

[Cursory Translation]

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

**Agreement between the Mainland and Hong Kong on Achieving
Basic Liberalisation of Trade in Services in Guangdong**

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”), 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 in Guangdong Province between the Mainland and the Hong Kong Special Administrative Region (hereinafter referred to as “Hong Kong”).

**CHAPTER 1
RELATIONSHIP WITH CEPA**

¹ In CEPA, the "Mainland" refers to the entire customs territory of China.

Article 1

Relationship with CEPA

1. To progressively reduce until eliminating substantially all discriminatory measures between the two sides, the two sides decided to sign this Agreement based on the liberalisation measures that have been implemented under the Mainland and Hong Kong Closer Economic Partnership Arrangement (including its Supplements, hereinafter referred to as the “CEPA”).
2. In the event that the provisions of this Agreement are in conflict with those provisions of the CEPA, the provisions of this Agreement shall prevail.

CHAPTER 2

SCOPE AND DEFINITION

Article 2

Scope and Definition

1. All measures in Annex 1 and Annex 2 to this Agreement only apply to trade in services between the Guangdong Province of 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 for governmental purposes by contractual means in the form of purchase, lease and rental or hire purchase, with or without an option to buy, as well as build-operate-transfer contracts and public works concession contracts, 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. “Service supplier” referred to in this Agreement shall comply with the requirements set out in the ‘Definition of "Service Supplier" and Related Requirements’ of Annex 5 under CEPA.

CHAPTER 3

General Obligations and Disciplines

Article 3

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.²
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. 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 4

Most-Favoured Treatment

1. With respect to any measure covered by this Agreement,

² 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.

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 5

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 system³.

2. No provisions of this Agreement shall apply to non-discriminatory measures of general application in implementing

³ 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.

monetary or related credit policies or exchange rate policies⁴.

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 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

⁴ 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.

for any sectors not clearly covered in existing regulations.

Article 6

Safeguard Measures

1. One side shall reserve the right of establishing or maintaining any restrictive measures relating to services in accordance with the relevant provisions of the “Specific Commitments on Liberalisation of Trade in Services” of Annex 4 under CEPA.

2. The other side shall be notified fully and in a timely manner the measure taken under paragraph 1, and resolution shall be sought through consultation.

Article 7

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 PRESENCE⁵

Article 8

Reserved Restrictive Measures

1. Article 3 (National Treatment) and Article 4 (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 3 (National Treatment) and Article 4 (Most-Favoured Treatment) than the measures before amendment.

2. Article 3 (National Treatment) and Article 4 (Most-Favoured Treatment) shall not apply to:

- (i) government procurement; or
- (ii) subsidies or donation accorded by one side, including

⁵ Under this Agreement, commercial presence under this Chapter does not include commercial presence with respect to services under Article 10 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 11 (Cultural Services) of Chapter 7 (Cultural Services).

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 5⁶

CROSS-BORDER SERVICES

Article 9

Cross-border services

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

CHAPTER 6

TELECOMMUNICATIONS

Article 10

Telecommunications Services

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific additional liberalisation measures are set out in Table 3 of Annex 1 and Annex

⁶ Under this Agreement, cross-border services under this Chapter do not include cross-border services with respect to services under Article 10 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 11 (Cultural Services) of Chapter 7 (Cultural Services).

2 and no other commitment is made.

CHAPTER 7

CULTURAL SERVICES

Article 11

Cultural Services

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific additional liberalisation measures are set out in Table 4 of Annex 1 and Annex 2 and no other commitment is made.

CHAPTER 8

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 3 (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 3 (National Treatment) and Article 4 (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 9

INVESTMENT FACILITATION

Article 13

Investment Facilitation

To enhance the level of investment facilitation, the Mainland agrees that, with respect to Hong Kong service suppliers investing in Guangdong Province in sectors of trade in services as liberalised for Hong Kong under this Agreement, except for those encouraged projects and restricted projects that require majority shareholding by Mainland shareholders (including relative controlling shareholding) under the Catalogue for the Guidance of Industries for Foreign Investment and that are subject to approval, the other investment projects will be dealt with according to the same authority

and procedures as applicable to the Mainland investment projects, and agrees 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 8 of Chapter 4 and the establishment and change of a company in the telecommunications or cultural services sector or 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.

CHAPTER 10

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 March 2015.

This Agreement is signed in duplicate in the Chinese language.

This Agreement is signed on 18 December 2014 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)