

Mainland and Hong Kong
Closer Economic Partnership Arrangement (CEPA)

Frequently Asked Questions – Agreement on Trade in Services

(Signed on 27 November 2015; last amended on 21 November 2019)

Q1. How many agreements are there under CEPA?

A: CEPA is a free trade agreement concluded by the Mainland and Hong Kong. It is a framework agreement underpinned by four agreements, namely Agreement on Trade in Services (signed in 2015), Investment Agreement (signed in 2017), Agreement on Economic and Technical Cooperation (signed in 2017) and Agreement on Trade in Goods (signed in 2018).

Q2. What important provisions and concepts are included under the Agreement on Trade in Services?

A: The Agreement on Trade in Services adopts the “pre-establishment national treatment plus negative list” liberalisation approach in respect of the mode of “commercial presence”, and in accordance with the WTO rules and the prevailing international practices, introduces provisions for national treatment, most-favoured treatment and restrictive measures, which are important integral parts for adopting “negative list” approach for liberalisation.

Q3. Why does the Agreement on Trade in Services signed in 2015 need to be amended? What are the major amendments made under the Agreement Concerning Amendment to the Agreement on Trade in Services (the Amendment Agreement) signed in 2019?

A: The Agreement on Trade in Services is amended to further enhance its liberalisation level and to deepen the liberalisation of trade in services between the two sides, thereby allowing more Hong Kong enterprises and professionals to enjoy preferential treatment when

tapping into the Mainland market, to maintain CEPA as the most liberal free trade agreement of the Mainland, and to promote continuous market opening.

The two sides started a new round of discussion on services liberalisation under the framework of CEPA since early 2019. The Mainland has positively responded to proposals of the trade in Hong Kong for lowering market access thresholds or expanding the scope of business operation in various sectors in the Mainland.

The new liberalisation measures in the Amendment Agreement cover a number of important sectors such as financial services, legal services, construction and related engineering services, testing and certification, television, motion pictures, tourism services, etc. The liberalisation measures include removing or relaxing restrictions on equity shareholding, capital requirement and business scope in establishment of enterprises, relaxing qualification requirement, etc., thus making it easier for Hong Kong service suppliers and professionals to set up enterprises and develop business in the Mainland.

For details of the new liberalisation measures, please refer to the webpage of the Trade and Industry Department: <http://www.tid.gov.hk/english/cepa/legaltext/cepa18_note.html>.

Q4. When will the Amendment Agreement be implemented? The Amendment Agreement includes descriptions of policy support for further liberalisation in respect of some key services sectors such as financial and tourism services. Are there any specific liberalisation measures and time table in this regard?

A: The Amendment Agreement was implemented on 1 June 2020. The Amendment Agreement includes descriptions of policy support in respect of some key services sectors so as to affirm Mainland's objective and direction of further liberalisation, thereby laying the

foundation for cooperation in trade in services between the two sides in future. In accordance with the objective and direction set out in the Amendment Agreement, relevant authorities of the two sides actively study the implementation of relevant policies and formulate specific liberalisation measures so as to further deepen the liberalisation of trade in services between the two places.

Q5. What are the differences between the approach of “negative list” and “positive list” for liberalisation?

A: The “positive list” approach sets out the liberalisation measures for Hong Kong by the Mainland. No other commitment is made.

“Negative list” is a more transparent, stable and predictable way of listing liberalisation commitments. In free trade agreements and investment agreements, contracting parties may set out in the “negative list” the restrictive measures for specific services trade sectors reserved as inconsistent with the obligations of national treatment, most-favoured treatment, etc..

Measures listed in the “negative list” are “restrictive measures”. With the adoption of “negative list”, except for those restrictive measures as well as the horizontal management measures, the Mainland will not impose any particular restrictions on eligible Hong Kong service suppliers, i.e. “permitted if not forbidden”. Meanwhile, regarding the modes ¹ of cross-border supply, consumption abroad, movement of natural persons (collectively

¹ The four modes of supply for trade in services adopted by the World Trade Organisation are:

- (a) **Cross-border supply:** service supplier in Hong Kong supplies services to consumers located in the Mainland, such as supplying consultancy services through electronic means;
- (b) **Consumption abroad:** service supplier in Hong Kong supplies services to Mainland consumers located in Hong Kong, such as hotel services;
- (c) **Commercial presence:** Hong Kong service supplier supplies services through establishment of enterprises in the Mainland, such as establishment of printing enterprises; and
- (d) **Movement of natural persons:** Hong Kong service supplier supplies services by himself or his employees in the Mainland, such as architect.

Commercial presence is the most popular mode of services adopted by Hong Kong service suppliers. The other three modes of services (including cross-border supply, consumption abroad and movement of natural persons) are collectively known as “cross-border services” under the Agreement on Trade in Services.

known as “cross-border services”), the Mainland’s liberalisation measures for Hong Kong service suppliers in the amended Agreement on Trade in Services will remain positively listed item by item.

Q6. What are the commitments under the provisions for national treatment and most-favoured treatment?

A: National treatment represents the highest standard of liberalisation. Their specific commitments depend on the liberalisation measures and the extent of liberalisation of respective sectors. If there is no longer any restrictive measure for a particular sector in the “negative list”, that sector has achieved national treatment.

In accordance with provision for most-favoured treatment, any CEPA-plus liberalisation measures included in the free trade agreements signed by the Mainland with other countries or regions will also be extended to Hong Kong, assuring Hong Kong’s favourable position to enjoy the most preferential liberalisation measures of the Mainland. Besides, the unilateral liberalisation measures introduced by the Mainland which are applicable to any external investors will be immediately and automatically applied to Hong Kong without the need to be included into CEPA.

Q7. Does the “application of national treatment” mean that the operation of Hong Kong enterprises in the Mainland will no longer be restricted?

A: The “application of national treatment” means that Hong Kong service suppliers will be treated equally as the Mainland service suppliers. If the Mainland service suppliers are subject to relevant rules and regulations, Hong Kong service suppliers will also be subject to equal restrictions.

Q8. Why is the “negative list” only adopted in the mode of “commercial presence”?

A: At present, Hong Kong service suppliers operate in the Mainland mainly by setting up of enterprises, i.e. to provide services by means of “commercial presence”. As such, the use of “negative list” in respect of the mode of “commercial presence” demonstrates the determination of the Mainland to continue with market liberalisation and, through the adoption of the approach of “permitted if not forbidden” for market commitment in the most popular business mode adopted by Hong Kong traders, helps them better tap into the Mainland market.

Q9. Why are “cross-border services” dealt with under the approach of “positive list”?

A: The modes of “cross-border services” have specific characteristics, sophisticated laws and regulations, while at the same time may involve public interest and safety. The liberalisation therefore remains to be set out in the form of “positive list”. Yet, it does not mean that the Mainland refrains from opening up “cross-border services” to Hong Kong. Under the “positive list” in the amended Agreement on Trade in Services, 26 liberalisation measures are newly added, and 34 liberalisation measures become more liberal.

Q10. Why are the list of liberalisation measures and the restrictive measures of Hong Kong not set out in Annex 2 to the Agreement on Trade in Services?

A: It is specified under the Agreement on Trade in Services that the two sides will, through consultation, formulate and implement further liberalisation of trade in services of Hong Kong for the Mainland and the relevant specific commitments will be listed in the agreement. As Hong Kong is a highly liberalised economy, there is no need to introduce any new liberalisation measures but only need to honour

the original commitment by not imposing any restrictive measures on Mainland's services and service suppliers in the areas of services covered under the Agreement on Trade in Services.

Q11. Is there any change in the definition of the “Hong Kong service supplier” under the Amendment Agreement? Can external investors enjoy the preferential treatment provided by the Mainland under CEPA?

A: The definition of the “Hong Kong service supplier” under the Agreement on Trade in Services is not amended in the Amendment Agreement. “Hong Kong service supplier” as a “natural person” means a Hong Kong permanent resident, whereas “Hong Kong service supplier” as a “juridical person” means any legal entity duly constituted or organised under the applicable laws of Hong Kong (i.e. corporation, partnership, sole proprietorship, etc.) and which has engaged in substantive business operations in Hong Kong for 3 to 5 years (including having paid profit tax in Hong Kong, owned or rented business premises, employed Hong Kong residents in over half of its staff).

Regardless of whether the external investors supply services in the form of “natural person” or “juridical person”, they can enjoy the preferential treatment offered by the Mainland under CEPA provided that they can fulfil the definition of “Hong Kong service supplier” under the Agreement on Trade in Services.

For details of the definition of “Hong Kong service supplier” and its related requirements, please refer to Annex 3 (Definition of “Service Supplier” and Related Requirements) of the Agreement on Trade in Services.

Q12. After the signing of the Amendment Agreement, are there any services sectors that the Mainland has yet to open up to Hong Kong?

A: After the signing of the Amendment Agreement, there are only a very limited number of sectors that the Mainland has yet opened up to Hong Kong service suppliers, including postal services, space transport, etc.. These sectors are sensitive industries which the Mainland does not open up to external investors, and do not belong to the key industries which Hong Kong service suppliers are investing or developing businesses in the Mainland.

Q13. After the signing of the Amendment Agreement, will the two sides continue to have consultation for further liberalisation on trade in services?

A: The Hong Kong Special Administrative Region Government will maintain close communication with the Mainland authorities to continue enriching the contents of CEPA, and to discuss and formulate more measures on liberalisation and facilitation of trade and investment at an appropriate time.

Q14. After the signing of the Amendment Agreement, if the Mainland provides other external investors with more preferential treatment than CEPA, can Hong Kong's trade benefit?

A: In accordance with Article 5 (Most-Favoured Treatment) of Chapter 3 (Obligations and Disciplines) of the Agreement on Trade in Services, any CEPA-plus liberalisation measures accorded by the Mainland to services and service suppliers of other countries or regions will also be extended to Hong Kong, assuring Hong Kong's favourable position to enjoy the most preferential liberalisation measures of the Mainland. Therefore, the unilateral liberalisation measures introduced by the Mainland applicable to any external investors, as well as the CEPA-plus liberalisation measures on trade

in services under the free trade agreements between the Mainland and other trading partners, will be immediately and automatically applied to Hong Kong without the need to be included under CEPA.