate-backed securities is discouraged for financial institutions, for reasons related to risk diversification. They are authorised, however, to invest in real estate through other enterprises members of the same Costa Rican Financial Group (Law 7558, article 141). Additionally, while pension funds cannot invest directly in real estate, they can invest in real estate-backed securities.

The restriction for the acquisition of real estate abroad by Costa Rican resident banks, savings and credit co-operatives, non-bank financial institutions and pension funds is reflected in a proposed reservation under item III/B.1 (List B) of the CLCM.

**Securities and other financial market instruments (items IV to VII)**

**Admission of foreign securities on domestic financial markets**

Regarding the admission of foreign securities and other financial market instruments in Costa Rica (issue and introduction), the authorities noted that foreign securities are subject to the same non-discriminatory requirements for public offer than Costa Rican-issued securities and as such, do not lead to proposed reservations under the CLCM.

Securities must be issued in series and obtain previous authorisation from the SUGEVAL (Law 7732, articles 10 and 22; Regulation 571 of 2006, articles 9, 10 and 15). Offerings of securities to less than 50 identifiable investors and through other means different from massive communication, are considered private and, therefore, are not required to be issued in series or subject to registration requirements from SUGEVAL.

Both residents and non-residents must carry out their transactions in the secondary market through an authorised broker or bank (intermediary). The Costa Rican authorities have noted that this requirement is intended to ensure compliance with securities laws and regulations, as well as to protect local costumers, which guarantee the rights of investors such as access to relevant information. These requirements are in line with remarks under items IV, V, VI and VII of the CLCM to the extent that Members may require that “such transactions and transfers must be carried out through authorised resident agents”.

**Investments abroad by institutional investors**

Regarding purchases of securities and other financial market instruments abroad by residents, covered by items IV/D(1), V/D(1) and VI/D(1), Costa Rica initially notified restrictions for investments of the Costa Rican Stock Exchange on its own behalf, collective investment funds, pension funds, and for certain financial institutions when investing in real estate-backed securities.

Further to recommendations of the Committee, Costa Rica modified on 12 July 2018 their regulation for investments of the Costa Rican Stock Exchange on its own behalf and for collective investment funds, SUGEVAL Agreement 50-10 of 2010, to eliminate all discriminatory treatment between residents and non-residents.
As a result of the modification, the restriction for the Costa Rican Stock Exchange to purchase securities abroad, on its own behalf, exclusively with a BB or lower risk rating granted by a foreign rating agency recognised by the U.S. Securities and Exchange Commission (SEC) was eliminated (article 13). The current regulation allows for the purchase of foreign securities rated by any local or foreign rating agency, without discrimination.

For resident collective investment funds, the provision requiring that securities bought and their issuers have a risk rating exclusively from a nationally recognised statistical rating organization (NRSRO) according to prudential regulation by the U.S. SEC (Regulation 762 of 2008) was also eliminated. The current regulation allows for the use of any recognised rating agency and for the foreign securities to be listed for trading on an organised market, which should have a set of rules and regulatory body recognised by the International Organisation of Securities Commissions (IOSCO) (Article 55).

The measures for collective investment funds are non-discriminatory and do not constitute a restriction, to the extent that they set regulatory and supervisory requirements which are comparable for residents and non-residents, and do not need to be reflected in the list of reservations.

For pension funds, Costa Rica maintains the following restrictions for residents to purchase securities and other financial instruments abroad:

- Purchases of securities and other financial instruments abroad cannot exceed more than 25% of the fund’s total assets. However, if the real return on the investments in national securities is equal to the lower international yield, then CONASSIF can authorise up to 50% (Law 7983, Article 62);

- Non-resident securities and other financial instruments must be registered in a stock exchange, settlement and clearing company, or over-the-counter market, from a country that is an ordinary member of IOSCO and has been given a sovereign risk rating of investment grade by an international risk-rating agency (Regulation 1452 of 2008, Article 14).

The requirement of IOSCO membership and a sovereign risk rating of investment grade by an international risk-rating agency amounts to a technical requirement.

Limits on foreign assets of pension funds amount to a restriction under the Codes. They have been reflected in proposed reservations under items IV/D(1) (Operations in securities on capital markets), V/D(1) (Operations on money markets) and VI/D(1) (Other operations in negotiable instruments and non-securitised claims) of the CLCM.

During the course of the review, in an effort to further align with the principle of non-discrimination, Costa Rica modified its previous limitation for pension funds to invest in non-resident securities and other financial instruments issued in currencies different than colones, dollars (USD), pounds (GBP), yen (JPY), or euros (EUR). This restriction was abrogated on 27 May 2019, following the amendment to the Regulations on Asset Management (Regulation 1452 of 16 October 2018, article 15). Therefore, the reservations initially proposed for items IV/D(1) (Operations in securities on capital markets), V/D(1) (Operations on money markets) and VI/D(1) (Other operations in negotiable instruments and non-securitised claims) of the CLCM are no longer necessary.

52 From 2007 CONASSIF has authorised a progressively higher percentage, which has remained at 50% since 2009.
The following Costa Rican financial institutions cannot invest in real estate-backed securities abroad: resident banks, savings and credit co-operatives and non-bank financial institutions (Law 1644, article 73; Law 7391, article 21; Law 5044, article 10).

As mentioned in section Real Estate above, the Costa Rican authorities discourage financial institutions to invest in real estate and real estate-backed securities (with the exception of pension funds for the latter). Investment is only possible as part of a Costa Rican Financial Group and through a separate enterprise.

The prohibition for resident banks, savings and credit co-operatives and non-bank financial institutions to invest in real estate-backed securities abroad amounts to a restriction under the Codes and has been reflected in proposed reservations under items IV/D(1) (Operations in securities on capital markets) and V/D(1) (Operations on money markets).

No further measures that amount to restrictions exist for Costa Rican residents to purchase securities abroad.

For operations covered under item VII/D(1) (Operations in collective investment securities), initially Costa Rica notified restrictions for Costa Rican collective investment funds to purchase collective investment securities abroad.

According to former article 111 of Regulation 762 of 2008, foreign collective investment securities had to:

- Be authorised for public offering of securities by a regulatory body that is a member of IOSCO;
- Comply with the same rules of indebtedness and diversification established for: (i) Costa Rican funds; (ii) United States' registered funds; or (iii) "harmonised investment funds" in accordance with the definition established in the directives of the European Union;
- Be within a fund with a minimum of one year of operation and at least USD 20 million;
- In the case of real estate investment funds, only those authorised in the following markets are allowed: United States; Spain; Mexico; Colombia; Chile; Canada; Brazil; United Kingdom; France; The Netherlands; Australia; Germany; Ireland; Italy; Luxembourg; Switzerland; Portugal; Japan; and Hong Kong, China.

As part of Costa Rica’s efforts to further align with OECD best practices, Costa Rica abrogated article 111 of Regulation 762 of 2008 and therefore eliminated all restrictions for Costa Rican collective investment funds to purchase collective investment securities abroad.

Credits and deposits (items VIII to XI)

Resident non-bank financial institutions cannot grant credit, financing or sureties, guarantees or financial back-up facilities to non-residents (Law 5044, Article 12), while such operations are permitted towards residents.

This restriction impacts operations under items: VIII(i&ii)/B (Credits directly linked with international commercial transactions or with the rendering of international services), IX/B (Financial credits and loans) and X(i&ii)/A(2),B(2) (Sureties, guarantees and financial back-up facilities), and has been reflected in proposed reservations.
For item X (Sureties, guarantees and financial back-up facilities), according to Law 6220, there are restrictions for residents to encumber the shares of locally incorporated media or advertising agency companies in favour of corporations with bearer shares, foreign enterprises or foreign nationals (Article 4).

This restriction for shares of resident media and advertising agency companies to serve as guarantees is a remnant of the previous restrictions for foreign investment in audio-visual companies, which was abrogated by the Constitutional Court in 1994.\(^{53}\) The Legislative Assembly is currently considering a bill of law (No. 20661) which would derogate article 4 of Law 6220.

Pending the proposed modification of Law 6220, the Costa Rican authorities note that this measure has a bearing on item X(i&ii)/A2 (Sureties, guarantees and financial back-up facilities) of the CLCM and propose to lodge a reservation, which will be lifted once Law 6220 is modified.

Regarding item XI (Operation of deposit accounts), there are no restrictions for residents to hold deposit accounts with non-resident institutions in both foreign currency and colones.

**Other operations**

Regarding operations covered by item XII (Operations in foreign exchange), the Costa Rican authorities have reported that the exchange market in Costa Rica is free and foreign exchange and domestic currency are freely convertible.

According to Law 7558, trading in foreign exchange in Costa Rica can be performed by authorised domestically incorporated financial intermediaries and/or foreign exchange intermediation business (*casas de cambio*).

All foreign currency transactions carried out by commercial banks, as well as the maintenance of assets and liabilities in foreign currencies abroad are subject to the provisions of the legislation of the Central Bank of Costa Rica and related resolutions and recommendations agreed by the Board of the Central Bank.

The Central Bank informed of the legal possibility of introducing temporary restrictions on convertibility in case of serious disturbances of the Balance of Payments (BoPs), for a maximum of one year (Articles 82 and 83 of Law 7558). These restrictions entail an obligation to channel all FX operations through the Central Bank, as well as repatriation and surrender requirements. Articles 82 and 83 are not operative and have not been used by the Central Bank for the past 35 years.

Costa Rica understands that there is an expectation not to lodge reservations on provisions that are not currently in force and rely, if necessary, on the safeguard provisions of the Codes of Liberalisation, namely Article 7 of the Codes. Articles 82 and 83 of Law 7558 are further detailed below in section *Non-operative legal provisions impacting capital flows in Costa Rica*.

The Costa Rican authorities have noted that they maintain no measures in force concerning operations covered by the CLCM under items XIII (Life assurance), XIV

\(^{53}\) See Decision of the Constitutional Chamber of the Supreme Court 5965-94 of 11 October 1994.
(Personal capital movements), XV (Physical movement of capital assets), or XVI (Disposal of non-resident-owned blocked funds).

3.5. Derivatives (covered under items VI and XII)

This section deals with regulations regarding derivatives trading and which have a bearing on both inflow or outflow operations and which are covered under item VI (Other operations in negotiable instruments and non-securitised claims) of the CLCM and item XII (Operations in foreign exchange) of the CLCM.

There are no restrictions in place preventing resident companies to purchase derivatives and structured products in foreign markets or to offer derivatives and structured products to non-residents in the country, except for the negotiation of foreign exchange derivatives (Central Bank regulation adopted in session 5404-2008).

However, during the review process, it was noted that non-residents were not allowed to offer derivatives and structured products in the country. This restriction for non-residents covered both operations in negotiable instruments and non-securitised claims (derivatives) and foreign currency options and futures (Central Bank regulation adopted in session 5404-2008).

The SUGEVAL indicated that the restriction for operations in negotiable instruments and non-securitised claims was in place due to lack of regulation allowing for the development of a formal derivatives market in the country. Operations were conducted exclusively bank-to-bank and derivatives trading was not possible through other entities supervised by the SUGEVAL.

In line with OECD best practices, Costa Rica decided to modify the Law Regulating the Securities Market 7732 to allow for trading in operations in negotiable instruments and non-securitised claims.

On 17 September 2019, the Legislative Assembly approved bill of law 21 293, which provides the legal basis for the creation of a market for negotiable instruments and non-securitised claims, including derivatives. Thus, no reservation under item VI/B, C2, C3 (Other operations in negotiable instruments and non-securitised claims) is proposed.

A reservation for item XII/A2, A3 (Operations in foreign exchange) of the CLCM is proposed, to cover operations in foreign currency options and futures.

3.6. Non-operative temporary safeguards on convertibility

Costa Rica notified that it maintains one legal provision that could have an impact on capital flows, but which is currently not operative.

The measure consist of temporary restrictions on convertibility in case of severe disturbances of the BoPs (Articles 82 and 83 of Law 7558). These restrictions consist in the obligation, for up to one year, to channel all FX operations through the Central Bank and/or introduce repatriation and surrender requirements. The last time these measures were used was in 1984.

In accordance with the spirit of the OECD Codes and the requirements established in the Roadmap for Accession of Costa Rica, no precautionary reservations have been lodged.

As noted under the heading Other operations of section Capital outflows, Costa Rica wishes to maintain the legal possibility of introducing temporary restrictions on
convertibility in case of severe disturbances on its BoPs, for maximum one year (Articles 82 and 83 of Law 7558 Organic Law of the Central Bank).

These restrictions consist of an obligation to channel all FX operations through the Central Bank, as well as repatriation and surrender requirements.

The Costa Rican authorities have noted that although these measures will not be active at the time of Costa Rica’s accession to the OECD Convention and adherence to the OECD Codes of Liberalisation, the authorities have in the past made use of these measures, and they wish to retain the flexibility of reintroducing them if circumstances so warrant. These measures have a bearing on item XII (Operations in foreign exchange) of the CLCM.

The Costa Rican authorities also wish to stress that today Costa Rica has no general exchange controls in place and has demonstrated a long-standing record of progressive liberalisation. All convertibility restrictions were lifted since 1992 and the last time that the Board of Directors of the Central Bank enacted the obligation to channel operations through the Central Bank was in 1984.

According to the Central Bank of Costa Rica, these restrictions were created at the beginning of the 1980s, when Costa Rica was facing a BoPs crisis due to a general contraction of the economy and increase of international oil prices, together with an accelerated increase in public debt, and a consequent drop in the Central Bank’s international reserves.

Restrictions on convertibility can only be enacted in case of severe disturbances of the BoP, which must be duly confirmed by the Board of Directors of the Central Bank (Law 7558, Article 77) and by the IMF, by virtue of Costa Rica’s adherence to IMF Article VIII by Law No. 55 of 24 December, 1945.

Article 82 establishes an obligation to channel, for a maximum of one year, all FX operations through the Central Bank. This measure allows the country to access foreign currency in moments of serious lack of liquidity. The Board of Directors of the Central Bank would establish the buy and sale exchange rates.

Article 83 establishes repatriation and surrender requirements for any individual or enterprise that has obtained foreign currency by way of exports of goods and services. They would have to sell them totally or partially, to the entities authorised by the Central Bank, in the periods it specifies. This measure may not be established for a period longer than one year.

Both articles forbid any discrimination between resident and non-residents. Restrictions will be applicable to all foreign currency in the country, regardless of its origin.

According to the User’s Guide of the Codes, “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”.

The Costa Rican authorities, mindful of their commitment to the principle of avoidance of precautionary reservations, while retaining the flexibility of reactivating articles 82 and 83, wish to refrain from requesting to lodge reservations under item XII of the Codes, but nevertheless wish to retain the flexibility to activate them, if circumstances so warrant.

At present, Costa Rica’s convertibility restrictions in case of severe disturbances to the BoP are not operative. However, it is the understanding of the Costa Rican authorities that, following the adherence of Costa Rica to the OECD Codes of Liberalisation, the
powers of the Board of Directors of the Central Bank to reinstate articles 82 and 83 of Law 7558 when circumstances so warrant, can be exercised pursuant to the safeguard provisions of the OECD Codes of Liberalisation.

The safeguard provisions include the possibility to introduce reservations for operations covered by List B of Annex A to the CLCM and the clauses of derogation under Article 7 of the Codes. It is with this understanding that the Costa Rican authorities agree not to request the lodging of reservations to cover these measures under item XII (Operations in foreign exchange).
4. FINANCIAL SERVICES: ESTABLISHMENT AND CROSS-BORDER TRADE

4.1. Overview of the financial sector

Financial intermediation in Costa Rica remains largely bank-dominated (IMF, 2016)\(^{54}\). According to the Costa Rican Central Bank, the first decade of the 2000s saw a deepening of the financial system with almost doubling of the ratio of credit to GDP from 20% in 2000 to almost 49% in 2009 (BCCR, 2009)\(^{55}\). In 2018 the SUGEF recorded a ratio of credit to GDP of 66%.

As mentioned in section four on Other capital movements, the country’s financial system is highly dollarized, especially bank loans and deposits, constituting a significant vulnerability associated with slower and more volatile output growth and less stable demand for money (OECD, 2016)\(^{56}\).

By December 2018, banks and financial intermediaries (BFIS) accounted for 94.7% of the financial sector’s assets in Costa Rica, while other financial institutions remain limited in their scope and presence (Table 4.1). The Costa Rican capital market is still at an early stage of development.

<table>
<thead>
<tr>
<th>Table 4.1. Costa Rica -Financial system and economy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Assets/GDP</strong></td>
</tr>
<tr>
<td>Banks and Financial intermediaries (BFIS)</td>
</tr>
<tr>
<td>Insurance Market</td>
</tr>
<tr>
<td>Securities Market</td>
</tr>
<tr>
<td>Pensions (administrators)</td>
</tr>
<tr>
<td><strong>Total Investments/GDP</strong></td>
</tr>
<tr>
<td>Banks and Financial intermediaries (BFIS)</td>
</tr>
<tr>
<td>Insurance Market</td>
</tr>
<tr>
<td>Securities Market</td>
</tr>
<tr>
<td>Pensions (administered funds)</td>
</tr>
</tbody>
</table>

\(^{54}\) International Monetary Fund, 2016. IMF Country Report No. 16/132


Costa Rica’s financial sector has undergone a slow process of liberalisation over the past twenty years and is now largely open to foreign investment. Both the banking sector and pension plans were state-owned but opened to private competition in 1996; more recently, in 2008, the state monopoly on insurance was terminated with an opening of the market through the DR-CAFTA and the implementation of Law 8653 (Law Regulating the Insurance Market).

However, the state still dominates the sector. In 2017, three state-owned banks (Banco Nacional de Costa Rica, Banco de Costa Rica, and Banco Crédito Agrícola de Cartago - Bancredito57) accounted for 63% of the total banking system assets and 60% of total banking system loans (OECD, 2018)58. In addition, all public institutions are obliged by law to deposit their cash with one of the state-owned banks. The state-owned insurance company (Instituto Nacional de Seguros, INS) still holds a market share of 72%59.

State-owned commercial banks and the state-owned insurance company enjoy a government guarantee on senior liabilities which private banks, non-state public law institutions and private insurers do not (Law 1644 of 1953, article 4 and Law 12 of 1924, article 1).

The government guarantee on senior liabilities for commercial banks covers deposits and securities issued by state-owned banks in both colones and foreign currency. There is no quantitative limit for the amount guaranteed; however, it is considered to account for more than 20% of GDP (OECD, 2016).

The guarantee will be applicable exclusively for exceptional situations of crisis that prevent the normal operation of the state-owned bank and not for all types of default. An exceptional situation has been defined as "serious problems of solvency and liquidity of the state [owned] bank, which prevent them from meeting obligations: withdrawal of deposits and current obligations and even the continuity of banking operations. [When] the banking entity evidences capital deficiency or indications of irregularities that put it in danger or in a situation in which its operation is almost impossible." (Opinion of the Attorney General's Office number C-024-2004).

This government guarantee was applied in 1994, after the default and closing of state-owned bank Banco Anglo Costarricense. According to information provided by the Costa Rican authorities, the Central Bank covered all liabilities of the defaulted bank, both in

---

57 Bancredito was absorbed by Banco de Costa Rica through Law 9605 of 19 September 2018, due to lack of financial viability.
colones and dollars, although payment from the Central Bank was made exclusively in colones.

As of 12 February 2020, private banks benefit from a deposit insurance mechanism through Law No. 9816. The funded deposit insurance scheme covers: (i) private banks, (ii) Banco Popular (special-law bank), (ii) financial institutions and co-operatives under the supervision of SUGEF. The fund will mitigate the contingency of the government guarantee and cover demand deposits, term deposits, savings and investments of natural and legal persons in any currency. It is expected to cover at least 90% of individual savers and up to six million colones (approximately USD 10.500) per person per entity (to be paid in colones). The fund does not guarantee bearer deposits or deposits belonging to natural or legal persons linked to the entity in resolution.

Direct branching is allowed only for insurance and reinsurance services, which were authorised when the sector was opened in 2008, collective investment fund managers and portfolio management services. It is not admitted for banking and other financial services (e.g. brokerage houses, settlement and clearing companies, rating agencies, custodians, and pension fund management), nor for insurance intermediaries, and private pensions. Provision of financial services, other than insurance, to residents requires incorporation of a subsidiary in the form of a sociedad anónima.

In the first accession review on selected issues, the Costa Rican authorities explained that traditionally lawmakers consider subsidiaries as a stronger business model for financial services than branching. The incorporation requirement, which entails incorporation of capital and appointment of a board of directors (even when members of the board do not need to be residents), allows for easier supervision by Costa Rican authorities. Moreover, they explained that it has not prevented foreign investment in the country. As an example, it was mentioned that from the 12 private banks currently operating in the country, ten are foreign-owned.

The Committee reminded Costa Rica that the Core Principles in the Accession Roadmap (Annex 1) provide for "relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services" and recommended Costa Rica to continue its work to further relax restrictions for bank branches.

Following this recommendation, Costa Rica undertook extensive internal consultations and took the policy decision to allow the provision of banking services by branches of foreign banks.

Further information on the action plan for implementation of this policy decision, as well as main features of branching operation in Costa Rica can be found in section Establishment.

As noted in Chapter Two, section 2.2 General legal framework for foreign direct investment, by interpretation of the Constitutional principles of non-discrimination (art. 19), autonomy of free will (art. 28), property rights (art. 45) and freedom to conduct business (art. 46), the Costa Rican authorities have confirmed that operations falling under the scope of the CLCIO that are not expressly regulated by law are therefore permitted for both residents and non-residents.

Under this provision, Costa Rican residents are free to purchase abroad financial services at their own initiative.

60 See Footnote 15.
On the cross-border provision by non-resident companies in Costa Rica, Costa Rica maintains a number of restrictions. Cross-border provision of financial services by non-residents is not allowed, with the exception of cross-border reinsurance and retrocession (item D/5 of CLCIO), specific insurance lines covered by article 16 of Law 8653 and under the terms described below for items D/2 (insurance relating to goods in international trade), D/3 (life assurance), D/4 (all other insurance) and D/7 (entities providing other insurance services); as well as asset management, cash management and safekeeping of assets (item E/4), and private advisory and agency services; credit reference and analysis; investment research; mergers, acquisitions, restructurings, management buyouts, and venture capital (item E/5).

The Costa Rican authorities indicated that these restrictions have been considered necessary to enforce the regulatory and supervisory objectives of the Financial Superintendencies.

4.2. Banks, securities firms and other non-bank intermediaries

Establishment

Banks

A total of 15 banks were operating in Costa Rica by June 2019: two state-owned banks, two non-state public law institutions (banks created by special laws), two domestically-owned banks and nine foreign-owned banks (Table 4.2).

Table 4.2. Costa Rica - Financial institutions and market share of the banking system (2019)

<table>
<thead>
<tr>
<th>Financial intermediaries</th>
<th>Number of participants</th>
<th>Market share</th>
</tr>
</thead>
<tbody>
<tr>
<td>State-owned banks</td>
<td>2</td>
<td>36.08%</td>
</tr>
<tr>
<td>Banks created by special laws</td>
<td>2</td>
<td>11.58%</td>
</tr>
<tr>
<td>Private banks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of which, foreign owned</td>
<td>9</td>
<td>30.13%</td>
</tr>
<tr>
<td>Of which, domestically owned</td>
<td>2</td>
<td>2.27%</td>
</tr>
<tr>
<td>National Housing System institutions (Savings and Loans Mutual Organizations)</td>
<td>2</td>
<td>3.76%</td>
</tr>
<tr>
<td>Savings and loan co-operatives</td>
<td>24</td>
<td>10.91%</td>
</tr>
<tr>
<td>Non-bank financial institutions (&quot;Financieras&quot;)</td>
<td>5</td>
<td>1.10%</td>
</tr>
<tr>
<td>Other: Public Saving and Loan Association for Educators</td>
<td>1</td>
<td>4.16%</td>
</tr>
<tr>
<td>Foreign-exchange houses</td>
<td>2</td>
<td>0.01%</td>
</tr>
<tr>
<td><strong>Total assets of Banks and Financial intermediaries (BFIS)</strong></td>
<td><strong>49</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Source: SUGEF (2019) and OECD calculations.
In September 2018 state-owned commercial bank Bancredito, with assets worth about 2% of GDP by March 2017, was absorbed by state-owned Banco de Costa Rica due to lack of financial viability.

The supervisory and regulatory structure of the Costa Rican financial system is composed of five different bodies: CONASSIF\(^{61}\) constitutes the senior steering body, which governs the four superintendencies\(^{62}\) and approves regulations regarding the authorisation, regulation, supervision and oversight of the superintendencies. The SUGEF is the authority in charge of regulating and supervising the banking system.

Up until the middle of the 1990s, private-owned banks were not allowed to receive and administrate deposits from the public. Following a progressive liberalisation of the financial sector by the Costa Rican authorities, participation from private and foreign investors is now authorised without restriction.

The Costa Rican authorities have informed that their process of registration for new banks is transparent. Although there is no maximum period stated in the law to receive an authorisation to operate, in practice the authorities have confirmed that it takes no more than 6 months. All requests are handled through SUGEF, which is in charge of preparing a legal assessment for CONASSIF to make a final decision. Only private agents must follow this process, as Costa Rican state-owned banks are created by special law and follow a different process.

As stated in section Credits and deposits (items VIII to XI), according to article 59 of Law 1644, when receiving initial authorisation, private banks (whether domestically or foreign-owned) must choose between: (a) maintaining at least 17% of all short-term liabilities of 30-days or less deposited in a state-owned bank (in case deposit to the fund is made exclusively in colones, the percentage shall be of only 15%); or (b) operating at least four agencies or offices in designated rural regions of the country.

Although there are no restrictions for the participation of foreign investors in locally incorporated banks, Law 1644 previously stated that non-residents wishing to conduct banking activities in Costa Rica must incorporate a sociedad anónima and obtain authorisation by CONASSIF. Branching by non-resident banks was not permitted in Costa Rica.

Following the Committee’s recommendation to assess the feasibility of relaxing restrictions for non-resident banks to carry out banking activities in Costa Rica through local branches, Costa Rica announced its decision to modify Law 1644 and to create a regulatory framework to authorise branches of foreign banks in the country.

On 14 August 2019, Law 9724 was enacted allowing foreign banks to operate in Costa Rica through branches, with the same rights and obligations as Costa Rican private banks. Law 9724 also gives legal powers to the SUGEF and CONASSIF to issue regulations with the specific provisions for registration, authorisation and operation of banking branches.

As guiding principles of this reform, only prudential safeguards were demanded, with no discriminatory requirements, including no distinction among countries of origin, or limitations to market access. Additionally, branches will receive equivalent level of

---

\(^{61}\) National Council for Supervision of the Financial System (CONASSIF).

\(^{62}\) General Superintendency of Financial Institutions (SUGEF), General Superintendent for Insurance (SUGESE), General Superintendency of Securities (SUGEVAL) and Superintendency of Pensions (SUPEN).
regulation to that of national private banks, following existing regulatory examples for branches in insurance and investment fund managing.

Bank branching is legally possible as of 14 August 2019; registration, authorisation and operation of bank branches will commence following the enactment of the relevant regulations and Memoranda of Understanding with other jurisdictions, which must be completed within a maximum of one year. Further details regarding the contents of Law 9724, as well as an action plan for implementation of the law are included in Annex 7 to this report.

Thus, no reservation is proposed under item I/A of the CLCM and under item E/7 of the CLCIO for foreign bank branching.

Private Costa Rican resident banks may freely establish branches abroad. In addition, they may establish subsidiaries abroad as part of a Costa Rican Financial Group (Law 1644 of 1953, Articles 5, 48 and 149). State-owned Costa Rican resident banks are allowed to open subsidiaries directly and do not need to be part of a Costa Rican Financial Group; they are referred to in the law as Costa Rican Financial Conglomerates.

Costa Rican Financial Groups are regulated by Law 7558 and are locally incorporated holding companies, which own at least 25% of the capital of different institutions engaged in providing financial services, either locally or abroad. Although each institution is responsible for their own operations, the holding company will be the main point of contact of each Superintendency.

The requirements for Costa Rican Financial Groups to open a bank abroad (subsidiary) are (Law 7558, article 147):

- Have a capital of no less than three million USD;
- obtain authorisation from the Central Bank ensuring that the foreign market has adequate prudential regulation standards;
- be supervised and monitored by the appropriate authorities abroad;
- submit to SUGEF audited reports by companies of internationally acknowledged reputation. The audit shall reveal aggregated information on the institution’s financial position in general, and in particular, on the quality, risk and concentration of its assets.

There are no legal restrictions on the establishment of representative offices of foreign banks. The authorities have confirmed that according to the Constitutional principles of free will and contractual freedom referred to above, representative offices of non-resident banks are authorised to establish and operate in the country.

**Securities firms and other non-bank financial services**

Entities that can provide investment and financial services in Costa Rica, other than banks, are non-bank financial institutions, savings and loan cooperatives, and foreign exchange houses (regulated by SUGEF), as well as securities firms and investment service providers (regulated by SUGEVAL).

---

63 Minimum capital for establishment for resident commercial banks is approximately USD 180,000 (article 151 of Law 1644).

64 In accordance with articles 43 and 44 of Regulation SUGEF 8-08.
Branching is not an available form of establishment for these institutions, with the only exception being collective investment fund portfolio management services (Regulation 762 of 2008, articles 30-31) and collective investment fund managers (SAFIs) (Regulation 762 of 2008, article 2)\(^6\). 

According to articles 2, 3 and 31 of Regulation 762 of 2008, the requirements for the establishment of branches of foreign collective investment fund managers and portfolio management services are the same as for subsidiaries and locally incorporated companies in the country.

Non-bank financial institutions (Law 5044) were created in 1972 -before private banking was allowed in the country- to authorise certain specific financial operations by private parties. The services they can provide are credit and loans, guarantees and financial back-up facilities; purchase of securities in the local market and trust services (art. 12). They are limited to domestic operations (art. 4), credit granting up to 20% of its capital and reserves (art. 9), and are non-deposit taking (art. 14.b). Non-bank financial institutions must be incorporated in the form of a sociedad anónima, with no restrictions for the participation of foreign investors.

Savings and loan co-operatives (Law 7391 of 1994) consist of voluntary member based co-operative associations. Participation and investment in saving and loan co-operatives is open to both residents and non-residents on a non-discriminatory basis. As of December 31, 2016, their combined total assets amounted to 10% of the financial sector\(^6\).

The Costa Rican securities market has low trade volume, a situation that hinders the process of price discovery. Main operations are repos and those in the money market, which represented 74% of the total volume traded by the end of December 2018.

As of December 2018, five non-bank financial institutions and 24 savings and loan cooperatives\(^6\) were registered in Costa Rica, also 16 brokerage firms, 23 custodians, three price vendors, three risk rating agencies and 14 collective investment fund managers.

The incorporation requirements for securities firms and other non-bank financial services, with the exception of collective investment funds portfolio management services and collective investment fund managers, give rise to proposed reservations under item I/A of the CLCM and under item E/7 of the CLCIO.

Incorporation requirements also apply to participation in the Costa Rican stock exchange. In order to be a member of a stock exchange, the Securities Law 7732 of 1997 requires local incorporation as a stock brokerage firm in Costa Rica (articles 27 and 28). This incorporation requirement is not deemed a restriction in terms of the Codes.

Finally, the Costa Rican authorities have requested to clarify that it is possible to establish co-operative banks (“bancos cooperativos”), composed by at least ten Costa Rican co-operative organizations (Law 1644, Article 185); as well as solidarity banks (“bancos solidaristas”), composed by at least 25 Costa Rican solidarity associations (Law 7107, \(^6\)In Costa Rica, the collective investment fund manager (known as SAFIs) is a controlling company, which administrates and hires the services of other companies, such as collective investment fund portfolio managers. Most SAFIs hire individuals as collective investment fund portfolio managers, but the law allows SAFIs to contract these services with local companies or branches of foreign companies. \(^6\)This percentage corresponds to savings and loan cooperatives supervised by SUJEF. According to article 117 of Law 7558, cooperatives, which are deemed too small in terms of assets and members by the rule set by CONASSIF, are not supervised. \(^6\)Idem.
Article 28). Participation and investment in co-operative banks and solidarity banks is open to both residents and non-residents on a non-discriminatory basis.

**Cross-border banking and financial services**

Costa Rica maintains freedom for residents to avail themselves of banking and financial services when abroad; however, restrictions apply to the cross-border provision of a number of banking and financial services by non-residents in Costa Rica.

Payment services, including payment instruments and fund transfer services, are reserved for registered entities, whether resident or non-resident (Law 8204, article 15), although this does not require incorporation in the country, but a registration process with SUGEFE. The registration is for reporting purposes only.

According to Law 7558 of 1995, foreign exchange operations can be performed exclusively by authorised domestically incorporated financial intermediaries and/or foreign exchange intermediation businesses (*casas de cambio*).

The restriction for the provision of foreign exchange payment services by non-residents has been reflected in proposed reservation to item E/1 of the CLCIO.

Regarding the provision of banking and investment services covered by item E/2 (Banking and investment services), only locally incorporated financial institutions are allowed to provide banking and investment services (Law 1644).

This restriction extends to public offering of intermediation services for securities or financial instruments in international markets, as well as public offering of individual management of securities portfolios in the country, which are reserved for locally incorporated and authorised intermediaries (Law 7732, Article 2 and the Regulation of Intermediation and Complementary Activities, article 1).

Local non-bank financial institutions cannot grant credit or financing to non-residents, or invest abroad using the resources obtained from their securities issued in Costa Rica (Law 5044, article 12).

Regarding underwriting and broker/dealer services covered under item E/2, cross-border provision by non-residents is not allowed in Costa Rica (Regulation 571 of 2006). Non-residents need to incorporate in Costa Rica and obtain authorisation by SUGEVAL.

For financial market information, communications and executions systems, covered also under item E/2, there is no specific regulation in the country forbidding or regulating these services. The Costa Rican authorities have confirmed that, by interpretation of the Constitutional principles of non-discrimination and autonomy of free will, cross-border provision of these services by non-residents is allowed.

According to the Costa Rican authorities, these restrictions on the provision of cross-border operations under item E/2 are not designed to discriminate against foreign providers, but are intended as a mechanism to protect the financial system and ensure efficient supervision and transparency.

The above measures constitute a restriction under the CLCIO for the provision of cross-border services of banking and investment services, including public offering of intermediation services for securities or financial instruments, underwriting and broker/dealer services, and have been reflected in a proposed reservation under item E/2 of the CLCIO.
Regarding the provision of services covered by item E/3 (Settlement, clearing and custodial and depositary services), Costa Rica requires incorporation for the provision of all these services (Law 7732 and Regulation 1150 of 2015).

The Users’ Guide supplementary explanatory notes 1 and 3 to item E/3 of the CLCIO exclude from liberalisation obligations any incorporation requirements for settlement, clearing and depositary services. Thus, for provision of services, the proposed reservation under item E/3 of the CLCIO concerns only the provision of custodial services by non-residents in Costa Rica.

Regarding the access by non-residents to cross-border services in Costa Rica covered under item E/3, Costa Rica allows non-residents to have direct access to such services. Regarding the access by Costa Rican residents to these services when abroad, also covered under item E/3, there are no restrictions.

The Costa Rican authorities initially noted that the safekeeping of securities requires incorporation in Costa Rica. However, according to CONASSIF Safekeeping Regulation and the delegation’s explanation to the Investment Committee during the first accession review on selected issues, the cross-border provision of safekeeping of assets is authorised, as long as the foreign safekeeping company is authorised in its home market and institutes an agreement with a locally incorporated and supervised company (articles 31-33 of CONASSIF Safekeeping Regulation, session 1150-2015 of 23 February 2015).

A reservation has been proposed under item E/3 to reflect the restrictions on the establishment of custodial services by non-residents in Costa Rica.

The Costa Rican authorities have confirmed that Costa Rican residents can avail themselves of all services covered under item E/4 (asset management including cash management, portfolio management, pension fund management, safekeeping of assets and trust services) when abroad. If the agreement on the provision of services has been concluded abroad at the initiative of the customer, the provision of the service is considered as not having taken place in Costa Rica and is unrestricted.

Regarding the provision in Costa Rica of services covered by item E/4, Costa Rica does not allow for cross-border provision of collective investment fund portfolio management, pension fund management, trust services for infrastructure projects and public offering of individual management of securities portfolios by non-residents in Costa Rica.

According to Decree 762 of 2008, portfolio management services require either incorporation in the country or the establishment of a branch of a foreign company.

Pension fund management in Costa Rica is only authorised for Pension Operating Companies (OPC) incorporated in the country and supervised by the Pension Superintendency, SUPEN (Law 7983, article 30).

Trust services for infrastructure projects require incorporation in the country via a special purpose vehicle and an authorisation as a securities issuer from SUGEVAL. Infrastructure trusts are created with the purpose of obtaining credit from investors to develop a specific infrastructure project (Regulation 1124 of 2014, articles 11 and 13).

On May 2017, Law 7786 was modified to comply with international standards for prevention of money laundering and terrorist financing. This new reform requires resident and non-resident trust services to register with SUGEF before providing trust services in the country (article 15 bis). Since this is a non-discriminatory preventive regulation, it does not entail a reservation under item E/4 of the CLCIO.
Regarding the other operations covered under E/4 (Asset management, cash management, and safekeeping of assets) cross-border provision of services by non-residents in Costa Rica and by residents abroad is allowed.

Costa Rica proposes to reflect in a reservation under item E/4 of the CLCIO the restrictions for cross-border provision of services for portfolio management, pension fund management, and trust services for infrastructure projects.

Regarding obligations established under item E/5 of the CLCIO (Advisory and agency services; credit reference and analysis; investment research; mergers, acquisitions, restructurings, management buy-outs, and venture capital), Costa Rica allows the cross-border provision of these services by non-residents.

For public offer of investment advice, incorporation is required (Law 7732, article 2 and CONASSIF Regulation 1259-2016 of 17 June 2016). Also, securities credit rating agencies require incorporation in the country (article 22 of Regulation 571 of 2006).

A reservation under item E/5 has been lodged for the incorporation requirement for public offer of advisory services on securities or financial instruments (including securities credit rating agencies).

For item E/6, which covers transfers for payment of fees, commissions and other charges in relation to any international banking or financial services, which has been authorised or can be performed without authorisation, the Costa Rican authorities have confirmed that there are no measures in force that would need to be reflected in proposed reservations.

4.3. Insurance and private pensions

Establishment

Insurance

There are 13 insurers operating in Costa Rica as December 2018. One of them is owned by the state, one is fully owned by local stakeholders, two are jointly owned by local and foreign stakeholders and nine are fully owned by foreign stakeholders. Of the totality of private insurers operating in Costa Rica, ten of them are locally incorporated and organised as stock corporations and two of them operate as branch offices.

The Costa Rican insurance market operated as a state monopoly for 84 years, until the enactment of Law 8653 (Law Regulating the Insurance Market) in 2008 allowing new participants to enter the market, following the conclusion of the DR-CAFTA. Prior to 2008, the sole insurance operator in Costa Rica was the National Insurance Institute (INS), a state-owned, composite insurance and reinsurance entity.

According to the National Insurance Institute Law (No 12 of 1924), the state grants INS an unlimited state guarantee as the one extended to state-owned banks. Article 1 of the INS Law prescribes, "INS has a full state guarantee in the development of its insurance activity in Costa Rica, which includes the administration of commercial insurance, workers’ compensation insurance, and mandatory vehicle insurance". Such guarantee covers operations in both colones and foreign currency and is limited to the INS’ insurance liabilities, excluding debt issued. This guarantee is not extended to any corporations,
commercial companies, branch offices, agencies, or any other commercial entity or entity of a similar nature that INS establishes or participates in, or to any debt issued by the INS.

In addition, the central government and state-owned companies must buy insurance from INS as the first option, according to article 7 of Law 8653. When a state-owned company can demonstrate that a private insurer provides better conditions and more competitive prices than the INS, they are authorised to purchase coverage from a private insurer. The authorities have explained that the pay-out of INS policies may be influenced by public policy concerns. The Costa Rican authorities confirmed that most state-owned utility companies such as ICE (energy and telecom), AyA (water) and CCSS (health) are insured by the INS, however some of their operations are covered by private insurers; the central government does not usually require insurance.

Table 4.3. Costa Rica - Players in the insurance market – December 2018

<table>
<thead>
<tr>
<th>Insurance Company</th>
<th>Source of Capital</th>
<th>Main Shareholders</th>
<th>Shareholder of main shareholder</th>
<th>Part of a conglomerate</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Insurance Institute (INS)</td>
<td>State</td>
<td>State of Costa Rica (100%)</td>
<td>n.a.</td>
<td>Yes68</td>
</tr>
<tr>
<td>Seguros del Magisterio, S.A.</td>
<td>Private capital, local</td>
<td>National Educators Life Insurance Association</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MAPFRE Seguros Costa Rica, S.A.</td>
<td>Private capital, foreign (Spain)</td>
<td>MPP Tenedora A.C., S.A. (100%)</td>
<td>Mapfre America Central, S.A. (100%)</td>
<td>Yes</td>
</tr>
<tr>
<td>Assa Compañía de Seguros, S.A.</td>
<td>Private capital, foreign (Panama)</td>
<td>ASSA COMPAÑÍA TENEDORA, S.A (100%)</td>
<td>Grupo ASSA, S.A. (100%)</td>
<td>Yes</td>
</tr>
<tr>
<td>Pan American Life Insurance de Costa Rica, S.A.</td>
<td>Private capital, foreign (United States)</td>
<td>Pan-American Life Insurance Group Incorporated (100%)</td>
<td>Pan American Life Mutual Holding (100%)</td>
<td>Yes</td>
</tr>
<tr>
<td>Aseguradora del Istmo ADISA, S.A.</td>
<td>Private capital, local and foreign (Panama)</td>
<td>Compañía Internacional de Seguros IS (76%, Panama) / COOPENAE (24%, Costa Rica)</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Davivienda Seguros (Costa Rica), S.A. (before: Seguros Bolivar Aseguradora Mixta S.A.)</td>
<td>Private capital, local and foreign (Panama)</td>
<td>51% DaVivienda Group (51%, Costa Rica) and Riesgos e Inversiones Bolivar Internacional, S.A. (49%, Panama),</td>
<td>Riesgos e Inversiones Bolivar Internacional is 100% owned by Riesgos e Inversiones Bolivar, S.A (Colombia) which in turn is 100% owned by Sociedades Bolivar (Colombia)</td>
<td>Yes</td>
</tr>
<tr>
<td>Quálitas Compañía de Seguros (Costa Rica), S.A.</td>
<td>Private capital, foreign (Mexico)</td>
<td>Quálitas Compañía de Seguros, S.A de C.V. (Mexico) and an individual shareholder with one share.</td>
<td>Quálitas Compañía de Seguros, S.A de C.V. in turn owned by Nacional Financiera, Sociedad Nacional de Crédito.</td>
<td>Yes</td>
</tr>
<tr>
<td>Best Meridian Insurance Company (Branch)</td>
<td>Private capital, foreign (incorporated in Florida, United States)</td>
<td>License issued as a branch office</td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Triple-S Blue INC. (Branch)</td>
<td>Private capital, foreign (incorporated in Puerto Rico)</td>
<td>License issued as a branch office.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aseguradora Sagicor Costa Rica, S.A.</td>
<td>Private capital, foreign (Panama, Jamaica)</td>
<td>C&amp;A Sagicor Holdings Inc. (50%, Panama) and Sagicor Group Jamaica (50%, Jamaica).</td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

Oceánica de Seguros, S.A. | Private capital, foreign (Bolivarian Republic of Venezuela) | Ocean Fidus Holdings, S.L (100%) | Two individual shareholders from Bolivarian Republic of Venezuela, (50% each)
--- | --- | --- | ---
Seguros Lafise Costa Rica, S.A. | Private capital, foreign (Panama) | Lafise Group - Panama, Inc. (100%, Panama) | Yes

Notes: 1. Part of an international insurance conglomerate; 2. Part of a local financial group (with banking activities) and of an international financial conglomerate; 3. Part of an international insurance and financial conglomerate; 4. Part of a local financial group (with banking activities); 5. Controller of a local financial group with activities in investment funds, stock market, hospital and human resources and other auxiliary services.

Source: Costa Rican Authorities (2019).

The General Superintendence of Insurance (SUGESE) was created in 2008 pursuant to article 28 of Law 8653 as a fully decentralised body under the Central Bank and was integrated into the financial oversight system established in articles 169 to 177 of Law 7732 (Law Regulating the Securities Market of 1997).

In 2008, the insurance sector was opened to allow branching by non-resident insurers. Foreign insurance companies may operate in Costa Rica through both branches and subsidiaries, provided they receive authorisation from the SUGESE and comply with similar prudential solvency and integrity requirements as local insurers. Branches of foreign insurance companies can perform the same activities as a locally incorporated entity and have equivalent obligations.

The Costa Rican authorities have confirmed that branches and subsidiaries of foreign reinsurance companies, as well as its intermediaries and auxiliary services are allowed to establish in the country and conform with all the provisions set out in Part II of Annex I to Annex A of the CLCIO. No reservation is therefore required under items D/6 (Conditions for establishment and operation of branches and agencies of foreign insurers) and D/7 (Entities providing other insurance services) for reinsurance companies.

Moreover, the Costa Rican authorities confirm that their regulations for branches and agencies of foreign insurers conform with all the provisions set out in Part III of Annex I to Annex A of the CLCIO, as they are equivalent as those of insurers incorporated in Costa Rica. No reservation is therefore required.

According to article 11 of Law 8653, the minimum capital levels are the same for both foreign-owned and locally owned insurance companies. Although foreign insurers must deposit initial capital at the Central Bank, once the insurer has received authorisation to operate from SUGESE, it can decide to maintain its capital either inside or outside of the country and in the financial entity of its choice.

There are incorporation requirements for insurance intermediaries and restrictions applicable to representative offices of insurance companies, which are not under the scope of an international agreement. According to article 22 of Law 8653, incorporation in the form of a local company or sociedad anónima is required for entities providing insurance intermediation (insurance brokerage). This measure is reflected in a proposed reservation under item I/A of the CLCM and under item D/7 of the CLCIO.

In the first accession review on selected issues of March 2017, the Committee was presented with restrictions for representative offices for all types of insurance. According to article 17 of Law 8653, representative offices cannot make public offerings of insurance business in the country. They cannot perform any promotion activity such as advertising of insurance of any kind; granting of specific information regarding a particular assurance;
general presentations or announcements of their products or insurance brokerage activities. Representative offices are intended to operate only as logistics facilities for non-residents when processing the respective authorisation application or registration.

Under the CLCIO, representative offices may be established by an enterprise from one Adherent in another Adherent and, while they do not conduct business in the country, they are permitted to promote business on behalf of the parent enterprise.

The Committee invited the Costa Rican authorities to allow representative offices to perform promotion activities, clarifying, if necessary, that they are not permitted to undertake transactions. The Committee noted in particular that the objective of consumer protection does not by itself necessitate prohibition of these promotion activities.

Consequently, SUGESE issued a legal opinion clarifying that, in accordance with article 16 of the Insurance Market Regulatory Law and as a result of the Accession Agreement entered into with the OECD, all Codes’ Adherents will be allowed to establish representative offices in Costa Rica’s territory, to promote the cross-border insurance of those services authorised to deliver in the country.

In accordance with article 16 of Law 8653, insurance companies from countries covered by an international agreement are permitted to perform promotion activities through a representative office regarding the cross-border insurance services admitted by said agreement. By virtue of article 7 of Costa Rica’s Constitution, Legislative Assembly-approved international agreements, such as the Accession Agreement, will fall under this category.

The Costa Rican authorities will not lodge a reservation under item D/7 for the establishment and operation of representative offices for all types of insurance. The absence of a reservation means that liberalisation benefits will be extended to all Codes Adherents at the time of Costa Rica’s accession to the Organisation (Law 8653, Article 16).

Finally, the Costa Rican authorities confirm that, due to their interpretation of the Constitutional principles of non-discrimination (art. 19), autonomy of free will (art. 28), property rights (art. 45) and freedom to conduct business (art. 46), representative offices of reinsurance companies are allowed in the country and are authorised to do promotion activities, since there is no provision expressly forbidding these transactions. No reservation is required under item D/7 for representative offices of reinsurance companies.

Pension funds

Costa Rica’s social security system was created in 1941. The Social Security Administration (CCSS) manages the national health system, along with the Ministry of Health. SUPEN (Superintendencia de Pensiones) grants authorisations to pension plan operators and supervises the National Pensions System, which include regimes administered by the CCSS, by state-owned enterprises and by private agents.

The Costa Rican voluntary private pensions market is relatively small. As of December 2018, there were six Pension Operating Companies (OPC) in the market, down from eight OPCs existing previously, after an acquisition in 2010 and a merger in 2012. Five of these OPCs are owned by the state or public companies and one is foreign-owned. The default

69 “Article 7. Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws upon their enactment or from the day that they designate.”
Compulsory Complementary Scheme (ROP) provider, Popular Pensiones, holds 37% of total accrued pension savings.

Costa Rica has a multi-pillar national pension system comprising:

- **Basic Scheme (IVM):** public, mandatory defined-benefit scheme managed by the CCSS and funded by contributions of employers, employees and the state;
- **Alternative Regime Schemes:** schemes replacing the basic system for particular groups in the public sector. The schemes have separate contribution and benefit provisions. They are funded by contributions of employers, employees and the state;
- **Non-contributory Scheme:** means tested social assistance scheme providing a minimum income guarantee, operated by CCSS and funded with resources from the Fondo de Desarrollo Social y Asignaciones Familiares and some specific taxes;
- **Compulsory Complementary Scheme (Régimen Obligatorio de Pensiones, ROP):** individual capitalisation mandatory complementary scheme managed by OPCs;
- **Special Occupational Schemes:** supplementary schemes covering particular groups in the public sector. Schemes are set mainly defined-benefit. They are funded by contributions of employers and employees and managed by OPCs;
- **Voluntary Complementary Scheme:** managed by Pension Operating Companies (OPC).

The Costa Rican private pension system was first enshrined in Law 7523 of 1995. The mandatory private pension system was introduced by Law 7983 in 2000. The current private pension system comprises of mandatory and voluntary complementary schemes managed by private pension plan operators registered with the Supervisor (SUPEN). The Special Occupational Schemes predate these elements. The schemes pertain to relatively small groups and they are set up by special laws.

By year-end 2018, total accrued funds in private pension arrangements stood at USD 11,284 million equalling 19.7% of GDP. Close to 83% of this amount relates to the ROP system, while Special Occupational Schemes held 12% and Personal Pensions 5% of total pension savings. The asset allocation is strongly dominated by domestic assets - around 89% across all forms of private pensions - and around 65% are invested in government backed securities or state owned companies.

Establishment of private pension funds in Costa Rica requires OPCs to be incorporated in the country and supervised by the SUPEN. Foreigners may participate in the Costa Rican pension system as foreign investors by incorporating a subsidiary. Branching is not available as a form of establishment for the provision of these services. This restriction is reflected in a proposed reservation under item I/A of the CLCM and under item D/8 of the CLCIO.

**Cross-border insurance and private pension services**

For all types of insurance, the cross-border provision of services is allowed when transactions are entered at the initiative of the proposer. There is no law expressly forbidding or regulating these types of transactions, therefore, according to the Constitutional principles of free will and contractual freedom referred to above, they are allowed. Exceptions apply only to compulsory insurance and pension products or services offered by insurance companies in connection with the social security system.
A 30% income tax is applied to both domestically incorporated insurers (either locally owned or foreign-controlled) and branches of foreign insurance companies. Insurance premiums are subject to a 13% sales tax for general insurance (property and casualty insurance) and 2% for personal insurance (including life, accident and health annuities). Premiums paid for survival income, workplace compensation, harvest and social interest housing premiums are exempt from such sales tax (Law on General Sales Tax).

Four percent of premiums from all insurance sold in Costa Rica contributes to the Fire Department Fund (article 40 of the Law on the Fire Department of Costa Rica). Neither this contribution nor the 13% sales tax is applicable to contracts concluded by Costa Ricans outside the territory of Costa Rica on a cross-border basis. A tax rate of 5.5% is applied to remittances of insurance premium or other benefit generated by Costa Rican source to an individual or company residing in a third country. This tax does not apply to premiums arising from companies established in such country, given that no remittance is actually required.

Regarding social security and social insurance (item D/1 of the CLCIO), there are no restrictions to transfers associated to social security and social insurance, therefore Costa Rica has not lodged any reservations under this item.

For item D/2 (insurance relating to goods in international trade), the cross-border provision of services is permitted only if initiated at the initiative of the policyholder.

According to article 16 of Law 8653, which has been developed by the Legal Opinion PJD-013-2009 of 26 May 2009, non-resident companies from countries with which Costa Rica has signed an International Agreement (IA) are authorised to provide cross-border insurance services in Costa Rica under the conditions therein agreed.

Costa Rica has concluded IAs with a financial chapter allowing cross-border insurance in the Association Agreement with the EU, in DR-CAFTA, in the Free Trade Agreement with Colombia, in the Free Trade Agreement with the European Free Trade Association (EFTA) and in the Free Trade Agreement with Korea (the latter is not in force). These IAs allow for cross-border provision of insurance relating to goods in international trade (except for transactions related to railway and road transport), surplus lines for all insurance and intermediation services and auxiliary services.

The standard list used on Costa Rican IAs70 includes authorisation to provide cross-border supply of:

"(a) insurance risk relating to:

(i) space launching of freight (including satellite), maritime shipping and commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

(ii) goods in international transit."

---

70 See (a) DR-CAFTA: Annex 12.9.2., Section H, Part III, item 1.A.ii.a.; (b) EECAA (European Union-Central America Association Agreement): Annex 11, Section B, Specific Reservations, item 7 (Financial Services), Item A (Insurance and related services), Mode 1, item a.; (c) EFTA: Appendix 1 to Annex XV, Part II, item 7.A.; (d) F.T. with Colombia: Annex 14.A., part “Costa Rica”, item 2
As well as the following services for all lines of insurance\textsuperscript{71}:

"(i) services auxiliary to insurance [...];
(ii) insurance intermediation such as brokerage and agency [...]"

Finally, DR-CAFTA includes the authorised provision to provide cross-border supply of surplus lines defined as "insurance coverage not available from an admitted company in the regular market"\textsuperscript{72}

Costa Rica is aware that discrimination among Codes Adherents is contrary to Article 9 of the Codes and may not be the subject of reservations under the Codes. For this reason, Costa Rica is willing to extend the liberalisation benefits of IAs on an \emph{ergra omnes} basis to all Codes Adherents.

The Costa Rican authorities have noted that there are no plans to modify article 16 of Law 8653, but that, by virtue of article 7 of Costa Rica’s Constitution\textsuperscript{73} and article 5 of the Civil Code, Legislative Assembly-approved IAs have precedence over domestic laws.

The absence of a reservation for the operations covered under Costa Rica’s IAs means that liberalisation benefits will be extended to all Codes Adherents at the time of Costa Rica’s accession to the Organisation, since the Accession Agreement would therefore prevail over article 16 of Law 8653. This will cover operations under item D/2 (Insurance relating to goods in international trade); D/3 (Life assurance) for insurance not available in the Costa Rican market; D/4 (All other insurance) exclusively for surplus lines; and D/7 (Entities providing other insurance services) for intermediation and auxiliary services.

The Costa Rican authorities further note that in accordance with article 27 of the Vienna Convention on the Law of Treaties of 23 May 1969, Costa Rica commits to abide by the obligations it will undertake with respect to the OECD Codes of Liberalisation in the Accession Agreement even in cases where its domestic legislation is in conflict with such obligations.

Moreover, at the first accession review on selected issues of March 2017, the Committee inquired about the possibilities for further commitments in the insurance sector. After consideration of the Committee’s request, Costa Rica informed the Chair of the Investment Committee that it would liberalise all operations falling under item D/2 of the CLCIO.

Therefore, the country accepts the request of the OECD Investment Committee to liberalise all the elements included under D/2, including those not currently covered by IAs, such as insurance associated with road and railway transport. Costa Rica will not lodge a reservation under item D/2 of CLCIO.

Cross-border provision of services covered by item D/2 would be open to all Codes Adherents from the date of Costa Rica’s accession to the OECD.

Regarding item D/3 (Life assurance), the cross-border provision of services is permitted only if initiated at the customer’s initiative.

\textsuperscript{72} Footnote 28 to Annex 12.9.2., Section H, Part III, item 1.B.b.iii.
\textsuperscript{73} “Article 7. Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws upon their enactment or from the day that they designate.”
In addition, current IAs of Costa Rica allow the provision of cross-border life insurance services for those coverages that are not available in the Costa Rican market. Costa Rica proposes to liberalise these operations to all Codes Adherents on an *erga omnes* basis, by lodging a reservation that would allow cross-border services for life insurance not available in the Costa Rican market.

Costa Rica proposes to lodge a reservation under item D/3 of the CLCIO for cross-border provision of life assurance by non-residents in the country, and authorising cross-border provision of life assurance if taken at the proposer’s initiative and the contract is concluded and serviced in the jurisdiction of the foreign insurer, and for life surplus lines or coverages.

For operations covered under D/4 (All other insurance), the cross-border provision by non-residents of all other insurances to Costa Rican residents is permitted only if taken at the proposer’s initiative and the contract is concluded and serviced in the jurisdiction of the foreign insurer. In addition, by virtue of article 16 of Law 8653, cross-border provision of surplus lines for all other insurance is allowed exclusively for those companies from countries with an IA in force with Costa Rica.

Costa Rica proposes to extend the liberalisation benefits of IAs on an *erga omnes* basis to all Codes Adherents by the time of Costa Rica’s accession to the Organisation by not lodging a reservation for the cross-border provision of surplus lines.

The Costa Rican authorities propose a reservation on item D/4 (all other insurance), that would allow cross-border provision by non-residents if the insurance is taken at the proposer's initiative and for surplus lines from the date of Costa Rica's accession to the OECD.

Cross-border provision of reinsurance and retrocession, and its intermediation and auxiliary services (covered under item D/5) for both non-resident providers in Costa Rica and for residents abroad, is allowed without restrictions according to article 16, paragraph 3 of Law 8653. No reservation is required under this item.

For item D/7 (Entities providing other insurance services), the cross-border provision by non-residents of other insurance services to Costa Rican residents is permitted if initiated at the policyholder’s initiative.

In addition, according to the aforementioned article 16 and the IAs subscribed by Costa Rica to date, cross-border provision of intermediation and auxiliary services are allowed for companies from countries with which Costa Rica has signed an IA.

Costa Rica proposes to extend to all Codes Adherents, by the time of Costa Rica’s accession to the Organisation, the same benefits that it has granted on its IAs in force, by not lodging a relevant reservation under item D/7.

Regarding operations covered by item D/8 (Private pensions), non-residents cannot provide cross-border pension services except if the relationship is initiated at the policyholder’s initiative and the contract is concluded and serviced in the jurisdiction of the foreign provider. This has been reflected in a proposed reservation under item D/8.

*Financial guarantees for cross-border insurance*

Costa Rica initially notified that Appendix 18 of SUGESE Agreement 01-08 required companies wishing to provide cross-border insurance and intermediation services to provide a financial guarantee.
The minimum amount of this financial guarantee was the higher value of the following: a) 2.5% of the total premiums sold in the last 12 months; and b) 30,000 development units (approximately USD 48,000 as of 10 February 2017).

Further to the recommendation of the Committee’s to this effect, on 22 August 2018 Costa Rica modified Appendix 18 of SUGESE Agreement 01-08 to eliminate the requirement for companies wishing to provide cross-border insurance and intermediation services to provide a financial guarantee.

Additionally, this reform introduced improvements to the insurance system, through a comprehensive review and simplification of the registration requirements and of the process applicable to cross-borders providers.
5. CURRENT INVISIBLE OPERATIONS OTHER THAN FINANCIAL SERVICES

5.1. Current transfers and payments

In the field of exchange controls, the free convertibility of the domestic currency enables residents and non-residents to carry out freely payments and transfers in connection with current international transactions, as well as with capital account operations. Costa Rica subscribed to IMF Article VIII by Law No. 55 of 24 December 1945. Accordingly, restrictions on current payments and discriminatory currency practices are not permitted. Convertibility of foreign-held balances is guaranteed.

5.2. Trade in non-financial services

Costa Rica maintains some restrictions on the cross-border provision of non-financial services, such as transport (transport of passengers and freight between national ports, road transport) and professional services.

Business and Industry

According to the General Law on the Concession of Public Works with Public Services (Law 7762 of 1998), incorporation in Costa Rica is required to hold a concession to construct and maintain railroads, ports or airports.

The Costa Rican authorities have confirmed that this incorporation requirement does not entail a restriction to the ability of concessionaries to perform any transfer of payments or enter into cross-border agreements for the provision of contracting services.

The material restriction requiring incorporation in the country for the provision of services of construction and maintenance of railroads, ports or airports is a common requirement among Codes Adherents, which is not considered, however, as an impediment to provide the service by non-residents. No reservation under A/4 (Contracting) of the CLCIO is required.

Transport

There are some restrictions regarding transport services in Costa Rica, (e.g. transport of passengers and freight between national ports, road transport), which give rise to proposed reservations under the CLCIO.

Costa Rica maintains no restrictions on maritime freights, as covered by item C/1. Costa Rica's main international seaports, Puerto Caldera on the Pacific, Moin Port Complex and Puerto Limón on the Atlantic coast, are open to international freight traffic, without any differentiation as to who owns the freight.

The Costa Rican authorities have requested to state on the report that foreign vessels using the services offered by a tourist marina will enjoy a two-year permit of permanence, extendable by equal periods. During their stay in Costa Rican waters and territory, such vessels and their crew will not be allowed to engage in lucrative water transportation
services, fishing, diving or other activities related to sports and tourism. This measure is outside of the current understanding for item C/1.

For cross-border maritime passenger and freights, Costa Rica requires that at least 10% of the crew on Costa Rican registered vessels are nationals, provided that such personnel are available (Law 12 of 1941, article 41). In addition, the authorities have reported requirements for non-residents to have an agent or representative domiciled in Costa Rica to supply international maritime services (Law 12 of 1941, article 43) and international multimodal transportation of cargo services (Executive Decree 25270 of 1996, article 547).

To the extent that these provisions do not amount to a residency requirement, the measures are not a restriction for operations covered under item C/1 of the CLCIO. However, the nationality requirement for crew is listed under other measures reported for transparency under the NTI.

Regarding inland waterway freights covered by item C/2, Costa Rica requires transportation between national ports, both for cargo and for passengers, to be provided only by enterprises organised under Costa Rican law and using Costa Rican flag vessels (Cabotage Service Law 2220 of 1958, articles 2 and 4; and Maritime Commerce Code 104 of 1853, article 537).

This measure is reflected in a proposed reservation under C/2 (Inland waterway freights, including chartering) of the CLCIO.

In the area of international road transport covered by item C/3 (Road transport: passengers and freights, including chartering), Costa Rica notified two measures having a bearing under the CLCIO.

Article 16 of the Regulation on International Transport of Persons (Decree 26 of 1965)\(^{74}\) established that when granting permits to supply international services for remunerated passenger transportation, the principle of reciprocity applied.

This reciprocity requirement was based on the number of permits granted to Costa Ricans in the other territory. For example, if Nicaragua had authorised four Costa Rican companies to provide the service in their country, Costa Rica would also allow four Nicaraguan companies to provide the service in its territory. Therefore, according to the Costa Rican authorities the reciprocity depended on the total number of permits that were available for the supply of the service.

Discrimination among Codes Adherents is contrary to the obligations of the Codes and the Core Principles listed in Costa Rica’s Accession Roadmap; reciprocity is one form of such discrimination and may not be the subject of reservations under the Codes.

Therefore, following the accession review discussion on 20 October 2017, Costa Rica informed the Committee that it abrogated the measure (Decree 41404 of 2018), eliminating all reciprocity requirement and allowing the approval of international passenger road transportation permits based on objective, technical and non-discriminatory criteria. No reservation is therefore required under the CLCIO.

The second measure is for freight transportation in Costa Rica. Freight transport within the country is reserved to either Costa Rican nationals or firms incorporated in Costa Rica that are managed by Costa Rican nationals and which are majority-owned by Costa Rican

\(^{74}\) Decree 16 was abrogated by Executive Decree 41404 of 2018.
nationals (Executive Decree 15624-MOPT of 1984, article 8). Regarding international freight transport, only vehicles with a Central American plate can provide the service (Law 7557 of 1995, article 69).

The measure restricting freight transport is reflected in a proposed reservation under C/3 (Road transport: passengers and freights, including chartering) of the CLCIO.

**Films**

The Costa Rican authorities have accepted the Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production of Films. Costa Rica supports the principles underpinning the Recommendation and notes that Costa Rica’s regulation and policy in the area in question is consistent with those principles.

Costa Rica does not impose restrictions on the import and use of films. However, it does maintain quantitative regulations in the form of screen quotas, requiring the exhibition of films of domestic origin up to 40% of films projected per day, in both television broadcast and cinema (Law 1758 of 1954, article 11).

The Costa Rican authorities have clarified that the restriction does not affect operations covered under the CLCIO in practice since: (i) combined domestic production does not reach 10% of total screen time; (ii) current fines are set at approximately two USD.

According to Annex V to Annex A, paragraph 2 of the CLCIO, screen quotas for printed films for cinema exhibition are allowed under the Codes "during a specific minimum proportion of the total screen time actually utilised over a specified period of not less than one year" (highlight not from the original). Since Costa Rica's current screen quota is calculated on a daily basis, the measure gives rise to a proposed reservation under item H/1 of the CLCIO.

**Professional services**

Costa Rica maintains restrictions on the cross-border provision by non-residents on several professional services commonly understood to be under the scope of the Codes.

Professionals that wish to provide professional services in Costa Rica must join their respective Costa Rican professional association, for which a residency requirement applies. According to the Costa Rican authorities, the provision of professional services in the country is considered of public interest and within the state's responsibility.

Costa Rica initially requested to lodge reservations on a number of professional services that are not commonly understood as coming under the purview of the Codes or for which the feasibility of cross-border provision is limited.

Following the Committee’s reviews, and after further discussions with the Costa Rican authorities and the OECD Secretariat, Costa Rica has agreed to reduce the list of proposed reservations.

---

75 Regulations concerning professional services which cannot be feasibly provided cross-border, such as custom services and pilotage, have not been considered in compiling the list of proposed reservations under item L/6. Furthermore, notary services and official translation and interpretation services, which are performed on behalf of the State, have also been excluded. Restrictions on the mobility of physical persons do not fall under the purview of the Codes.
reservations significantly and include only a limited amount of services that are typically considered under the scope of item L/6.

Professions for which registration before the professional associations is voluntary (tourist guides and journalists) or allowed for non-residents on a temporary basis,76 have been excluded, as well as professions that are performed on behalf of the state or commonly understood to be outside of the scope of the Codes.

Costa Rica brings to the attention of the Committee that for veterinarians, medical service providers, engineers, and architects, although temporary membership could be allowed, additional restrictions apply for non-residents, which effectively prevent the provision of professional services on a cross-border basis:

- For veterinarians, temporary membership is only allowed for professionals dedicated exclusively to academics, at the discretion of the board of Directors of the Professional College of Veterinarians.
- For medical service providers, temporary membership is allowed for very specific cases and only in case there are not enough Costa Rican specialists.
- For engineers and architects, for a blueprint from a non-resident who is a temporary member to be valid, it must be signed by a professional who is a permanent member of the professional association.

Costa Rica initially notified reciprocity requirements for the provision of cross-border services for dentists, geologists, journalists, accountants, veterinarians, pharmacists, doctors and other medical branches and optometrists. Following the Committee’s reviews, and after further consideration of the legal framework and discussion with professional associations, these requirements are considered not to fall under the purview of the Codes, since:

- For dentists: the professional association’s oversight is focused on services provided as a result of mobility of persons (ie. professionals that exercise the profession in the territory of Costa Rica). Thus, cross-border provision under the CLCIO is not restricted.
- For geologists: the authorities confirm that all Codes’ Adherents comply with the reciprocity requirement.
- For journalists: the reciprocity requirement would only apply in case of registration in the professional association. Since membership is not compulsory, non-residents are not required to fulfil the reciprocity requirement.
- For accountants, veterinarians, pharmacists, doctors and other medical branches (including optometrists): Costa Rica confirms that the principle of reciprocity becomes inapplicable, since the cross-border provision of the profession is effectively closed for all foreigners without discrimination and reflected in a proposed reservation under item L/6.

Therefore, a proposed reservation under item L/6 of the CLCIO has been lodged exclusively for lawyers, accountants, engineers and architects, pharmacists, veterinarians, doctors and other medical branches.

---

76 Professional services that can be provided by non-residents, following temporary membership of the corresponding professional association are: i) geologists; ii) agricultural engineers; iii) professionals on informatics and computers; iv) chemical engineers; v) economists; vi) biologists; vii) physics; viii) sociologists; ix) political science; x) international relations.
6. OECD BENCHMARK DEFINITION OF FOREIGN DIRECT INVESTMENT

At the request of the Investment Committee, the Working Group on International Investment Statistics (WGIIS) reviewed the position of Costa Rica under the Benchmark Definition of Foreign Direct Investment, 4th edition (BMD4) and related reporting requirements as set out in the Accession Roadmap.

The first accession review of Costa Rica by the WGIIS was conducted on 22 March 2016, with the participation of the Delegation of Costa Rica, on the basis of an OECD Secretariat document and Costa Rica’s response to the Survey of Implementation of Methodological Standards for Direct Investment (SIMSDI). The Chair welcomed the submissions by Costa Rica and their openness to answering questions during the review but asked for additional clarifications and commitments.

The WGIIS undertook a second accession review of Costa Rica’s position under BMD4 on 21 March 2017 on the basis of Costa Rica’s revised response to the SIMSDI, on FDI statistics according to the current reporting templates requested by the OECD, and on the basis of the revised OECD Secretariat report examining Costa Rica’s position vis-à-vis BMD4. At that review, Costa Rica indicated that it accepted the OECD recommendations vis-à-vis BMD4 and had implemented them in its FDI statistics. It had revised its FDI statistics back to 2011 to incorporate the changes in BMD4. Costa Rica confirmed its commitment to report FDI statistics to the OECD in accordance with the timeline and templates approved by the WGIIS.

The Working Group appreciated the presentations by the Costa Rican Delegation and their response to the many questions put to it before, during or after the meetings on 22 March 2016 and 21 March 2017.

Based on this review, the WGIIS welcomed in September 2017 the following:

- Costa Rica’s revised response to the SIMSDI, as well as the supplementary explanations provided during the review.
- Costa Rica’s submission of the detailed, standard FDI series based on BMD4 according to the template requested by the OECD.
- Costa Rica’s declared commitment to report FDI statistics for the OECD International Direct Investment Yearbook and public reports on FDI trends published by the OECD, in accordance with the timetable and template agreed by Members.
- The Working Group noted clarifications and commitments provided by Costa Rica in response to the questions raised in a letter from the WGIIS Chair letter dated 7 April 2016.
7. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

7.1. Experience and Performance of the Costa Rican National Contact Point (NCP)

According to the Decision of the Council on the OECD Guidelines for Multinational Enterprises (the Decision), all countries adhering to the Guidelines are required to set up an NCP. NCPs are created to further the effectiveness of the Guidelines, and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices. In addition to a promotional role in respect of the Guidelines, NCPs contribute to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances. The Procedural Guidance describes the functions of NCPs in four sections: institutional arrangements, information and promotion, implementation in specific instances and reporting.

**Institutional Arrangements**

Under the Procedural Guidance of the Decision, Section I:

“NCPs will operate in accordance with the “core criteria” of visibility, accessibility, transparency and accountability”

**Structure and location**

The Costa Rican NCP was created on 30 September 2013, date on which the Ministry of Foreign Trade (COMEX) sent a letter on behalf of the government to the OECD, accepting the terms and conditions set out in the Investment Declaration. This letter, which refers to the Decision, but does not specifically mention the NCP, constitutes the official document that formally established the NCP in Costa Rica. The Costa Rican NCP is now governed by Executive Decree Nº 40970 COMEX-MEIC (see below).

During its first stage of development, the Costa Rican NCP operated under a simple, single-institution structure located in COMEX, with other Ministries and stakeholders involved in the work on an ad-hoc basis.

In March 2018, Costa Rica concluded an analysis of the different institutional arrangements used by other countries in structuring their NCP. The decision was made to modify the structure of the NCP to match best practices among the NCP network. Locating the NCP in one single Ministry during the early stage of development was the most appropriate approach to consolidate its operations and functions, given: (i) the novelty of the Guidelines for a new NCP and its relevant stakeholders, (ii) the complexity and diversity of the topics it covered; and (iii) the broad number of policies, agendas and

---


78 The Investment Policy Division is the office in government in charge of defining the country’s FDI policy, co-ordinating FDI-related strategies and plans and overseeing the execution of these actions and the application of tools designed for these purposes, such as the special FDI incentive regimes. The work is framed under a broad, long-standing sustainable development vision by means of which Costa Rica pursues the attraction of FDI that is closely aligned with the OECD Guidelines.
organisations in Costa Rica working on areas related to the Guidelines. The experience acquired during this first phase now allows the NCP to transition to a more complex structure.

Actions undertaken by the NCP in the first development stage, focused on understanding the mandate, identifying and generating a robust network of stakeholders, defining and addressing policy coherence needs, and strengthening capacities as a transparent and impartial body, by gradually reinforcing the NCP’s staffing needs, in 2016, increasing from one to two part-time members. The consolidation of the network of relevant government agencies and stakeholders working in areas related to the Guidelines, helped ensure a systematic dialogue about the NCP’s activities and other issues relevant to the implementation of the Guidelines. Although the NCP is not yet fully known across all stakeholder groups, it sought to position itself as a place where reflections on how to best respond to the growing expectations on Responsible Business Conduct (RBC) are happening in the country, and established mechanisms for a systematic involvement with other ministries and stakeholders to expand areas of knowledge. This included engagement with workers’ organisations, supported by international experts sought out by the NCP, an element of particular importance, as engagement of these organizations with the NCP’s agenda entailed a number of challenges. An example of this was the visit to Costa Rica organised in April 2017, of a delegation from the Trade Union Advisory Committee (TUAC) to the OECD, to gather input on good practices in involving civil and workers’ organisations in NCP-related work, and in maintaining those groups informed, encouraged and engaged in constructive and positive participation.

The restructuring process of the NCP was based on broad consultations within the government and with stakeholders, carried out from September to December 2017. Taking into account the contributions stemming from these consultations, the government worked on modifying the institutional arrangements to include other ministries, as well as stakeholders, in the NCP’s structure. The new structure was formalised through an executive decree (see above), a draft text of which was extensively consulted with stakeholders from civil society and the public and private sectors. With the entry into force of the decree on 5 February 2018, the institutional arrangements of the NCP have been revised to clarify its structure, engaging a range of government entities and stakeholders more systematically in the work. As a result, the NCP is currently composed of the Director of the Investment Division and two part-time advisers from COMEX - who act as the technical secretariat -; and focal points from the Ministries of Economy, Industry and Commerce; Labour and Social Security; Environment and Energy; and Justice and Peace. The Decree also provides for the establishment of a stakeholder advisory board, consisting of representatives from business, academia, workers’ organisations and non-governmental organisations (NGOs). The NCP’s rules of procedure have also been updated to take into account the NCP’s new institutional structure (see also section Handling Specific Instances below). To date, the governmental focal points and the members of the stakeholder advisory boards have not yet been designated.

Engagement with stakeholders

Engagement and collaboration with stakeholders have been important components of the NCP’s activities since it started its operations and a central pillar of the activities reflected in the NCP’s Work Plans since 2016. The mapping of actors carried out in 2016 identified the numerous actors in Costa Rica working in areas relating to the Guidelines and allowed the NCP to establish a network of stakeholders to target its activities. The NCP undertakes continuous efforts to reach out to a wide range of stakeholders, such as industry
associations, business groups, trade unions, NGOs, civil society, communities and others. The NCP also maintains regular contact with government agencies to seek advice and assistance to address specific topics in areas related to the Guidelines.

Another avenue of collaboration with stakeholders has been the active participation by the NCP in multi-stakeholder committees working on responsible business conduct matters. For example, the NCP is participating in the work of the National Consultation Council on Social Responsibility in Costa Rica, an instance composed of representatives from business, the public sector, civil society and development cooperation agencies, which also advised the Government on the development of the National Policy on Social Responsibility (NSRP). This policy, launched in 2017, created a Social Responsibility Advisory Council, where the NCP is also invited to participate regularly. Moreover, the NCP’s stakeholder advisory board will be a sub-group of the Council, thereby creating other opportunities for policy coherence.

The NCP is overall gaining trust from stakeholders, but the level depends on the stakeholder group, and sustained and targeted efforts are needed. The NCP has a strong relationship and good reputation amongst members of the business and industry representatives that participated in the fact-finding mission, though gaining visibility among the entire business community is still an ongoing process. They consider the NCP well placed within COMEX, which is recognised as a credible and well-functioning Ministry that benefits from an overall coordinating function within the Government. NGOs and civil society groups are also of this view and recognise the role of the NCP. However, they seem cautious about the NCP’s mediation and problem-solving function in light of Costa Rica’s national legal and institutional framework, which already provides stakeholders with a variety of mechanisms and judicial procedures to claim the breach of rights and obtain compensation for damages in the areas covered by the Guidelines. The NCP could focus more attention on engagement and promotion and building relationships amongst civil society groups that seem less aware of the value of the specific instance mechanism.

Engaging with and gaining the confidence of trade unions seems to represent a major challenge for the Costa Rican NCP. This seems mainly due to the particular industrial relations setting in Costa Rica, characterised by different types of workers’ organisations (unions and so called "solidarity organisations") and the low levels of unionisation in the private sector. At the same time, a few unions have raised questions about the NCP being housed in the Ministry responsible for attracting investment and promoting trade. The NCP is aware of these challenges and has made progress in the relations with unions using the help of TUAC, the Ministry of Labour and Social Security and the International Labour Organisation Office in San José. However, gaining the trust of unions will remain an important issue going forward, and continued efforts are needed to ensure that the NCP is accessible to all workers.

**Human and financial resources**

The human and financial resources of the NCP are provided out of COMEX budget. For 2016, approximately USD 60 000 were allocated to the functioning of the NCP and, in 2017, the budget allocated to the NCP amounted to USD 64 000. This amount covers staff costs, promotional activities, participation in NCP capacity and peer learning activities,
as well as handling of specific instances, once they arise. In 2018, the NCP reported having a budget of USD 80,000.79

The two part-time staff members from the Investment Division currently appointed to the NCP dedicate at least 50% of total work time each to NCP-related work under the supervision of the Director of the Division. Both staff members started in the role in 2018, replacing the former staff members who had respectively been in the role since 2015 and 2016.80 All these roles have been formalised by the Decree referred to previously. Regarding building capacity and knowledge, the NCP staff has participated in the meetings of the Network of NCPs for RBC at the OECD and one staff member has participated as an observer in the peer review of the Chilean NCP in August 2017.

The NCP indicates that currently available resources have been sufficient to carry out its functions. The Government indicates that additional flexibility exists to assign more funds if needed, for example should new opportunities for peer learning, a peer review or a specific instance arise.

**Reporting**

As required under the Procedural Guidance, the Costa Rican NCP reports annually on its activities to the OECD Investment Committee. The NCP has provided timely and complete annual reports.

In addition, the NCP is required to regularly report within COMEX on advancement and fulfillment of its objectives. This annual COMEX report forms part of the institution’s regular reporting mechanisms and includes a narrative of the activities of the NCP carried out during the year. At the end of each year, it is shared with the press and maintained for consultation by interested parties on the Ministry’s website.81 Given that the COMEX annual report covers a broad range of issues, since 2016 the NCP develops a self-standing annual report providing detailed information exclusively on the implementation of the NCP’s work plan during the reporting period. The report is made publicly available on the NCP website.82 In addition, a report on budget and accounts assigned to the NCP is part of the Ministry’s package of information made regularly available to the public by the Comptroller General.83

---

79 These figures represent almost 20% of the Investment Division’s total annual budget for the respective years.

80 Regarding professional and educational background, the two positions occupied by officials that carry out NCP work require at least three-years’ experience working in the area of economic development, investment, or related policies; candidates holding relevant Masters Degrees (for example, in areas such as public policies and economic development) from recognised universities are preferred. One of the current members holds specific skills in mediation.

81 The report covering the 2016 period can be found at http://www.comex.go.cr/sala_prensa/informes.aspx.


1. “Make the Guidelines known and available by appropriate means, including through on-line information, and in national languages [...];
2. Raise awareness of the Guidelines and their implementation procedures, including through co-operation, as appropriate, with the business community, worker organisations, other non-governmental organisations, and the interested public;
3. Respond to enquiries about the Guidelines [...].”

Information about the Guidelines

Information about the Guidelines is disseminated through the NCP’s website, as well as through promotional activities with stakeholders and relevant government institutions. The NCP has developed a promotional brochure about the Guidelines.

Website

The NCP has a website available in Spanish (www.comex.go.cr/OCDE/PuntoNacionaldeContactoelasLineasDirectricesparaEmpresasMultinacionales.aspx). The website includes the following information:

- The NCP
  - The nature and origin of the NCP
  - Contact Information (e-mail address)
- Information about the Guidelines (legal nature, scope, themes and due diligence)
  - Spanish version of the Guidelines
  - Promotional brochure of the Guidelines
- The NCP and submission of specific instances
  - Work Plan
  - Annual Report
  - Handling specific instances: the NCP’s rules of procedure and form for submission of specific instances
  - Activities of the NCP
- Links of interest
  - Links to the OECD Guidelines and NCP websites
  - Links to websites of OECD institutional stakeholders: BIAC, TUAC and OECD Watch

Requests for information

The NCP regularly receives requests for information within the government and from stakeholders. In addition, the NCP has also been asked to explain and provide presentations on the Guidelines to inform enterprises, business associations, trade unions and government entities.

NCP Work Plan

Since 2016, the NCP has developed an annual work plan. The Work Plan 2016 contained four core areas: dissemination, collaboration with stakeholders and key partners, due diligence and peer learning.

The Work Plan 2017 included the following six strategic objectives, which are broken down in specific outputs and activities to be undertaken per quarter:
a) Raise awareness about the Guidelines and strengthen the implementation of their recommendations by companies.
b) Participate in public policy processes regarding social responsibility/RBC and raise awareness about the Guidelines within the government with a view to ensuring policy coherence.

c) Consolidate the network of stakeholders in the areas of the Guidelines and activate a deeper discussion with them on their effective implementation.

d) Develop a proactive agenda by identifying priority areas for the effective implementation of the Guidelines and their due diligence guidance documents.

e) Participate in the meetings of the Working Party on Responsible Business Conduct (WPRBC) and the Network of NCPs for RBC to build on the dialogue and exchange of good practices and experiences.

f) Strengthen the technical capacity of the NCP for the handling of specific instances.

The 2018 and 2019 Work Plans follow a similar structure to the 2017 version, and include the same breakdown of specific outputs and activities per quarter.

Upon formal appointment of the members for the NCP’s multi-stakeholder advisory council, the NCP expects to clarify the mechanisms for consultation with stakeholders and other government entities in the elaboration of its work plans.

Recent promotional activities

The NCP has organised a range of activities to promote the Guidelines and contributed to events to raise awareness about corporate responsibility. Since 2014, more than 20 promotional activities have been carried out by the NCP, the majority of them in collaboration with relevant actors (business associations, chambers of commerce, government agencies, and others). According to the NCP, doing so saves costs and ensures a wider reach of participants. For example, in November 2016, the NCP co-organised an event with the Costa-Rican Investment Promotion Agency for MNEs. The NCP has also contributed to seminars and workshops organised by different groups and chambers, such as the Mexican Chamber of Commerce and the Earth Charter, Costa Rica. The NCP also promotes the Guidelines through participating in external events and strategic initiatives. In 2018, the NCP reported to the OECD Secretariat organising seven promotional events, and giving presentations in three events organised by others.

In its dissemination activities, the NCP also raises awareness about its grievance mechanism function.

In addition, the NCP promotes the OECD Due Diligence Guidance instruments as part of its promotional activities. In particular, capacity building on the OECD-FAO Guidance on Responsible Agricultural Supply Chains was identified as a priority in the 2017 Work Plan, and due diligence with the financial sector has been a priority work area for the NCP since 2018.

Promoting coherence in RBC Policy-making

The NCP has been active in promoting coherence on RBC policies and regulations in Costa Rica through its engagement with and outreach to relevant government institutions. Relevant ministries and government agencies working on RBC related issues have developed a good understanding of the Guidelines and the role of the NCP and have
increasingly cooperated with the NCP in promotional activities and in the design of the specific instance handling function of the NCP. In particular, the NCP has contributed to the development of the NSRP and is expected to play an active role in its implementation as part of the Social Responsibility Advisory Council. As mentioned above, the stakeholder advisory board of the NCP will also be a sub-group of the Social Responsibility Advisory Council.

Handling Specific Instances

Under the Procedural Guidance of the Decision, Section I (C):
“[t]he National Contact Point will contribute to the resolution of issues that arise relating to implementation of the Guidelines in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines.”

No specific instances have been submitted to the Costa Rican NCP so far. According to the NCP, this may be due to the fact that Costa Rica has a legal and institutional framework that addresses many of the areas of the Guidelines and provides a wide range of legal grievance mechanisms to claim rights violations and obtain compensation for damages. This was also raised by stakeholders, who refer in the same context to the already exhaustive coverage of the Guidelines' recommendations in Costa Rican national legislation and the fact that the NCP mechanism does not result in a mandatory resolution, unlike judicial or administrative mechanisms.

According to the NCP and stakeholders, a "complaint culture" exists in Costa Rica and currently available mechanisms are widely used. Examples include the following:

- The “Amparo Action” (Recurso de Amparo) grants the possibility to request the intervention of the Constitutional Chamber in order to protect a right when a public authority or a private party is not complying with the law.
- The Ombudsman Office (Defensoría de los Habitantes) receives complaints relating to the state's failure to protect human rights. However, it does not have the mandate to consider corporate conduct.
- The recently adopted Labour Procedure Reform Act provides for a renewed adjudication process to deal with labour related disputes.
- The Environmental Administrative Tribunal receives and adjudicates complaints against any private or public entity concerning violations of laws on environmental protection and the use of natural resources.

Mindful of this reality, the NCP has carried out a mapping of each Chapter of the Guidelines and identified the national laws and regulations relevant to recommendations in the Guidelines. The mapping also details the competent government entity and the available complaints mechanisms. With this mapping, the value added of the NCP mechanism can focus on providing a problem-solving approach to dealing with supply chain related cases that transgress national borders and involve enterprises operating in Costa Rica and Costa Rican enterprises operating abroad, as well as cases involving several chapters of the Guidelines.
**NCP’s rules of procedure for specific instances**

Since early 2016, the NCP has provided guidance on the way specific instances would be handled in its rules of procedure. The NCP has recently updated the rules to align with the changes to the structure it adopted. In developing the rules of procedure and its current revision, the experience and rules of procedures of other NCPs have been taken into account. They have been subject to broad internal consultations to ensure coherence and consistency with the applicable legal framework. The rules of procedure are available in Spanish and English.

In accordance with the indicative timeframes set out in the Procedural Guidance, the NCP’s rules of procedure provide timelines for each stage of the specific instance process: the initial assessment (two months), dialogue and good offices (six months) and the final assessment (three months).

**Submission of specific instances**

The NCP provides on its website a form for the submission of specific instances, instructions for the submission of specific instances, as well as information on who can submit a specific instance.

Within 5 days of receipt of a submission the NCP examines whether all information requested in the form regarding *inter alia* the identity of the party, summary of the facts, relevant provisions of the Guidelines and parallel proceedings has been submitted. If the missing information is not provided within 10 days, the NCP closes the case.

Following the confirmation of receipt of the case, the NCP provides written confirmation of receipt to the submitter and to the enterprise concerned. It also informs other relevant Ministries to seek technical support and contribute to the specific instance handling. However, currently no further information is provided in the rules of procedure on how exactly other government ministries will be involved in the specific instance handling and whether they also contribute to the dialogue and good offices stage. According to the rules of procedure, the NCP may also consult with other NCPs, relevant government agencies related to the provisions of the OECD Guidelines and experts in the matters raised.

In the case of ongoing parallel legal, administrative or other proceedings, or proceedings available to the parties - the NCP evaluates whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a situation of contempt of judicial or administrative authority. This aligns largely with paragraph 26 of the Procedural Guidance, which refers to a contempt of court situation.

Many other state-based mechanisms that address areas of the Guidelines and may offer dispute settlement proceedings and/or mediation services are available in Costa Rica. The relationship of the NCP to these mechanisms is not clear. Particularly it is not clear whether the NCP may handle specific instances which raise issues which may be handled/or are being handled in parallel by another state-based mechanism in Costa Rica or what might constitute a situation of contempt of judicial or administrative authority.

The rules of procedure indicate that the NCP will contribute to the resolution of issues related to the implementation of the Guidelines, acting in a manner that is impartial, predictable, equitable and compatible with the principles set out in the Guidelines. They do not specify how the NCP would deal with any real or perceived conflict of interest in a particular case.
Initial assessment

The criteria used by the NCP in the initial assessment stage in deciding whether submissions merit further examination are those set out in the Procedural Guidance. Prior to publishing the initial assessment, the NCP provides the parties 10 days to provide comments. If the NCP does not accept the case, an extract of the communication will be published on the NCP's website.

Dialogue and good offices

According to the NCP’s rules of procedure, when a specific instance is accepted for further examination, the NCP offers its good offices to facilitate the achievement of an agreement on the case between both parties through dialogue. The dialogue offered by the NCP involves three parts:

- Meetings with each party involved in specific instances (the party/ies submitting the complaint and the companies/other parties against whom the complaint is brought);
- Meetings with both parties;
- In case of agreement between the parties, drafting of the agreement.

Statements, recommendations and determination

The rules of procedure set out situations where the NCP will make a public statement:

- At the end of the initial assessment stage, the NCP prepares a statement, which includes at a minimum the identity of the parties; a summary of the facts and arguments presented by each party on the alleged violation of the Guidelines; a summary of the actions undertaken by the NCP; the reason for the NCP’s decision to admit, partially admit or refuse the case; a declaration that the admission does not imply that there is a non-observance of the Guidelines; and an indicative timetable of the next steps of the process.
- If the specific instance is not accepted for further examination, the NCP evaluates the suitability of publishing the names of the parties and an extract of the final statement on the NCP website.
- Following the dialogue and good offices stage and regardless of whether an agreement has been reached, the NCP prepares a final statement with recommendations on the implementation of the Guidelines that includes, at a minimum: the identity of the parties; a summary of the facts and arguments presented by each party on the alleged breaches of the Guidelines; a summary of the actions undertaken by the NCP; the reason for the NCP to examine the case; other relevant details that were not included in the initial assessment; and conclusions of the dialogue and good offices stage. The final statement is published on the NCP's website.
- Before initial and final statements are finalised and published, the NCP grants the parties 10 days to provide comments.

The rules of procedure provide that for specific instances where the NCP makes recommendations in its final statements, the NCP may follow-up on their implementation.
Confidentiality

The rules of procedure specify that the NCP will respect confidentiality of all information received relating to the specific instance. All written information received will be shared with the other parties involved, unless there are valid reasons for information to be retained. Proceedings will also remain confidential during the good offices and dialogue stage. With the agreement of the parties, extracts from the agreement can be included in the final statement.

Findings

The NCP, created in 2013, is based in the Investment Division of COMEX and its coordinating organ consists of two part-time officials headed by the Director of the Investment Division. The NCP is allocated with sufficient human and financial resources to fulfil its responsibilities and can count on high-level political support. COMEX has recently agreed to revise the NCP’s institutional arrangements to clarify its structure and to engage other government entities and stakeholders more systematically in its work. The proposed change would ensure that a mechanism is in place through which relevant Ministries can be consulted in the specific instance handling and to set up a stakeholder advisory board. The proposed revision to the structure has been formalised through an executive decree, adopted in February 2018. To date the government focal points and the members of the stakeholder advisory board have not yet been designated.

In particular, in the past two years, the NCP has undertaken significant actions to engage broadly with all relevant ministries, as well as companies, business associations, NGOs and unions through promotional and awareness raising activities. Stakeholders understand the role of the NCP; however, further efforts are needed to engage with all stakeholder groups to ensure effective access to the NCP, in particular workers' organisations.

In this regard, the NCP should also continue to highlight the comparative advantage of its specific instance procedure relative to the numerous other grievances processes available in Costa Rica and highlight its accessibility, extra-territorial reach and its solution-oriented approach. The NCP could also further improve its website as a communication tool, by providing information about upcoming promotional activities and making the site available in English.

The NCP has recently revised its rules of procedure in line with the proposed new structure. More clarity is needed on how the NCP would deal with conflicts of interest or the perception thereof, as well as how the NCP would handle the interplay with existing state-based grievance mechanisms. Considering that the new NCP structure will integrate other government ministries, the rules of procedure should also clarify how they would be involved in handling specific instances.
7.2. Recommendations of the Council on Due Diligence

This section addresses Costa Rica’s commitment to implement the Guidelines and the related Council Recommendations. The OECD Guidelines apply to enterprises operating across all industry sectors. However, specific challenges may arise when implementing them in various contexts and sectors. In 2013 the OECD started the “proactive agenda”, which represents a pillar of activity under the Guidelines to develop sectoral guidelines which aim to help enterprises identify and respond to risks of adverse impacts associated with particular sectors. These projects are demand-driven and convene governments, business, civil society and trade unions in a multi-stakeholder setting to set common expectations on due diligence in specific sectors. Current projects include (i) responsible mineral supply chains; (ii) stakeholder engagement in the extractive sector; (iii) responsible agricultural supply chains; (iv) responsible garment and footwear supply chains, and (v) responsible business conduct in the financial sector.


As part of its promotional activities, the Costa Rican NCP has raised awareness with all stakeholders of the concept of due diligence and promoting the OECD sector-specific guidance in this regard. Through the process of consultations with stakeholders and considering the relative economic importance and potential for risks of adverse impacts in the agricultural sector, the NCP has identified the dissemination of the Guidance for Responsible Agricultural Supply Chains as a priority. As a result of the workshops on the Guidance held with the participation of business, industry associations, government and other stakeholders in May and September 2017, a number of companies have expressed interest to participate in the pilot project for the implementation of the OECD-FAO Guidance. Dissemination of the guidance has also been included in the 2017 NCP Work Plan. In addition, taking into account the growing importance of financial services in the Costa Rican economy, some public and private banks have expressed interest in increased dissemination and peer learning experiences on RBC considerations in the financial sector.

---

sector, particularly the Guidance on due diligence in the financial sector.\textsuperscript{85} Due to this interest, the NCP has continued to work with the Business Association for Development (AED), the Netherlands Embassy, and the Institute for Corporate Governance, to aid financial institutions in the implementation of the Guidelines and sustainability standards.

\textit{Findings}

The Government has taken and is planning measures to implement the Recommendations of the Council on due diligence. The NCP has focussed on the OECD-FAO Agricultural Due Diligence Guidance, considering the importance of the agricultural sector in Costa Rica. The Government is aware of the remaining challenges in handling social and environmental issues in the sector, The NCP can play an important role in addressing these issues through multi-stakeholder engagement and the promotion of the OECD-FAO Guidance.

\textbf{7.3. Policies to promote Responsible Business Conduct}

The report on the accession review of Costa Rica under the OECD Guidelines submitted to the WPRBC also included an examination of policies to promote RBC and Costa Rica’s commitment to implement the Guidelines, with reference to the OECD Policy Framework for Investment, and in particular the chapter on enabling RBC. In this regard, the WPRBC considered general policies for promoting RBC, policies in specific areas covered by the Guidelines as well as policies relating to the state as an Economic Actor. This section provides a summary of this examination as set out in the WPRBC technical opinion.

There exists an increasingly well-developed understanding of the importance of RBC in Costa Rica among business, government and other stakeholders. The understanding of RBC has evolved from an emphasis on environmental consciousness to also include other aspects of corporate responsibility. The term social responsibility most commonly used seems to align broadly with the dimensions of the concept of RBC as outlined in the Guidelines covering the areas of environment, labour, human rights and anti-corruption and transparency. Government and leading companies see sustainability as a way to create value and enhance competitiveness. Maintaining the increasing interest in RBC, as well as raising increased understanding on supply chain due diligence, also among domestic companies and SMEs will be key.

Policies and regulations in the areas covered by the Guidelines are in place and Costa Rica has committed to the various international instruments cited in the Guidelines. In June 2017, the Government has adopted a NSRP, which represents an overarching policy framework for RBC. There is a significant level of collaboration and coordination between different ministries and other actors. The NCP has played an important role to integrate existing efforts and promote policy coherence. The measures foreseen to implement the NSRP should further align with and build on the NCP's dual role in promoting the Guidelines and dealing with cases of alleged corporate misconduct. The Government is also recommended to pursue its efforts with workers’ organisations to ensure their active engagement with the RBC agenda in Costa Rica.

\textsuperscript{85} See https://mneguidelines.oecd.org/rbc-financial-sector.htm
The Government has undertaken efforts to promote RBC in its role of economic actor, specifically through its free trade agreements, procurement activities and a range of voluntary certification programmes. In particular, in the area of environment, government policies and incentive structures to promote RBC are advanced. In order to strengthen uptake by SOEs, it will be important to ensure that the objectives of the NSRP be integrated into the new SOE coordination system and that the new central co-ordinating unit will have sufficient capacity to promote RBC policies on a government-wide basis.
Annex 1
Relevant OECD Legal Instruments and Core Principles for the Investment Committee's Accession Review of Costa Rica

A. Appendix to the Roadmap for the Accession of Costa Rica to the OECD Convention [excerpt]

This Appendix sets out core principles for the technical accession review of each OECD committee. These lists are non-exhaustive and the committees may consider other issues within their competence as appropriate.

Investment Committee

- Full compliance with the principles of non-discrimination, transparency and ‘standstill’, in accordance with the OECD Codes of Liberalisation and the National Treatment Instrument of the OECD declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);

- An open and transparent regime for FDI, restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;

- Liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;

- No restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;

- Relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;

- Fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;

- Effective enforcement of intellectual property rights;

- Key commitments under investment protection and other international agreements;

- Evidence of a commitment to implement the Guidelines for Multinational Enterprises, in particular the existence of a National Contact Point that operates in accordance with the provisions set out in the Decision of the Council on the OECD Guidelines for Multinational Enterprises, and of commitment to the various international instruments cited in the Guidelines;

- Completion of the OECD Survey of Implementation of Methodological Standards for Direct Investment (based on the Benchmark Definition of Foreign Direct Investment, 4th edition –
BMD4 2008) and agreement to report data for the compilation of the OECD International Direct Investment Yearbook, in accordance with the timetable and template agreed by Members.

B. OECD legal instrument under the purview of the Investment Committee for the purpose of the Accession Review

**Declaration on International Investment and Multinational Enterprises and Related Decisions & Recommendations**

Declaration on International Investment and Multinational Enterprises [OECD/LEGAL/0144]

Decision of the Council on the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0307]

Third Revised Decision of the Council concerning National Treatment [OECD/LEGAL/0263]

Decision of the Council on Conflicting Requirements being imposed on Multinational Enterprises [OECD/LEGAL/0261]

Decision of the Council on International Investment Incentives and Disincentives [OECD/LEGAL/0213]

Recommendation of the Council on Member Country Exceptions to National Treatment and Related Measures concerning Access to Local Bank Credit and the Capital Market [OECD/LEGAL/0255]

Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures in the Category of Official Aids and Subsidies [OECD/LEGAL/0250]

Recommendation of the Council on Member Country Exceptions to National Treatment and National Treatment related Measures concerning the Services Sector [OECD/LEGAL/0247]

Recommendation of the Council concerning Member Country Exceptions to National Treatment and National Treatment related Measures concerning Investment by Established Foreign-Controlled Enterprises [OECD/LEGAL/0233]

Recommendation of the Council on Member Country Measures concerning National Treatment of Foreign-Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order and Essential Security Interest [OECD/LEGAL/0226]


Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [OECD/LEGAL/0386]


Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector [OECD/LEGAL/0437]

Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [OECD/LEGAL/0443]

**Decisions**


**Recommendations**


Recommendation of the Council on the OECD Benchmark Definition of Foreign Direct Investment [OECD/LEGAL/0363]

Recommendation of the Council on Principles for Private Sector Participation in Infrastructure [OECD/LEGAL/0084]

Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production of Films [OECD/LEGAL/0063]

**Declaration**

Declaration on Sovereign Wealth Funds and Recipient Country Policies [OECD/LEGAL/0365]

**Draft Convention**

Convention on the Protection of Foreign Property [OECD/LEGAL/0084]
Annex 2
Costa Rica’s reservations to the Code of Liberalisation of Capital Movements

<table>
<thead>
<tr>
<th>List A</th>
<th>I/A</th>
<th>Direct investment:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>- In the country concerned by non-residents.</td>
</tr>
</tbody>
</table>

**Remark: The reservation applies only to:**

i. **concessions and permits of use for land for business purposes in the maritime-terrestrial zone, coastal urban areas and border areas for non-residents and foreign-owned or controlled companies;**

ii. **investment in road transport to the extent that freight transport between two points within the territory of Costa Rica may only be provided by Costa Rican nationals, or enterprises incorporated in Costa Rica, which are at least 51% owned and effectively controlled or managed by Costa Rican nationals;**

iii. **mining to the extent that:**
   a. **75% of the members of metallic mining co-operatives must be Costa Rican nationals;**
   b. **concessions may not be granted to foreign governments or leaders of foreign governments;**

iv. **commercial electricity generation by enterprises with 65% or more of foreign ownership;**

v. **joint ventures with the Public Services Company of Heredia (ESPH), is limited to a maximum of 49% foreign capital stock;**

vi. **private security, surveillance and investigations services, as well as private security training schools;**

vii. **media and advertising agencies, except through an enterprise incorporated in Costa Rica as a sole proprietorship/personal company (sociedad personal) or an enterprise of capital with nominative stock;**
| List B, III/A1, B1 | Operations in real estate:
- Building or purchase in the country concerned by non-residents.

*Remark: The reservation applies to granting of concessions and permits for the use of state-owned land in the maritime-terrestrial zones, coastal urban areas and border areas for non-residents and foreign-owned or controlled companies.*

- Building or purchase abroad by residents.

*Remark: The reservation applies to the acquisition abroad of real estate by resident banks, savings and credit cooperatives, non-bank financial institutions and pension funds.*

| List A IV/C1, D1 | Operations in securities on capital markets:
- Purchase in the country concerned by non-residents.

*Remark: The reservation applies only to the purchase of shares and other securities of a participating nature, which may be affected by laws on inward direct investment.*

- Purchase abroad by residents:

*Remark: The reservation applies to the purchase of:*

1) foreign securities and other financial instruments for private pension funds, that would represent more than 25% of the fund’s total assets;

2) real estate-backed securities for resident banks, savings and credit cooperatives, and non-bank financial institutions.
<table>
<thead>
<tr>
<th>List B</th>
<th>Operations on money markets:</th>
</tr>
</thead>
<tbody>
<tr>
<td>V/D1</td>
<td>Purchase abroad by residents:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><em>Remark: The reservation applies to the purchase of:</em></td>
</tr>
<tr>
<td></td>
<td>i) foreign securities and other financial instruments for private pension funds, that would represent more than 25% of the fund’s total assets;</td>
</tr>
<tr>
<td></td>
<td>ii) real estate-backed securities for resident banks savings and credit cooperatives, and non-bank financial institutions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List B</th>
<th>Other operations in negotiable instruments and non-securitised claims:</th>
</tr>
</thead>
<tbody>
<tr>
<td>VI/D1</td>
<td>Purchase abroad by residents:</td>
</tr>
<tr>
<td></td>
<td><em>Remark: The reservation applies only to private pension funds for the purchase of foreign financial instruments that would represent more than 25% of the fund’s total assets.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List A</th>
<th>Credits directly linked with international commercial transactions or with the rendering of international services:</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIII(i)/B</td>
<td>Credits granted by residents to non-residents:</td>
</tr>
<tr>
<td></td>
<td><em>Remark: The reservation only applies to non-bank financial institutions, which cannot grant credit to non-residents.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List B</th>
<th>Credits directly linked with international commercial transactions or with the rendering of international services:</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIII(ii)/B</td>
<td>Credits granted by residents to non-residents:</td>
</tr>
<tr>
<td></td>
<td><em>Remark: The reservation only applies to non-bank financial institutions, which cannot grant credit to non-residents.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List B</th>
<th>Financial credits and loans:</th>
</tr>
</thead>
<tbody>
<tr>
<td>IX/B</td>
<td>Credits and loans granted by residents to non-residents:</td>
</tr>
<tr>
<td></td>
<td><em>Remark: The reservation applies only to non-bank financial institutions, which cannot grant credit to non-residents;</em></td>
</tr>
<tr>
<td>List A</td>
<td>X(i&amp;ii)/A2</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
| X(i)/B2                                    | -Sureties and guarantees granted by residents in favour of non-residents.  
Remark: The reservation applies only to:  
\(i)\) the encumbrance of shares and quotas of locally incorporated media or advertising agency company in favour of corporations with bearer shares, foreign enterprises or foreign nationals;  
\(i)\) non-bank financial institutions.  
- Financial back-up facilities granted by residents in favour of non-residents.  
Remark: The reservation applies only to non-bank financial institutions. |

<table>
<thead>
<tr>
<th>List B</th>
<th>X(ii)/B2</th>
</tr>
</thead>
</table>
| X(ii)/B2                                    | - Financial back-up facilities granted by residents in favour of non-residents.  
Remark: The reservation applies only to non-bank financial institutions. |

<table>
<thead>
<tr>
<th>List B</th>
<th>XII/A2,A3</th>
</tr>
</thead>
</table>
| Operations in foreign exchange:  
- In the country concerned by non-residents:  
Remark: The reservation applies only to the sale or exchange of foreign currency derivatives and structured products. |
## Annex 3

**Costa Rica’s reservations to the Code of Liberalisation of Current Invisible Operations**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>C/2</td>
<td>Inland waterway freights, including chartering.</td>
<td><em>Remark: The reservation applies only to transport between national ports.</em></td>
</tr>
<tr>
<td>C/3</td>
<td>Road transport: passengers and freights, including chartering.</td>
<td><em>Remarks: The reservation applies to freight transport services.</em></td>
</tr>
<tr>
<td>D/3</td>
<td>Life assurance.</td>
<td></td>
</tr>
</tbody>
</table>
|      | Annex I to Annex A, Part I, D/3, paragraph 1 | *Remark: The reservation, which includes the activity of promotion, does not apply if:*
|      | i) the insurance policy is taken out at the policyholder’s initiative, and the contract is concluded and serviced in the jurisdiction of the foreign insurer; |
|      | ii) the life assurance coverage is not available from an authorised insurance company in the Costa Rican market. |
| D/4  | All other insurance. | *Remark: The reservation, which includes the activity of promotion, does not apply:*
<p>|      | i) if the insurance policy is taken out at the policyholder’s initiative, and the contract is concluded and serviced in the jurisdiction of the foreign insurer; |
|      | ii) for surplus lines. |
| D/7  | Entities providing other insurance services. | <em>Remark: The reservation applies only to the establishment of insurance intermediaries, which must be locally incorporated.</em> |
| D/8  | Private pensions. |  |
|      | i) the establishment of branches and agencies, which must be locally incorporated; |
|      | ii) cross-border provision of services, except if the relationship is initiated at the policyholder’s initiative and if the contract is concluded and serviced in the jurisdiction of the foreign provider.* |</p>
<table>
<thead>
<tr>
<th>E/1</th>
<th>Payment services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remark: The reservation applies only to the provision of foreign exchange payment services by non-residents.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E/2</th>
<th>Banking and investment services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remark: The reservation only applies to:</td>
<td></td>
</tr>
<tr>
<td>i) provision of banking and investment services, including public offering of intermediation services for securities or financial instruments, by non-residents in Costa Rica, except if the service is taken out at the resident's initiative;</td>
<td></td>
</tr>
<tr>
<td>ii) credit granting and financing to non-residents by local non-bank financial institutions;</td>
<td></td>
</tr>
<tr>
<td>iii) underwriting and broker/dealer services by non-residents in Costa Rica, except if the service is taken out at the resident's initiative, and is related to foreign securities;</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E/3</th>
<th>Settlement, clearing and custodial and depository services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remark: The reservation only applies to the provision of custodial services by non-residents in Costa Rica, except if requested by resident's initiative and is related to foreign securities or if the service is provided to a Costa Rican custod.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E/4</th>
<th>Asset management.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remark: The reservation only applies to:</td>
<td></td>
</tr>
<tr>
<td>i) cross-border provision of collective investment fund portfolio management services, pension fund management and trust services for infrastructure projects by non-residents in Costa Rica;</td>
<td></td>
</tr>
<tr>
<td>ii) establishment of pension fund management companies and trust services for infrastructure projects, which must be locally incorporated;</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>E/5</th>
<th>Advisory and agency services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remark: The reservation only applies to the public offering of advisory services on securities or financial instruments (including securities credit rating agencies).</td>
<td></td>
</tr>
</tbody>
</table>

<p>| E/7 | Conditions for establishment and operation of branches, agencies, etc. of non-resident investors in the banking and financial services sector. |</p>
<table>
<thead>
<tr>
<th>Annex II to Annex A, paragraph 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Remark: The reservation on paragraph 1 concerns the establishment of branches for banking institutions and financial services sector, which must be locally incorporated; except for banks, collective investment funds portfolio management services and collective investment fund managers.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>H/1</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Annex V to Annex A, paragraph 2:</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Remark: The reservation applies only to the screen quota for printed films and other recordings for cinema and television broadcasts.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>L/6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional services</td>
</tr>
</tbody>
</table>

| Remark: The reservation applies to the reservation applies to residency requirements for lawyers, accountants, engineers and architects, pharmacists, veterinarians, doctors and other medical branches. |
Annex 4
Costa Rica’s updated list of reservations under the National Treatment instrument

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Real Estate: Concessions and permits of use to perform any type of development or activity in the restricted maritime-terrestrial zone (islands and 150 meters from the public zone line, which includes the zone within 50 meters from the high tide line); coastal urban areas (200 meters from the high tide line, which have been declared as densely populated before 2014); and border regions (2,000 meters from the borders with Nicaragua and Panama) shall not be granted to non-residents, foreign-owned or foreign-controlled enterprises.

Authorities: Law 6043, article 47. Law 9221, article 13. Law 2825, article 7.

Mining: Only individuals can constitute metallic mining co-operatives for small-scale mining activities for family subsistence or artisanal purposes, and 75% of the members must be Costa Rican nationals. Concessions for mining or exploration of ores may not be granted to foreign governments or leaders of foreign governments.

Authorities: Law 6797, articles 9 and 74.

Electricity (generation, transmission and commercialisation): Private enterprises may invest in commercial power generation not exceeding 50,000 kW, provided that 35% of the capital stock of the company is owned by Costa Rican nationals; that the state-owned company, Instituto Costarricense de Electricidad (ICE), purchases the electricity produced; and that the power generated by all private plants in Costa Rica does not represent more than 30% of the total power produced in the national electric system. Participation of foreign capital in joint ventures with the Public Services Company of Heredia (ESPH) is limited to a maximum of 49% of the capital stock.

Authorities: Law 7200, article 3, 5 and 20. Law 7789, article 15.

Telecommunications: Participation of foreign capital in joint ventures with the Public Services Company of Heredia (ESPH) is limited to a maximum of 49% of the capital stock.

Authority: Law 7789, article 15.

Land transport (freight): Freight transportation between two points within the territory of Costa Rica may only be provided by Costa Rican nationals or enterprises incorporated in Costa Rica, which are at least 51% owned and effectively controlled or managed by Costa Rican nationals.

Authority: Executive Decree 15624-MOPT of 1984, Article 8 and Law 7557, Article 166.d).

Private security, surveillance and investigation services, as well as private security training schools: Firms must be owned by Costa Rican nationals, be incorporated locally either as enterprises or associations and all personnel responsible for their organization, operation and management must be residents.
Authority: Law 8395, articles 13, 14 and 45.

Public accounting: Enterprises providing these services must be locally incorporated and majority owned by professionals incorporated in Costa Rica as Certified Public Accountants. A minimum of five years of residence in the country prior to incorporation is required to register as a Certified Public Accountant.


Air transport: The supply of domestic air transport services by foreign-owned enterprises requires incorporation in Costa Rica. Certificates of air transport for non-resident companies are subject to reciprocity, except for Adherents to the Codes of Liberalisation of Capital Movements and Codes of Liberalisation of Current Invisible Operations, subject to their compliance with the corresponding technical procedure.

Authority: Law 5150, article 150.

II. Official aids and subsidies
None.

III. Tax obligations
None.

IV. Access to local finance

Mining: Costa Rican banks, combined, may not finance more than 10% of the total investment of enterprises of foreign capital or with more than 50% foreign ownership, which are investing in mining exploration or exploitation.

Authority: Law 6797, article 70.

V. Government procurement
None.

B. Exceptions by territorial subdivisions
None.
Annex 5
Costa Rica’s updated list of Other Measures Reported for Transparency under the National Treatment Instrument

A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

a) Investment by established foreign-controlled enterprises
None.

II. Other measures reported for transparency

a) Investment by established foreign-controlled enterprises
None.

b) Corporate organisation

Transport (water): At least 10% of the crew on Costa Rican registered vessels used for international traffic that call on Costa Rican ports shall be Costa Rican nationals, provided that such trained personnel are available domestically.

Authority: Law 12 of 1941, article 41.

c) Government purchasing
None.

d) Official aids and subsidies
None.

B. Measures reported for transparency at the level of territorial subdivisions

None.

C. Activities covered by public, private, mixed monopolies or concessions

At the level of national government

I. Public monopolies

- Exploration and exploitation of geothermal activities.
- Import, refinery and wholesale distribution of crude oil and its derivatives.
- Production and marketing of ethylic alcohol for the elaboration of alcoholic beverages.
- Water supply and public sewage services.
- Social service of postal communication of letter classified as letters and cards (LC) according to the Universal Postal Union.
Lottery sale services.
Electricity transmission.
Basic traditional telephony (fixed telecommunications).

II. Private or mixed (public/private) monopolies

III. Concessions

- Railroad, road and maritime transport services.
- Marinas, docking facilities and airport services.
- Radio and television broadcasting services.
- Wireless services.
- Electricity generation, distribution and commercialisation.
- Mining and hydrocarbons exploration.
- Irrigation and drainage services.
- Maritime and air services in national ports.
- Collection and treatment services of industrial and solid waste
- The installation, operation, and maintenance of hydrant services.

At the level of territorial subdivisions.
None.
Figures A 0.1. 2018 Overall FDI Restrictiveness Index

Source: OECD Foreign Direct Investment Regulatory Restrictiveness Index, 2019

Figures A 0.2. Costa Rica’s FDI’s Regulatory Restrictiveness Index, Sectorial Breakdown (2018)

Source: OECD Foreign Direct Investment Regulatory Restrictiveness Index, 2019.
Note: The OECD FDI Regulatory Restrictiveness Index covers only statutory measures discriminating against foreign investors (e.g. foreign equity limits, screening & approval procedures, restrictions on key foreign personnel, and other operational measures). Other important aspects of an investment climate (e.g. the implementation of regulations and state monopolies among other) are not considered. Regulatory restrictions are evaluated on a 0 to 1 scale (“0” is the absence of restrictions and “1” is a closed sector) in the following sectors: agriculture, forestry, mining and quarrying, manufacturing, electricity, construction, distribution, transport, media, telecom, financial and professional services, and real estate investment. The overall restrictiveness index is a simple average of the sectoral scores.

In 2019, all 36 OECD countries and 33 non-OECD countries were covered, including all G20 members. Data reflects regulatory restrictions as of end-December. For more information on the methodology, please refer to: Kalinova et al. (2010), OECD’s FDI Regulatory Restrictiveness Index: 2010 update, OECD Working Papers on International Investment, No. 2010/03, OECD Publishing: Paris
## Annex 7

Costa Rica’s action plan for implementation of the policy decision to allow branches of foreign banks, May 2019

<table>
<thead>
<tr>
<th>Phases</th>
<th>Actions</th>
<th>Steps</th>
<th>Estimated Dates</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting and presentation of a bill of law</td>
<td>Drafting of a bill of law to allow operation of branches of foreign banks</td>
<td>Drafting a bill of law considering previous experience with insurance, following the principle of non-discrimination and addressing prudential concerns.</td>
<td>October – December 2018</td>
<td>Completed</td>
</tr>
<tr>
<td>Submission of the bill of law to the Legislative Assembly</td>
<td>1. Coordination of the signing by the President and the Minister of Finance. 2. Submission to the Legislative Assembly.</td>
<td></td>
<td>July 2019</td>
<td>Completed, 8 March 2019</td>
</tr>
<tr>
<td>Legislative approval</td>
<td>Assigning the bill of law to a parliamentary commission</td>
<td>The President of the Legislative Assembly assigns the bill of law to the Special Commission for OECD Affairs’, for discussion.</td>
<td>March 2019</td>
<td>Completed, 11 March 2019</td>
</tr>
<tr>
<td>Explaining the content of the bill of law to legislative advisors</td>
<td>Convene and hold meetings to share the content of the bill of law with the technical advisors of some parliamentarians, including those that form part of the Special Commission for OECD Affairs.</td>
<td></td>
<td>April 2019</td>
<td>Completed, 3 April and 16 May 2019</td>
</tr>
<tr>
<td>Consultation to stakeholders by the Legislative Assembly</td>
<td>The Special Commission for OECD Affairs sends requests for opinions and receives them from stakeholders.</td>
<td></td>
<td>March – April 2019</td>
<td>Completed, 30 April 2019</td>
</tr>
<tr>
<td>Positive opinion by the parliamentary commission</td>
<td>The Special Commission for OECD Affairs studies the bill of law and issues a positive opinion, which allows the bill to proceed to the plenary of the Legislative Assembly for debate.</td>
<td></td>
<td>June 2019</td>
<td>Ongoing</td>
</tr>
<tr>
<td>First reading</td>
<td>Parliamentarians vote on the first of two readings in the plenary of the Legislative Assembly.</td>
<td></td>
<td>August 2019</td>
<td>Pending</td>
</tr>
<tr>
<td>Second reading</td>
<td>Parliamentarians vote on the second reading in the plenary of the Legislative Assembly.</td>
<td></td>
<td>September 2019</td>
<td>Pending</td>
</tr>
<tr>
<td>Signing by the President and publication</td>
<td>1. The Legislative Assembly sends the approved law to the President for ratification. 2. The President ratifies the new law. 3. Publication of the law.</td>
<td></td>
<td>September 2019</td>
<td>Pending</td>
</tr>
<tr>
<td>Entry into force</td>
<td>At this point, SUGEF and CONASSIF are empowered to formalize the issuance of the necessary regulations regarding branches.</td>
<td></td>
<td>September 2019</td>
<td>Pending</td>
</tr>
<tr>
<td>Phases</td>
<td>Actions</td>
<td>Steps</td>
<td>Estimated Dates</td>
<td>Status</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------------------</td>
<td>-------------------------</td>
</tr>
</tbody>
</table>
| Implementation framework           | Definition of the implementation framework                           | 1. Analysis of the existing framework considering the policy decision to allow branches of foreign banks as set forth in the bill of law (see description of contents of the bill of law in point II above). In this light, applying the following guiding principles:  
   - The supervision, sanctions and intervention framework will be equivalent to that of private banks.  
   - Capital requirements shall not be more than that required to a private bank to engage in similar activities.  
   - The applicable regime for bankruptcy will be the one established in the Commerce Code for branches of all economic activities, and in the laws and regulations applicable to private banks.  
   2. Confirmation that article 171 of the Law Regulating the Securities Market applies. This article stipulates that provisions concerning the authorization, regulation, supervision, control and oversight shall not establish requirements that unduly restrict the access of the economic agents to the financial market, limit free competition, or include discriminatory conditions. | October 2018 – March 2019                                               | Completed, 8 March 2019        |
| Regulation                         | Determining which regulations require modifications to provide equivalent treatment to branches with respect to established private banks | 1. Analysis and review of current regulations that apply to private banks to determine the specific aspects that require a reform, to adjust to the characteristics of a branch.  
   2. Analysis and review in light of the new legislation on whether additional modifications are required to adjust aspects such as formal requirements for information, corporate governance and fit-and-proper requirements, liquidity, regulations on risk, capital sufficiency and integral risk management. | Work has commenced and will continue once the law enters into force | Ongoing                  |
| Modification of regulations to provide equivalent treatment to branches with respect to established private banks |                                                      | 1. Defining an action plan.  
2. Drafting of modifications.  
3. Approval of modifications by CONASSIF.  
4. Public consultation.  
5. Final approval.  
6. Publication for entry into force. | Within one year of publication of the law** | Pending                   |
<table>
<thead>
<tr>
<th>Phases</th>
<th>Actions</th>
<th>Steps</th>
<th>Estimated Dates</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development of cooperation agreements with</td>
<td></td>
<td>1. Identifying banking marketplace of the holdings that might be interested in establishing a branch.</td>
<td>To begin when law enters into force</td>
<td>Pending</td>
</tr>
<tr>
<td>other countries</td>
<td></td>
<td>2. Studying the legal regime and the supervision and oversight regime of the markets identified.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Identifying conditions for the sharing of information.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Identifying information that is relevant for the supervision by Costa Rican authorities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Establishing contact points for cooperation with foreign authorities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>6. Creating the tools for the sharing of information and cooperation among authorities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>7. Signing of cooperation agreements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorization of branches</td>
<td>Processing of requests for authorization of</td>
<td>Applying the requirements of the new legal framework for branches of foreign banks to start their operations in Costa Rica.</td>
<td>To begin when regulations are approved, not more than one year after the publication of the law</td>
<td>Pending</td>
</tr>
<tr>
<td>branches</td>
<td>branches of foreign banks</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: The Special Commission for OECD Affairs operates in the Legislative Assembly with exclusive dedication to OECD-related matters. This allows bills of law under its purview to advance on a fast track, as this commission's workload is limited to only these issues. Among its main responsibilities, the Commission will complete the mandatory consultations with relevant stakeholders required (in writing and / or hearings before it), discuss the bill, and issue a positive opinion, which allows the bill to proceed to the plenary of the Legislative Assembly for debate.

**This term is in the bill of law that authorises branches of foreign banks. The bill empowers SUGEF to issue regulations relating to authorisation of branches of foreign banks. If authorities fail to comply with the term, article 36 e) of the Contentious Administrative Procedural Code (Law No. 8508) applies. This provision states that a judicial proceeding against the competent authorities may be presented regarding an omission of a conduct required by law.
Annex 8
Additional considerations made by Costa Rica for transparency purposes

The Costa Rican authorities have indicated that they may wish to avail themselves of the text of this Annex, which they have requested to include to this report, as part of the Final Statement of obligations of membership in acceding to the OECD.

This information is for transparency purposes and has no impact on Costa Rica’s position under the investment instruments.

Costa Rica's investment regime and social protection measures

Foreign direct investment is regarded as a catalyst for economic development in Costa Rica, for which special protection and incentives for its attraction have been put into place. Together with this economic pillar, the authorities strongly emphasise on a sustainable development model that preserves the country’s well-endowed natural environment, its more vulnerable populations and its social services.

Costa Rica does not have an across-the-board national security review mechanism for foreign investment; however, the authorities note that the maintenance of cultural values has been regarded by them as a public purpose, giving special attention to the respect of minorities in social and economic disadvantages, vulnerable groups and indigenous populations.

Costa Rica also notes that it considers as highly sensitive areas of public policy the protection and provision of social services protected by article 121 of the Constitution. Some of them, such as law enforcement and correctional services, are exclusively reserved for the state and therefore outside of the scope of the Codes.

Other social services covered by article 121 are allowed for provision by private parties, subject to special protections. Services in this category include income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public sewage services, and water supply services. These services have been constitutionally protected, and for this reason, Costa Rica has adopted a practice of reserving flexibility for its regulation when assuming trade and investment commitments.

The Costa Rican authorities note that the provisions under Article 3 of the Codes allow Adherents to take actions considered 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.

Costa Rica takes note of the scope of the Codes and the coverage of Article 3 and, although it refrains from their right of invoking Article 3 in relation to the measures described above, they wish to retain the flexibility of doing so if circumstances so warrant.

Costa Rica considers that Article 3 of the Codes allows them to fulfil their commitment of progressive liberalisation, while allowing for protection of public health, morals and safety by ensuring its social and sustainable development model.
Cultural, scientific and recreational hunting and fishing

In accordance with Costa Rica’s values of ecological protection and conservation of biological diversity, recreational hunting is forbidden for all persons and firms regardless of their nationality.

There are, however, licenses for individuals and enterprises to perform scientific or cultural collection of species, scientific hunting, scientific or recreational fishing and research on wildlife. These licenses include discriminatory provisions between residents and non-residents that have been regarded by the authorities as necessary to ensure an adequate level of protection of biodiversity.

Licenses for scientific or cultural collection of species, scientific hunting, and scientific or recreational fishing shall be issued for a maximum of one year for nationals or residents and six months for non-residents; while licenses for recreational fishing shall be issued for a maximum of sixty days to non-residents and one year for residents or nationals (Law 7317, Articles 31, 38, 41, 66; Executive Decree 32633 of 2005, Article 43). Nationals and residents shall pay a lower fee than non-resident foreigners to obtain these licenses.

These activities are not considered as having a commercial purpose and regulatory provisions do not prevent investment by non-residents.

Films

According to Law 4325, all commercial breaks, spots and filmed commercials inserted during programmes sponsored by the state, its institutions or other entities supported by the state shall be of national production. In addition, the state, its institutions or other entities supported by the state are required to dedicate their publicity and information on television and radio budgets to sponsor live, taped, filmed, artistic, cultural and informative programmes of national production.

The above measures fall outside of the scope of item H/1 of the CLCIO. Moreover, where a government acts on its own account, and not as a regulatory authority, the liberalisation obligations of the Codes do not apply.

Professional services

Finally, Costa Rica has requested to note the following measures which are outside of the scope of item L/6 of the CLCIO and for which they remain free to maintain or introduce any measure, since the liberalisation obligations of the Code would not be applicable:

- The number of foreign artists hired to perform in shows in Costa Rica should be equal to the number of Costa Rican nationals hired;
- Financial auditors of entities that are part of groups or financial conglomerates domiciled abroad, as well as foreign auditing firms need to: (i) register as active in a professional registry counterpart of the Costa Rican Public Accountants Professional Association (Colegio de Contadores Públicos de Costa Rica), and in the registry of the relevant public regulator, if such records exist; (ii) be represented in Costa Rica.