

[Cursory Translation]

Annex 1

Relevant Requirements on the Definition of “Investor”^①

1. A Hong Kong enterprise investing in the Mainland in the form of commercial presence may constitute an “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement if the following conditions are fulfilled:

- 1.1. be incorporated or established pursuant to the Companies Ordinance or other relevant laws of the Hong Kong Special Administrative Region^②, and have obtained a valid Business Registration Certificate; and
- 1.2. engage in substantive business operations in Hong Kong. The criteria for determination are:

(1) Years of operation required

A Hong Kong investor should be incorporated or established in Hong Kong, and have engaged in

^① For greater certainty, without prejudice to the other provisions and the requirements under the annexes to this Agreement, an investor of one side must fulfil the relevant requirements in relation to the definition of “investor” referred in Annex 1 to this Agreement in order to enjoy the treatment of investments as set out under Article 5 (National Treatment), Article 6 (Most-Favoured Treatment), Article 7 (Performance Requirements) and Article 8 (Senior Management, Boards of Directors and Entry of Personnel).

^② 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 investor under this Annex.

substantive business operations for 3 years or more^③;

(2) Profits tax

During the period of substantive business operations in Hong Kong, a Hong Kong investor should have paid profits tax in accordance with the laws;

(3) Business premises

A Hong Kong investor 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 in Hong Kong; and

(4) Employment of staff

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

For greater certainty, a Hong Kong enterprise investing in the Mainland in any forms other than commercial presence does

^③ From the day this Agreement comes into effect, where more than 50% of the equity interest of a Hong Kong investor has been owned for at least one year since a merger or acquisition by an investor other than one from either side, the investor which has been acquired or merged will be regarded as a Hong Kong investor.

not need to fulfil the conditions as stipulated in Articles 1.1 and 1.2.

2. Unless otherwise provided in this Agreement and its Annexes, a Hong Kong natural person investing in the Mainland shall constitute “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement only if he or she is a permanent resident of the Hong Kong Special Administrative Region of the People’s Republic of China.

3. To become a qualified “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement, a Hong Kong investor applying to invest in the Mainland in the form of commercial presence in accordance with this Agreement should meet the following requirements:

3.1. A Hong Kong investor in the form of an enterprise should submit a certificate issued by the Trade and Industry Department of the Government of the Hong Kong Special Administrative Region (hereinafter referred to as the “TID”). When applying for the certificate, a Hong Kong investor must declare the nature and scope of its business in Hong Kong together with the nature and scope of its intended investment in the Mainland, and submit the following documents and information, and the statutory declaration to the TID for examination:

3.1.1. 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 investor for the past 3 years;
- 4) Original or copy of document(s) substantiating that the Hong Kong investor owns or rents business premises in Hong Kong;
- 5) Copy of the Profits Tax Returns, Notice of Assessment and Demand for Tax in respect of the Hong Kong investor for the past 3 years; in the event of loss, the Hong Kong investor 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 investor 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 1.2(4) of this Annex on the percentage threshold;

7) Original or copy of other relevant document(s) substantiating that the Hong Kong investor engages in substantive business operations in Hong Kong, such as licences, permits, or confirmation letters issued by relevant authorities or bodies in Hong Kong relevant to the nature and scope of business in Hong Kong as required by the laws of Hong Kong or this Annex.

3.1.2. Statutory declaration

For any Hong Kong investor applying to obtain treatment under this Agreement, its authorised 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.

3.1.3. Application form for certificate

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

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. The TID will issue a certificate to an applicant that it considers to have fulfilled the criteria of Hong Kong investor 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. The relevant authorities of the Mainland and the Hong Kong Special Administrative Region may discuss and announce circumstances that allow the exemption of such certificate.

- 3.2. A Hong Kong investor in the form of a natural person should provide identification of his or her Hong Kong permanent resident status. For Chinese citizens among such investors, their Home Visit Permit for Hong Kong and Macau Residents or Hong Kong Special Administrative Region passport should also be provided.

4. To be qualified as an “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement, when applying to the Mainland’s examining authorities to invest in the form of commercial presence under this Agreement, a Hong Kong investor should follow the following procedures:

- 4.1. When applying to engage in a covered investment in the Mainland within the scope of Annex 2, a Hong Kong investor should submit to the Mainland's examining authorities the certificate as required under Article 3 of this Annex.
- 4.2. Pursuant to the powers conferred under Mainland laws, the Mainland's examining authorities, in examining the application for Hong Kong investments, may at the same time verify the qualifications of the Hong Kong investor when they consider necessary. The Mainland's examining authorities should request the Hong Kong investor to provide documents and information, and statutory declaration as required in Article 3 of this Annex within a stipulated period, and submit written justification for verifying the qualifications of the Hong Kong investor to the Ministry of Commerce.
- 4.3. When holding a different view in respect of the qualification of the Hong Kong investor, the Mainland's examining authorities should inform the Hong Kong investor 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 investor 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.

5. A Mainland investor investing in Hong Kong shall comply with the requirements in paragraph 2 of Article 2 (Definitions) of this Agreement.

6. In this Annex, “commercial presence” means any type of business or professional establishment of one side, including through:

6.1. the constitution, acquisition or operation of an enterprise,
or

6.2. the constitution or operation of a branch or a
representative office,

within the area of the other side.