

[Cursory Translation]

Annex 3

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”) and this Agreement, 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 this Agreement and its Annexes, “service supplier” as used in this Agreement 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 organised 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 1 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 in Hong Kong by a Hong Kong service supplier who intends to provide services in the Mainland should meet the requirements in this Agreement, and any restrictive requirements applicable to the nature and scope of the business of foreign investment entities in the laws, regulations and administrative regulations of the Mainland shall apply.

(2)Years of operation required

A Hong Kong service supplier should be incorporated or

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.

established in Hong Kong, and have engaged in substantive business operations for 3 years or more². In this context:

A Hong Kong service supplier providing construction and related engineering services should be incorporated or established in Hong Kong, and have 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; or should have operated as a branch for 2 years and also engaged in substantive business operations as a locally incorporated entity for 3 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.

A Hong Kong service supplier providing air transport ground services should have obtained the relevant licence for the provision of the relevant air transport

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.

ground services in Hong Kong, and have engaged in substantive business operations for 5 years or more.

A Hong Kong service supplier providing third party international shipping agency services should have been 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 1 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 this Agreement 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 this Agreement, 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 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

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.

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) substantiating that the Hong Kong service provider 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, Annex 1 or this Annex.

6.1.2. Statutory declaration

For any Hong Kong service supplier 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.

6.1.3. 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.

A Hong Kong service supplier should submit the documents and information, and the statutory declaration as required under Articles 6.1.1 and 6.1.2 of this Annex to the Trade and Industry Department of the Hong Kong 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 an applicant that it considers to have fulfilled the criteria of Hong Kong service supplier 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 Articles 6.1.1 and 6.1.2 and 6.2 of this Annex, should be attested by attesting officers recognised by the Mainland.

7. When applying to the Mainland’s examining authorities to obtain treatment under this Agreement, a Hong Kong service

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.

supplier should follow the following procedures:

7.1. When it applies to provide the services under Annex 1 in the Mainland, a Hong Kong service supplier should submit to 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 this Agreement in accordance with the requirements of Articles 6 and 7 of this Annex.