

[Cursory Translation]

**MAINLAND AND HONG KONG CLOSER ECONOMIC
PARTNERSHIP ARRANGEMENT**

[Consolidated version for reference only]

Agreement on Trade in Services

Preamble

To promote achieving basic liberalisation of trade in services between the Mainland¹ and the Hong Kong Special Administrative Region (hereinafter referred to as the “two sides”), to progressively reduce or eliminate substantially all discriminatory measures on trade in services between the two sides, as well as to further enhance the level of bilateral economic and trade exchanges and cooperation, the two sides decided to sign this Agreement to basically achieve liberalisation of trade in services between the Mainland and the Hong Kong Special Administrative Region (hereinafter referred to as “Hong Kong”).

¹ The "Mainland" refers to the entire customs territory of China.

CHAPTER 1

RELATIONSHIP WITH CEPA²

Article 1

Relationship with CEPA

1. To progressively reduce until eliminating substantially all discriminatory measures on trade in services between the two sides, the two sides decided to sign this Agreement based on the liberalisation measures that have been implemented under CEPA and its Supplements, and the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong under CEPA (hereinafter referred to as “Guangdong Agreement”). This Agreement is the Agreement on Trade in Services under CEPA.

2. The relevant content of Articles 11 and 12 of Chapter 4 of CEPA shall be implemented in accordance with this Agreement. In the event that the provisions of this Agreement are in conflict with the provisions of the CEPA and its Supplements, and the Guangdong Agreement, the provisions of this Agreement shall prevail.

² CEPA is the abbreviation of the Mainland and Hong Kong Closer Economic Partnership Arrangement.

CHAPTER 2

SCOPE AND DEFINITION

Article 2

Scope and Definition

1. All measures in Annex 1 and Annex 2 to this Agreement apply to trade in services between the Mainland and Hong Kong.

2. Trade in services referred to in this Agreement means:

- (i) the supply of a service from the area of one side into the area of the other side;
- (ii) the supply of a service in the area of one side to the service consumer of the other side;
- (iii) the supply of a service by a service supplier of one side, through commercial presence in the area of the other side;
- (iv) the supply of a service by a service supplier of one side, through presence of natural persons of one side in the area of the other side.

Sub-paragraphs (i), (ii) and (iv) above shall collectively be referred to as cross-border services.

3. For the purposes of this Agreement:

- (i) “measure” means any measure by one side, whether in the form of a law, regulation, rule, procedure,

decision, administrative action or any other form.

In fulfilling its obligations and commitments under this Agreement, each side shall take such reasonable measures as may be available to it to ensure observance of such obligations and commitments by governments and authorities as well as non-governmental bodies within its area.

- (ii) “services” includes any service in any sector except services supplied in the exercise of governmental authority.
- (iii) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.
- (iv) “commercial presence” means any type of business or professional establishment, including through:
 - (a) the constitution, acquisition or operation of a juridical person, or
 - (b) the constitution or operation of a branch or a representative office,within the area of one side for the purpose of supplying a service.
- (v) “government procurement” means procuring the use of goods or services or procuring goods or services or both, by the government by contractual means in the form of purchase, lease, etc., and not with a view to

commercial sale or resale or for use in the production or supply of the goods or services for commercial sale or resale.

4. The definition and related requirements of “service supplier” referred to in this Agreement are set out in Annex 3.

CHAPTER 3

Obligations and Disciplines

Article 3

Obligations

1. The specific measures applied by the Mainland to services and service suppliers of Hong Kong are set out in Annex 1 of this Agreement. In respect of the implementation of the specific commitments set out in Table 2 of Annex 1 of this Agreement, apart from applying the provisions of this Agreement, the relevant laws and regulations, and administrative regulations of the Mainland should also be applicable.

2. Hong Kong will not impose any new discriminatory measures on Mainland’s services and service suppliers in the areas of services covered in this Agreement. The two sides will, through consultations, formulate and implement further liberalisation of trade in services of Hong Kong for Mainland’s services and service

suppliers. The relevant specific commitments will be listed in Annex 2 of this Agreement.

3. At the request of either side, the two sides may, through consultations, further raise the level of liberalisation of trade in services between them.

4. Any measures to raise the level of liberalisation of trade in services pursuant to paragraph 3 of this Article shall be included in Annex 1 and Annex 2 of this Agreement for implementation.

Article 4

National Treatment

1. One side shall accord to services and service suppliers of the other side, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.³

2. Either side may meet the requirement of paragraph 1 by according to services and service suppliers of the other side, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

³ Specific commitments assumed under this Article shall not be construed to require either side to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers of the other side.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of one side compared to like services or service suppliers of the other side.

Article 5

Most-Favoured Treatment

1. With respect to any measure covered by this Agreement, each side shall accord immediately and unconditionally to services and service suppliers of the other side treatment no less favourable than that it accords to like services and service suppliers of any other party.

2. The provisions of this Agreement shall not be so construed as to prevent one side from conferring or according advantages to adjacent countries or regions in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 6

Prudential Principle on Financial Services

1. Notwithstanding any other provisions of this Agreement, one side shall not be prevented from taking or maintaining measures relating to financial services for prudential reasons. These

prudential reasons include the protection of investors, depositors, policy holders or persons to whom a fiduciary obligation is owed by a financial service supplier, or to ensure the integrity and stability of the financial system⁴.

2. No provisions of this Agreement shall apply to non-discriminatory measures of general application in implementing monetary or related credit policies or exchange rate policies⁵.

3. The term “financial service” shall bear the same meaning of financial service as defined in paragraph 5(a) of the *Annex on Financial Services* to the *WTO General Agreement on Trade in Services* and the term “financial service supplier” contained in that paragraph also includes public entity as defined in paragraph 5(c) of the *Annex on Financial Services*.

4. To avoid ambiguity, this Agreement shall not be construed as preventing one side from adopting measures that are applicable to a financial institution, or from enforcing measures in a financial institution, relating to the service suppliers of the other side or covered services necessary to ensure compliance with laws or regulations that are consistent with the provisions of this Agreement, including measures relating to the prevention of false and fraudulent

⁴ The term “prudential reasons” shall be interpreted as including the security, stability, integrity and financial responsibility of a single financial institution or a financial system, as well as protecting the security of payment and clearing system and the stability of finance and operation.

⁵ To avoid ambiguity, measures of general application in implementing monetary or related credit policies or exchange rate policies do not include measures which expressly declare invalid or modify a contract term stipulating the denomination in a currency or exchange rate of a currency.

practices or measures to deal with the effects of default on financial services contracts, provided that the manner in which such measures are applied would not constitute a means of arbitrary or unjustifiable discrimination to countries (or regions) where like conditions prevail or a disguised restriction on the investment of the financial institution.

5. Each side reserves the right to implement restrictive measures for any sectors not clearly covered in existing regulations.

Article 7

Domestic Regulation

1. The two sides reiterate the observance of their respective commitments under Article VI of the *WTO General Agreement on Trade in Services*.

2. The commitments on domestic regulation for trade in services undertaken by each side under the *WTO General Agreement on Trade in Services* are incorporated into and shall form part of this Agreement.

3. The commitments referred to in paragraph 2 include:

- (i) in the case of the Mainland, the commitments contained in the WTO document *GATS/SC/135/Suppl. 1*;

- (ii) in the case of Hong Kong, the commitments contained in the WTO document *GATS/SC/39/Suppl.4*; and
- (iii) the commitments on domestic regulation for trade in services to be undertaken by each side under the *WTO General Agreement on Trade in Services* in the future.

Article 8

Safeguard Measures

1. Each side reserves the right to establish or maintain any restrictive measures relating to services in the event that the implementation of this Agreement causes substantial impact on its trade and relevant sectors.

2. One side should, on a best endeavor basis, notify the other side fully and in a timely manner, measures intended to be taken pursuant to paragraph 1, and resolution shall be sought through consultation.

Article 9

Exceptions

1. The provisions of this Agreement and its Annexes shall not prevent one side from maintaining or adopting any measures on exceptions consistent with Article XIV and Article XIV bis of the *WTO General Agreement on Trade in Services*.
2. The horizontal management measures adopted by one side regarding the foreign character of the services or service suppliers of the other side shall not be considered as less favourable treatment.

CHAPTER 4

COMMERCIAL PRESENCE

Article 10

Reserved Restrictive Measures

1. Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment) shall not apply to:
 - (i) the reserved restrictive measures of one side set out in Table 1 of Annex 1 and Annex 2.
 - (ii) under general circumstances, the reserved restrictive measures referred to in sub-paragraph (i) may be amended, but the amended reserved measures shall

be no less compliant with the obligations required in Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment) than the measures before amendment.

2. Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment) shall not apply to:

- (i) government procurement; or
- (ii) subsidies or donation accorded by one side, including government-supported loan, guarantee and insurance.

However, should the laws and regulations of one side provide otherwise for sub-paragraphs (i) and (ii), such laws and regulations shall prevail.

CHAPTER 5

CROSS-BORDER SERVICES

Article 11

Cross-border services

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific liberalisation measures are set out in Table 2 of Annex 1 and Annex 2 and no other commitment is made.

CHAPTER 6
REQUIREMENT ON
SPECIAL PROCEDURES AND INFORMATION

Article 12

Requirement on Special Procedures and Information

1. If the requirement on special procedures does not substantially prejudice the obligations of one side owed to the service suppliers of the other side under this Agreement, then Article 4 (National Treatment) shall not be construed as a measure preventing the former side from adopting or maintaining the special procedures relating to services.

2. Notwithstanding Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment), one side may request information relating to services or service suppliers from the service suppliers of the other side only for information or statistical purposes. The former side shall protect confidential commercial information from leakage which may adversely affect the competitive position of the service supplier. This paragraph shall not be construed as preventing either side from acquiring or disclosing information relating to the laws on the application of fairness and integrity.

CHAPTER 7

INVESTMENT FACILITATION

Article 13

Investment Facilitation

1. To enhance the level of investment facilitation, the Mainland agrees, with respect to Hong Kong service suppliers investing in the Mainland in sectors of trade in services as liberalised for Hong Kong under this Agreement, to adopt filing administration, in lieu of prior approval, of contracts and articles of association for establishment and change of enterprises. After filing, the related procedures will be processed in accordance with the relevant regulations of the Mainland. This Article does not apply to the following two situations:-

- (i) The reserved restrictive measures under Article 10 of Chapter 4 and the establishment and change of a financial institution will be processed in accordance with the provisions of the prevailing foreign investments laws and regulations and related regulations; or
- (ii) The establishment and change of commercial presence other than in the form of a company will be processed in accordance with the relevant prevailing regulations.

2. The Mainland may adjust the above arrangements in accordance with the law to further enhance the level of investment facilitation for Hong Kong service suppliers.

3. Support is given to Hong Kong-invested enterprises registered in the nine Pearl River Delta municipalities of the Guangdong-Hong Kong-Macao Greater Bay Area to choose Hong Kong or the Macao Special Administrative Region (hereinafter referred to as “Macao”) as the seat of arbitration.

4. Support is given to Hong Kong-invested enterprises registered in the pilot municipalities of the Guangdong-Hong Kong-Macao Greater Bay Area to adopt Hong Kong law or Macao law as the applicable law in their contracts, on the condition that all mandatory provisions of the laws of the state are not violated and the social and public interests are not damaged.

CHAPTER 8

OTHER PROVISIONS

Article 14

Annexes

The Annexes to this Agreement form an integral part of this Agreement.

Article 15

Coming into Effect and Implementation

This Agreement shall come into effect on the day of signature by the representatives of the two sides, and shall be implemented on 1 June 2016.

This Agreement is signed in duplicate in the Chinese language.

This Agreement is signed on 27 November 2015 in Hong Kong.

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)