

Annex 5

Definition of “Service Supplier” and Related Requirements

1. Pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter referred to as the “CEPA”), the Mainland and Hong Kong Special Administrative Region have concluded this Annex on the definition of “service supplier” and related requirements.

2. Unless otherwise stipulated in the “CEPA” and its Annexes, “service supplier” as used in the “CEPA” and its Annexes refers to any person that supplies a service. In this context:

2.1. “person” means either a natural person or a juridical person;

2.2. “natural person”:

2.2.1. in the case of the Mainland, means a citizen of the People’s Republic of China;

2.2.2. in the case of Hong Kong, means a permanent resident of the Hong Kong Special Administrative Region of the People’s Republic of China;

2.3. “juridical person” means any legal entity duly constituted or otherwise organized under the applicable laws of the Mainland or the Hong Kong Special Administrative Region, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association (business association).

3. The specific criteria for Hong Kong service suppliers who provide services in the form of juridical persons:

3.1. with the exception of the legal services sector, a Hong Kong service supplier, when applying to provide the relevant services under Annex 4 in the Mainland, should:

3.1.1. be incorporated or established pursuant to the Companies Ordinance or other relevant laws of the Hong Kong Special Administrative Region,¹ and have obtained a valid Business Registration Certificate. If required by law, it should also have obtained the licence or permit for providing such services; and

3.1.2. engage in substantive business operations in Hong Kong. The criteria for determination are:

(1)The nature and scope of business

The nature and scope of the services provided by a Hong Kong service supplier in Hong Kong should encompass the nature and scope of the services it intends to provide in the Mainland.

(2)Years of operation required

A Hong Kong service supplier should be incorporated or established in Hong Kong, and have engaged in substantive business operations for 3 years or more.²

A Hong Kong service supplier providing construction and related engineering services should be incorporated or established in Hong Kong, and have

¹ Any overseas company, representative office, liaison office, "mail box company" and company specifically established for providing certain services to its parent company, which is registered in Hong Kong, is not a Hong Kong service supplier under this Annex.

² From the day the "CEPA" comes into effect, where more than 50% of the equity interest of a Hong Kong service supplier has been owned for at least one year since a merger or acquisition by a service supplier other than one from either side, the service supplier which has been acquired or merged will be regarded as a Hong Kong service supplier.

engaged in substantive business operations for 5 years or more; there is no limitation on the years of substantive business operations in Hong Kong for Hong Kong service suppliers providing real estate services;

A Hong Kong service supplier providing banking and other financial services (excluding insurance and securities), i.e. a Hong Kong bank or finance company should have engaged in substantive business operations for 5 years or more after it has been granted a relevant licence by the Monetary Authority pursuant to the Banking Ordinance;

A Hong Kong service supplier providing insurance and related services, i.e. a Hong Kong insurance company should be incorporated or established in Hong Kong and have engaged in substantive business operations for 5 years or more.

(3) Profits tax

During the period of substantive business operations in Hong Kong, a Hong Kong service supplier should have paid profits tax in accordance with the law.

(4) Business premises

A Hong Kong service supplier should own or rent premises in Hong Kong to engage in substantive business operations. The scale of its business premises should be commensurate with the scope and the scale of its business.

For a Hong Kong service supplier providing maritime transport services, 50% or more of the ships owned by it, calculated in terms of tonnage, should be registered in Hong Kong.

(5)Employment of staff

more than 50% of the staff employed in Hong Kong by the Hong Kong service supplier should be residents staying in Hong Kong without limit of stay, and people from the Mainland staying in Hong Kong on One Way Permit.

3.2. A Hong Kong law firm (office) of the legal services sector, when applying to provide the relevant services under Annex 4 in the Mainland, should:

3.2.1. be registered and established as a Hong Kong law firm (office) and have obtained a valid Business Registration Certificate pursuant to the relevant legislation of the Hong Kong Special Administrative Region.

3.2.2. The sole proprietor and all the partners of the law firm (office) should be registered Hong Kong practising lawyers.

3.2.3. The principal scope of business of the law firm (office) should be to provide Hong Kong legal services in Hong Kong.

3.2.4. The law firm (office) or its sole proprietor or partners should pay profits tax in accordance with the law.

3.2.5. The law firm (office) should have engaged in substantive business operations in Hong Kong for 3 years or more.

3.2.6. The law firm (office) should own or rent premises in Hong Kong to engage in substantive business operations.

4. Unless otherwise stipulated in the “CEPA” and its Annexes, Hong Kong service suppliers providing services in the form of natural persons should be permanent residents of the Hong Kong

Special Administrative Region of the People's Republic of China.

5. Service suppliers of the Mainland should fulfil the definition of Article 2 of this Annex. Specific criteria will be determined by the two sides through consultation.

6. To obtain the treatment under the "CEPA", a Hong Kong service supplier should provide:

6.1. In the event that the Hong Kong service supplier is a juridical person, the Hong Kong service supplier should submit the following documents and information, and statutory declaration, which have been verified by relevant institutions (persons) of Hong Kong, as well as the certificate issued by the Government of the Hong Kong Special Administrative Region:

6.1.1. Documents and information (if applicable)

(1) Copy of the Certificate of Incorporation issued by the Companies Registry of the Hong Kong Special Administrative Region;

(2) Copies of the Business Registration Certificate of the Hong Kong Special Administrative Region and an Extract of Information in the Register of Businesses;

(3) Annual reports or audited financial statements of the Hong Kong service supplier for the past 3 years (or 5 years);

(4) Original or copy of document(s) substantiating that the Hong Kong service supplier owns or rents business premises in Hong Kong;³

(5) Copy of the Profits Tax Returns, Notice of Assessment and Demand for Tax in respect of the

³ A Hong Kong service supplier applying to provide maritime transport services in the Mainland should separately submit document(s) or its copy (verified) to attest that 50% or more of the ships owned by it, calculated in terms of tonnage, is registered in Hong Kong.

Hong Kong service supplier for the past 3 years (or 5 years); in the event of loss, the Hong Kong service supplier should provide supporting document(s) from the relevant department of the Hong Kong Special Administrative Region attesting to the loss;

(6) Copy of the Employer's Return of Remuneration and Pensions of the Hong Kong service supplier in respect of the remuneration and pension of its employees in Hong Kong, and the original or a copy of other relevant document(s) substantiating that the company fulfils the requirement of Article 3.1.2.(5) of this Annex on the percentage threshold;

(7) Original or copy of other relevant document(s) that can substantiate the nature and scope of the business in Hong Kong of the Hong Kong service supplier.

6.1.2. Statutory declaration

For any Hong Kong service supplier applying to obtain treatment under the "CEPA", its authorized representative should make a statutory declaration pursuant to the procedures and requirements of the Oaths and Declarations Ordinance of the Hong Kong Special Administrative Region.⁴ The form of the declaration will be determined by the relevant authorities of the Mainland and the Hong Kong Special Administrative Region through consultation.

6.1.3. Certificate

A Hong Kong service supplier should submit the documents and information, and the statutory declaration as required under Article 6.1.1 and 6.1.2 of this Annex to the Trade and Industry Department of the Hong Kong

⁴ A person is subject to criminal liability of Hong Kong if he wilfully makes a false or untrue declaration pursuant to the Oaths and Declarations Ordinance.

Special Administrative Region (hereinafter referred to as the “TID”) for examination. The “TID” may, in the circumstances it considers necessary, entrust other government departments of the Hong Kong Special Administrative Region, statutory bodies, or independent professional institutions (personnel) to conduct verification.⁵ The “TID” will issue a certificate to the applicants that it considers to have fulfilled the criteria of Hong Kong service suppliers as required under this Annex. The contents and form of the certificate will be determined by the relevant authorities of the Mainland and the Hong Kong Special Administrative Region through consultation.

6.2. In the event that a Hong Kong service supplier is a natural person, the Hong Kong service supplier should provide identification of his or her Hong Kong permanent resident status. For Chinese citizens among such service suppliers, their Home Visit Permit for Hong Kong and Macau Residents or Hong Kong Special Administrative Region passport should also be provided.

6.3. Copies of the statutory declarations and the identification documents of natural persons, as well as the documents and information that the “TID” considers should be attested by a lawyer, as required under Article 6.1.1 and 6.1.2 and 6.2 of this Annex, should be attested by attesting officers recognized by the Mainland.

7. When applying to the Mainland’s examining authorities to obtain treatment under the “CEPA”, a Hong Kong service supplier should follow the following procedures:

7.1. When it applies to provide the services under Annex 4 in the Mainland, a Hong Kong service supplier should submit to

⁵ In the telecommunications sector, the “TID” will entrust the authority of the Government of the Hong Kong Special Administrative Region that regulates telecommunications to conduct verification with a view to substantiating the nature and scope of business of the Hong Kong service suppliers providing internet data centre services, call centre services, and content services.

the Mainland's examining authorities the documents and information, statutory declaration and certificate as required under Article 6 of this Annex.

7.2. Pursuant to the powers conferred under Mainland laws and regulations, the Mainland examining authorities, in examining the application for supplying Hong Kong services, should at the same time verify the qualifications of the Hong Kong service supplier.

7.3. When holding a different view in respect of the qualification of the Hong Kong service supplier, the Mainland examining authority should inform the Hong Kong service supplier within a stipulated period, and notify the Ministry of Commerce. The Ministry of Commerce will in turn inform the "TID", giving the reasons for the divergent views. The Hong Kong service supplier may, through the "TID" and with written justification, request the Ministry of Commerce for reconsideration. The Ministry of Commerce should give a written reply to the "TID" within a stipulated period.

8. Hong Kong service suppliers who have already been providing services in the Mainland should apply for obtaining treatment under the "CEPA" in accordance with the requirements of Articles 6 and 7 of this Annex.

9. This Annex will come into effect on the day of signature by the representatives of the two sides.

Signed in duplicate in Hong Kong, this 29th day of September 2003 in the Chinese Language.

Vice Minister of Commerce
People's Republic of China

Financial Secretary
Hong Kong Special
Administrative Region of the
People's Republic of China

(signature)

(signature)