



香港特別行政區政府 工業貿易署

Trade and Industry Department
The Government of the Hong Kong Special Administrative Region

香港九龍城協調道3號工業貿易大樓
Trade and Industry Tower, 3 Concorde Road, Kowloon City, Hong Kong

24-hour hotline : 23 922 922

e-mail address : enquiry@tid.gov.hk

Ref. : TID/HKI 1

20 December 2017

Dear Sirs,

Notice to Investors No. 1/2017

Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)

Application Procedures for Hong Kong Investor (HKI) Certificate

I. INTRODUCTION

The CEPA, which was signed by the Mainland and Hong Kong in 2003, encompasses liberalization for trade in goods and services as well as trade and investment facilitation. Under the building block approach, both sides subsequently conducted several rounds of consultations and signed ten Supplements between 2004 and 2013, as well as the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong and the Agreement on Trade in Services in 2014 and 2015 respectively. The latest agreements under CEPA are the Investment Agreement and the Agreement on Economic and Technical Cooperation, both signed on 28 June 2017. The Investment Agreement will be implemented as from 1 January 2018.

2. This Notice announces the requirements and procedures for application of a Hong Kong Investor Certificate (HKI certificate) under the Investment Agreement as from 1 January 2018.

II. DETAILS

Mainland's Liberalization Measures under the Investment Agreement

3. The Investment Agreement is the first investment agreement of the Mainland with pre-establishment national treatment commitments in the form of negative list for investments in non-services sectors (including manufacturing sectors, mining sectors and investment in assets). The Mainland commits to providing national treatment to investments and investors of Hong Kong in all non-services sectors, except the 26 measures listed in Annex 2 of the Investment Agreement. The text of the Investment Agreement can be downloaded from TID's webpage (http://www.tid.gov.hk/english/cepa/legaltext/cepa_legaltext.html).

4. Under the Investment Agreement, Hong Kong investors enjoy more preferential investment access to the Mainland than investors from other countries and

regions in specific non-services sectors. Such non-services sectors are:

- (i) manufacture of common ships (including subsection);
- (ii) manufacture of civil aircrafts (for trunk and branch lines) and civil helicopters (of three tons or more);
- (iii) manufacture of general purpose aircrafts;
- (iv) mining of special and scarce coals; and
- (v) smelting of tungsten.

5. Hong Kong enterprises need to apply for the HKI certificate when they make investment or have new investment in the Mainland in the form of “commercial presence” in non-services sectors with preferential access to Hong Kong. Under the Investment Agreement, “commercial presence” means any type of business or professional establishment of one side, including through: (a) the constitution, acquisition or operation of an enterprise, or (b) the constitution or operation of a branch or a representative office. Investors making investment in forms other than “commercial presence” (such as purchase of financial products, properties and intangible assets, etc.), or investors in the form of natural persons, or making investment or having new investment in non-service sectors other than those with preferential access to Hong Kong, are not required to apply for the HKI certificate.

Definition of Hong Kong Investor and Related Requirements

6. Investor as defined in Article 2.2 to the Investment Agreement means one side, or a natural person or an enterprise of one side, that seeks to make, is making or has made a covered investment:

- (i) “natural person” - in the case of Hong Kong, a permanent resident of the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China; and
- (ii) “enterprise” - enterprise as defined in Article 2.5 to the Investment Agreement means (a) an entity constituted or organised under the laws of one side, whether or not for profit, whether privately-owned or governmentally-owned, and whether its liabilities are limited or otherwise, such as a public institution, corporation, foundation, agency, cooperative, trust, society, association and similar entity and a private company, firm, partnership, establishment, joint venture and organisation; and (b) a branch of any such entity.

7. A Hong Kong investor who wants to apply as a **natural person** to the relevant Mainland’s examining authorities for preferential treatment under the Investment Agreement is **not required** to apply for an HKI certificate. However, according to Article 3.2 of Annex 1 to the Investment Agreement, he or she should provide to the relevant Mainland’s examining authorities identification of his or her Hong Kong permanent resident status. He or she should also provide his/her Home Visit Permit for Hong Kong and Macau Residents or HKSAR passport if he or she is a Chinese citizen.

8. A Hong Kong investor in the forms of an **enterprise** and “commercial presence” has to fulfill the relevant requirements on the definition of Hong Kong investor set out in Annex 1 to the Investment Agreement (see Appendix 1) in order to apply to the

relevant Mainland's examining authorities for enjoying preferential treatment under the Investment Agreement. In this regard, it should first obtain an HKI certificate in accordance with the requirements set out in Article 3.1 of Annex 1 to the Investment Agreement (a sample of the HKI certificate is available at [Appendix 2](#)). Relevant article of the Investment Agreement are available on the following TID's webpage:

- http://www.tid.gov.hk/english/cepa/legaltext/cepa_legaltext.html

9. When applying for the HKI certificate, the applicant is required to declare the nature and scope of its business in Hong Kong together with the nature and scope of its intended investment in the Mainland on the application form (see paragraph 12(i) below). The applicant is also required to complete a copy of the Statutory Declaration (see paragraph 12(ii) below). In declaring the nature and scope of its business in Hong Kong on the application form and Statutory Declaration, applicants are requested to refer to [Appendix 5](#) to choose a suitable sector which best describes their substantive business operations in Hong Kong. Normally, information regarding the applicant's business in Hong Kong could appear in, amongst others, its audited financial statements, Business Registration Certificate, commercial agreements or invoices.

10. Hong Kong investors holding valid HKI certificates may apply to the relevant Mainland examining authorities for preferential treatment under the Investment Agreement (see paragraphs 24 and 25 below), which is not limited to the sector they are currently engaged in Hong Kong. Investors are reminded to find out and be fully aware of the Mainland rules and regulations that may apply to the sector they intend to apply for preferential treatment in the Mainland.

11. In addition, under Article 4.2 of Annex 1 to the Investment Agreement, when applying to the Mainland authorities for preferential treatment under the Investment Agreement, holders of HKI certificates will also have to abide by the Mainland laws, rules and regulations. The relevant Mainland's examining authorities, in examining the application for Hong Kong investments, may verify the qualifications of the Hong Kong investor when they consider necessary and the Hong Kong investor will have to be subject to the verifications of the relevant examining authorities of their HKI eligibility.

Documentation Requirements for Applications for HKI Certificate

12. In support of its application for an HKI certificate lodged with TID, a Hong Kong investor should provide the following documents to TID:

- (i) a duly completed application form for HKI certificate [Form TID 117] (proforma at [Appendix 3](#), or downloaded from TID's webpage: <http://www.tid.gov.hk/english/aboutus/form/publicform/cepa/cepa.html>);
- (ii) a duly completed Statutory Declaration. The Statutory Declaration must be made by the applicant's authorized person ^(Note 1) in accordance with the procedures and requirements of the Oaths and Declarations Ordinance (Cap. 11) of the HKSAR. The Statutory Declaration must be completed in Chinese. A proforma of the Statutory Declaration in Chinese is set out in [Appendix 4A](#) [Form HKI 001]. Non-Chinese speakers requiring

^(Note 1) The authorized person of a "Hong Kong investor" should be the sole-proprietor (in the case of sole-proprietorship), one of the partners (in the case of partnership), or a director/responsible officer authorized by the Board of Directors (in the case of a limited company) of the applicant.

interpretation of the content of the declaration should use the proforma in Appendix 4B [Form HKI 002] (also in Chinese). These two proforma can be downloaded from TID's webpage (<http://www.tid.gov.hk/english/aboutus/form/publicform/cepa/cepa.html>);

- (iii) supporting documents applicable to respective sectors as detailed in Appendix 5; and
- (iv) if the application involves group of companies, the applicant concerned should follow the requirements as set out in paragraphs 14, 15 and 16 below and provide the required supporting documents.

13. If TID, based on the documents set out in Appendix 5 as provided by the applicant, is unable to verify the authenticity of the sector of the applicant's substantive business operations in Hong Kong as declared in the application form and the Statutory Declaration, TID may request the applicant to supply any other documents to support the application for HKI certificate.

Applications Involving Group of Companies

14. According to Section 2 of the Companies Ordinance (Cap. 622) of the HKSAR, "group of companies" means any 2 or more bodies corporate one of which is the holding company of the other or others. After consideration, the HKSAR Government and the Central People's Government have agreed to follow the approach of handling the relevant application for the Hong Kong Service Supplier Certificate that applicants, which have engaged in substantive business operations in Hong Kong in the form of group of companies as defined in the Companies Ordinance of the HKSAR and which fulfill the requirements as stated in this Notice, should be eligible to apply for investment in the Mainland with preferential treatment under the Investment Agreement. In this regard, both sides have agreed to apply the following flexible treatment, which are made according to the requirements of the Investment Agreement, to applications for HKI certificate involving group of companies:

- (i) the applicants have to be incorporated or established pursuant to the Companies Ordinance or a former Companies Ordinance or other relevant laws of the HKSAR, and have obtained a valid Business Registration Certificate for 3 years or more prior to the date of lodgement of the applications;
- (ii) if required by law, the applicants or their wholly owned subsidiaries ^(Note 2) should have obtained the licences or permits for the business concerned;
- (iii) the applicants or their wholly owned subsidiaries are engaging and have engaged in substantive business operations in Hong Kong for 3 consecutive years or more prior to the date of lodgement of the applications; during the period of substantive business operations in Hong Kong, they should have paid profits tax in accordance with the law;

^(Note 2) In this Notice, the term "wholly owned subsidiary" shall have the same meaning as given in Section 678(1) of the Companies Ordinance (Cap. 622) of the HKSAR. In accordance with that Section, a body corporate is to be regarded as a wholly owned subsidiary of the applicant if it has no members except the applicant and the applicant's wholly owned subsidiaries and its or their nominees.

- (iv) if the applicants fulfill the criteria set out in point (iii) above by their wholly owned subsidiaries, the applicants should prove that prior to the date of lodgement of the applications, that wholly owned subsidiaries have engaged in substantive business operations in Hong Kong for 3 consecutive years or more, and the applicants have maintained holding and subsidiary relation with that wholly owned subsidiaries;
- (v) if the business premises used by the applicants or their wholly owned subsidiaries for their substantive business operations in Hong Kong have not been owned or rented by them, the owners or tenants of that business premises should be either the holding companies or subsidiaries ^(Note 3) of the groups of companies to which the applicants belong, and that the owners/tenants have given permission to the applicants or their wholly owned subsidiaries to use that business premises to engage in the substantive business operations; and
- (vi) if the staff engaged in the substantive business operations in Hong Kong of the applicants or their wholly owned subsidiaries have not been employed by them, that staff should be directly employed by the holding companies or subsidiaries of the groups of companies to which the applicants belong. Moreover, more than 50% of the staff engaged in the substantive business operations in Hong Kong of the applicants or their wholly owned subsidiaries should be residents staying in Hong Kong without limit of stay, and people from the Mainland staying in Hong Kong on One Way Permit.

15. If applicants wish to make use of the flexible treatment set out in paragraph 14 above, please follow the requirements set out in paragraph 12 above and hand in an application form for HKI certificate [Form TID 117], a Statutory Declaration and the required supporting documents. They should also provide a Supplementary Form for Group of Companies Applying for HKI Certificate [Form TID 117A] as well as the required supporting documents stipulated therein. A proforma of the aforementioned Supplementary Form is at Appendix 6. The said form can be downloaded from TID's webpage: (<http://www.tid.gov.hk/english/aboutus/form/publicform/cepa/cepa.html>).

16. If TID, based on the Supplementary Form for Group of Companies Applying for HKI Certificate [Form TID 117A] as provided by the applicant, is unable to verify the authenticity of the sector of the applicant's substantive business operations in Hong Kong as declared in the application form and the Statutory Declaration, TID may request the applicant to supply any other documents to support the application for HKI certificate.

Application Procedures for HKI Certificate

17. As stipulated in paragraphs 12 and 15 above, each application for HKI certificate shall comprise a duly completed application form (including the supplementary form for group of companies, if applicable), a Statutory Declaration and the required supporting documents. Applications for HKI certificate should be sent **either by post or in person to the Hong Kong Service Supplier and Hong Kong Investor Certification Section of TID**. The opening hours of the Section are:

^(Note 3) In this Notice, the terms "holding company" and "subsidiary" shall have the same meaning as given in Sections 13 to 15 of the Companies Ordinance (Cap. 622) of the HKSAR.

Mondays to Fridays : 8:45 a.m. to 12:30 p.m.
(except for public holidays) 1:30 p.m. to 5:45 p.m.

TID will acknowledge receipt of the applications. On the basis of the information and documents provided by the applicant, TID will assess whether the applicant meets the eligibility criteria for Hong Kong investor as defined in Annex 1 to the Investment Agreement. TID may, in the circumstances it considers necessary, entrust other government departments, statutory bodies or any independent professional institutions/personnel to conduct verification/certification of the information provided in the application form and the accompanying documents (including the Statutory Declaration). Moreover, TID reserves at all times the absolute right to request the applicant to provide additional information or further documentary proof to verify its application.

18. Under normal circumstances, TID will complete the processing of an application **within 14 clear working days** from the date of its receipt of the duly completed application form accompanied by a Statutory Declaration and all necessary supporting documents. TID will then notify the applicant of the result of application. Applicants who have been assessed by TID as fulfilling the eligibility criteria for Hong Kong investor will receive a payment notice of the application fee. An HKI certificate will be issued to the applicant upon payment of the application fee. Payment can be made by cash or by cheque made payable to “The Government of the Hong Kong Special Administrative Region”. The HKI certificate will be valid for 2 years. If the application form is not properly completed or there are discrepancies in the information declared therein, or the application form is not accompanied by all necessary documents or if there are discrepancies in the information provided in the accompanying documents, the processing time will be longer. If the applicant fails to provide accurate information and/or the necessary documents (including the Statutory Declaration), for example, the applicant is unable, on request of TID, to supply documents to substantiate the sector of its business operations in Hong Kong as declared in the application form and the Statutory Declaration (for relevant documents, please see paragraph 9 above), its application will be rejected. In addition, if an applicant who knowingly and willfully makes a statement false in a material particular in the Statutory Declaration, such as making a false statement on the nature and scope of its business in Hong Kong, TID will pass the application in question to the relevant law enforcement authorities for further investigations and the applicant may be prosecuted (please see paragraph 33 below for further details).

Application Fee

19. The current application fee for HKI Certificate is HK\$1,550 per application. Apart from the application fee, applicants should also be responsible for all expenses incurred for the verification or certification of the documents as stipulated in paragraphs 12, 13, 15 and 16 above as well as in Appendix 5.

Amendment/Cancellation of Applications

20. The applicant should immediately cancel the application in writing and lodge a fresh application form together with the supporting documents required if there is any substantial change to the information provided in the application form and its accompanying supporting documents concerning its eligibility as a Hong Kong investor under the Investment Agreement. At the same time, the applicant should also make a fresh Statutory Declaration in accordance with the provisions set out in paragraph 12(ii) above. A Statutory Declaration, together with a new application form and the supporting documents required

should be sent to the Hong Kong Service Supplier and Hong Kong Investor Certification Section of TID by post or in person.

21. If an applicant would like to cancel its application for HKI certificate, it should immediately lodge a cancellation request in writing to the Hong Kong Service Supplier and Hong Kong Investor Certification Section of TID by post or in person.

Application Procedures for Amendment/ Replacement/ Certified True Copy (CTC)/ Cancellation of an HKI Certificate

22. Holders of valid HKI certificate(s) may apply for the amendment/replacement/certified true copy (CTC)/cancellation of their valid HKI certificate(s) under specific circumstances. Respective application requirements and procedures are set out in the latest relevant Notice to Investors to be issued by TID which is available on the following TID's webpage:

- http://www.tid.gov.hk/english/aboutus/tradecircular/nti/i_maincontent.html

Renewal arrangement for HKI Certificates

23. HKI certificate is valid for two years. To facilitate holders of HKI certificates in extending the validity of their certificates, TID provides voluntary renewal services for HKI certificates. Eligible holders of HKI certificates can send their renewal applications to TID within the period of 60 days before and 180 days after the date of expiry of their HKI certificates. Relevant renewal arrangement and application procedures are set out in the latest relevant Notice to Investors to be issued by TID which is available on the following TID's webpage:

- http://www.tid.gov.hk/english/aboutus/tradecircular/nti/i_maincontent.html

Procedures for Application for Engaging in Businesses in the Mainland with Preferential Treatment under the Investment Agreement

24. After obtaining an HKI certificate from TID, Hong Kong investors wishing to invest in the Mainland with preferential treatment under the Investment Agreement should, during the validity period of the HKI certificate, apply to the relevant Mainland's examining authorities according to the procedures stipulated in Article 4 of Annex 1 to the Investment Agreement (see [Appendix 7](#)). For Hong Kong investors currently investing in the Mainland, they are subject to specific requirements of substantive business operations only when they have new investment in the form of "commercial presence" in the Mainland in non-services sectors with preferential access to Hong Kong (see paragraph 4 above). They must also apply for the HKI certificate.

25. The HKSARG has been in close contact with the relevant Mainland's authorities for provision of information relating to the application procedures/requirements for engaging in the businesses in the Mainland under the Investment Agreement. Latest information available can be found at TID's webpage (<https://www.tid.gov.hk/english/cepa/index.html>).

Handling of Information

26. TID is committed to ensuring all personal data provided in the applications for HKI certificate and in all the accompanying supporting documents (including the Statutory Declaration) are handled in accordance with the provisions of the Personal Data (Privacy)

Ordinance (Cap. 486) of the HKSAR. In this regard, the personal data provided in the above documents will be used by TID or its authorized persons/institutions for activities relating to the processing and verification of applications for HKI certificate, and related statistical and research work.

27. TID will keep the personal data provided in the applications and their accompanying documents in strict confidence. However, TID may disclose such data to other government departments, or to third parties within or outside Hong Kong under certain circumstances. Such circumstances may include: TID is of the view that the disclosure is necessary to facilitate the Mainland's examining authorities to verify the applications for obtaining the preferential treatment under the Investment Agreement (see paragraph 24 above) or for the purposes mentioned in paragraph 26 above; the disclosure is authorized or required by law; or explicit consent to the disclosure is given by the applicant/data subject. If necessary, TID will contact other government departments or specified independent institutions or persons to verify the personal data provided in the applications with those held by them.

28. Applicants and data subjects whose data are collected by TID may request access to such data under the Personal Data (Privacy) Ordinance (Cap. 486) of the HKSAR. Such requests should be made on the Data Access Request Form (No. OPS003) issued by the Privacy Commissioner, which is available at the Information Counter of TID or can be downloaded from TID's webpage:

<http://www.tid.gov.hk/english/aboutus/form/publicform/others/index.html>. The duly completed Request Form should be sent to the Hong Kong Service Supplier and Hong Kong Investor Certification Section. A charge will be made to cover the cost of photocopying. In addition, if the data subject considers that the data supplied to TID is inaccurate, a request for correction of the data may be made in writing after a data request has been complied with.

29. Separately, TID may publish and/or disclose the names of holders of valid HKI Certificates to third parties within or outside Hong Kong. Please contact the Customer Service Manager of the Hong Kong Service Supplier and Hong Kong Investor Certification Section of TID at telephone no. 3403 6004 if there are questions on this matter.

III. IMPORTANT NOTES

30. It is the responsibility of the applicant to complete the application form fully and truthfully and provide the supporting documents as required (including the Statutory Declaration). Failing to provide accurate and complete information may affect the consideration and processing of the applications, and may result in their being deferred or rejected.

31. During the validity period of an HKI certificate, if there is any change in the particulars of the applicant that makes it no longer eligible as a Hong Kong investor, the applicant may, if considers necessary ^(Note 4), notify TID in writing of the change, and at the

(Note 4) During the validity of the HKI certificates, if more than 50% of the equity interest of the holders of the HKI certificates has been owned by way of merger or acquisition by investors not from the Mainland or Hong Kong, the investments that have already been made by the holders in the Mainland in the non-services sectors with preferential access to Hong Kong may continue to operate without applying for a new HKI certificate. However, the holders are not allowed to use the HKI certificates previously issued to cover new investments in those non-services sectors. The concerned Hong Kong investors may make a fresh application for an HKI certificate one year after 50% of its shares being acquired by investors not from the Mainland or Hong Kong for covering new investments in those non-services sectors.

same time apply for cancellation of the HKI certificate. If it is found that the applicant has obtained its HKI certificate by means of any misrepresentation or omission of information, or by any other fraudulent means, TID may cancel the application concerned or revoke any HKI certificate issued.

32. From the Investment Agreement comes into effect on 28 June 2017, 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 the Mainland or Hong Kong, the investor which has been acquired or merged will be regarded as a Hong Kong investor.

33. According to the Crimes Ordinance (Cap. 200) of the HKSAR, any person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular, such statement being made in a statutory declaration shall be liable on conviction upon indictment to imprisonment for two years and to a fine.

34. If the application, the supporting documents and/or the Statutory Declaration are sent by post, TID will not accept the responsibility for any loss of documents in transit.

IV. ENQUIRIES

35. For enquiries relating to the application procedures or details of applying for an HKI certificate, please contact the Hong Kong Service Supplier and Hong Kong Investor Certification Section of TID at:

Address : Room 1605, 16/F, Trade and Industry Tower,
3 Concorde Road, Kowloon City, Kowloon
Tel : 3403 6428
Fax : 3547 1348
E-mail : hki@tid.gov.hk

Yours faithfully,

(Ms Anna LING)
for Director-General of Trade and Industry

Appendices to Notice to Investors No. 1/2017

Appendix 1	CEPA - Extract of Annex 1 to the Investment Agreement - Relevant Requirements on the Definition of “Investors”
Appendix 2	Specimen of Hong Kong Investor (HKI) Certificate
Appendix 3	Application Form for Hong Kong Investor (HKI) Certificate [TID 117]
Appendix 4A	Proforma of Statutory Declaration [HKI 001]
Appendix 4B	Proforma of Statutory Declaration [HKI 002] (where interpretation is needed)
Appendix 5	Supporting Documents Required for Application for Hong Kong Investor (HKI) Certificate
Appendix 6	Supplementary Form for Group of Companies Applying for Hong Kong Investor (HKI) Certificate [TID 117A]
Appendix 7	CEPA - Extract of Annex 1 to the Investment Agreement (Article 4)