

[Cursory Translation]

**Investment Agreement under the framework of  
The Mainland and Hong Kong Closer Economic Partnership Arrangement  
Mediation Rules (“Rules”) for Investment Disputes**

[Applicable to investment disputes involving the Mainland investors and the relevant  
Hong Kong authorities or institutions]

**Introduction**

- (A) On 28 June 2017, an investment agreement (“Investment Agreement”) was signed between the Mainland and the Hong Kong Special Administrative Region (“Hong Kong”) under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement to:
- (i) promote and protect investments by investors of the Mainland and Hong Kong (hereinafter referred to as the “two sides”) in the other side;
  - (ii) progressively reduce or eliminate substantially all discriminatory measures on investments between the two sides;
  - (iii) protect the rights of investors;
  - (iv) promote achieving progressive liberalization and facilitation of investments of the two sides;
  - (v) further enhance the level of bilateral economic and trade exchanges and cooperation.
- (B) Under Article 19 of the Investment Agreement, a dispute arising from a claim by

a Hong Kong investor that it or its covered investment<sup>1</sup> has suffered losses or damages resulting from a breach by the relevant Mainland authorities or institutions of their obligations under the Investment Agreement may be settled by resolution through mediation whereby the Hong Kong investor may submit the dispute to a mediation institution of the Mainland side.

- (C) Under Article 20 of the Investment Agreement, a dispute arising from a claim by a Mainland investor that it or its covered investment has suffered losses or damages as a result of a breach by the relevant Hong Kong authorities or institutions of the obligations under the Investment Agreement may be settled by resolution through mediation whereby the Mainland investor may submit the dispute to a mediation institution in Hong Kong.
- (D) The Mainland and Hong Kong had established the investment mediation mechanism for mediation conducted under paragraph 1(v) of Article 19 and paragraph 1(iv) of Article 20 both of the Investment Agreement.
- (E) These Rules only apply to a dispute between a Mainland investor and the relevant Hong Kong authorities or institutions as specified in (C) above.

## **Article 1 Scope of Application and Definitions**

1. These Rules apply to mediation of Disputes. Where the Parties agree to submit a Dispute to the Institution for mediation, they shall be regarded to have agreed to mediate the Dispute in accordance with the Investment Agreement, the Mediation Mechanism and these Rules.
2. Notwithstanding Paragraph 1 of Article 1, the Parties may agree to exclude or vary any of these Rules save for Articles 1, 2, 3 and 4.

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<sup>1</sup> “covered investment” means, with respect to one side, an investment in its area that an investor of the other side owns or controls, directly or indirectly, and exists on the date of the coming into effect of the Investment Agreement or is made or acquired thereafter.

3. If any of these Rules is in conflict with a provision of law which any Party cannot derogate, that provision prevails.
4. In these Rules (including the Introduction), unless the context otherwise requires:
  - (a) capitalized words and expressions not defined in these Rules shall have the meaning assigned to them in the Investment Agreement;
  - (b) words and expressions defined in any provision of these Rules shall have the same meaning when used in other provisions of these Rules;
  - (c) the following words and expressions shall have the meaning assigned to them below:

“Force Majeure” means any subsequent event that is unforeseeable, inevitable and insurmountable by the Investor, which impedes the Investor submitting a Dispute to mediation, including:

- (a) any outbreak of war affecting Hong Kong and/or any other parts of the Mainland, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil disturbances, influenza pandemic, fire or acts of God; or
- (b) any supervening catastrophic event which is similar to any of the foregoing;

“Investor”	means a Mainland investor who seeks to make, is making or has made a covered investment in Hong Kong;
“Parties”	means all parties to a Dispute and “Party” means any one of them;
“Mediated Settlement Agreement”	means the mediated settlement agreement defined in section 2 of the Mediation Ordinance (Chapter 620 of the Laws of Hong Kong), specifically, it means the settlement agreement (whether settling in full or in part of their Disputes) reached by the Parties after mediation;
“Investment Agreement”	means the Investment Agreement described in (A) of the Introduction, as may be amended or supplemented from time to time;
“Dispute”	means a dispute described in (C) of the Introduction;
“Mediation Mechanism”	means the mechanism described in the Schedule to these Rules, as may be amended or supplemented from time to time;
“Specified Panel of Mediators”	means a dedicated panel of mediators established and maintained by the Institution comprising the Designated Mediators;

- “Designated Mediators” means those persons who are agreed by the parties to the Investment Agreement to act as mediators in accordance with the Mediation Mechanism;
- “Request for Mediation” means the request for mediation referred to in Paragraph 3(c) of Article 2, which contains all the information set out in Paragraph 4 of Article 2;
- “Commission” means the Commission of mediators as referred to in Paragraph 1 of Article 5 comprising of three Designated Mediators;
- “Agreement to Mediate” means the agreement to mediate as defined in section 2 of the Mediation Ordinance (Chapter 620 of the Laws of Hong Kong), i.e. a written agreement by the Parties to submit their Dispute to mediation, regardless of:
- (a) whether the agreement is in the form of a mediation clause in an agreement or in the form of a separate agreement;
  - (b) whether the agreement is made before or after the Dispute arises; and
  - (c) whether or not a mediator is appointed at the time the agreement is made;
- “Term” means a period of 120 days from the date of constitution of the Commission or such other period as agreed by the Parties within which the mediation proceeding shall be completed;

“Mediation  
Communication” means:  
(a) anything said or done;  
(b) any document prepared; or  
(c) any information provided,  
for the purpose of or in the course of mediation, but  
does not include an Agreement to Mediate or a  
Mediated Settlement Agreement;

“Mediation Notification” means the written notification delivered to the  
Investor by the Institution referred to in paragraph  
8 of Article 4;

“Invitation to Mediation” means the invitation to mediation delivered to the  
Investor and the other Party to the Dispute by the  
Institution described in paragraph 3 of Article 4;

“Institution” means the mediation institution(s) designated  
under the Mediation Mechanism.

(d) a reference to a person includes an individual, corporation, firm or any  
body of persons, corporate or unincorporated, and includes any public  
body.

5. In these Rules, where the context requires:

(a) words importing the singular only shall include the plural and vice versa;

(b) each gender includes the others;

(c) a reference to a document shall mean the same as it is from time to time  
amended or supplemented; and

- (d) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subsidiary legislation made under those statutes;

## **Article 2     Conditions for Submission of Disputes to Mediation**

1. If an Investor has already submitted a Dispute for resolution through any judicial proceedings under the laws of Hong Kong as referred to in paragraph 1(v) of Article 20 of the Investment Agreement, the Investor shall not submit the same Dispute to the Institution for mediation unless such submission is in compliance with the relevant laws and regulations of Hong Kong; and
2. In the case of a Dispute which has entered into judicial proceedings prior to the coming into effect of the Investment Agreement (i.e. prior to 28 June 2017), unless agreed upon by the Parties and in compliance with the relevant laws and regulations of Hong Kong, the Investor may not submit the Dispute to the Institution for mediation.
3. In addition to Paragraphs 1 and 2 above, an Investor may submit an application to the Institution to mediate a Dispute only if the following conditions are met:
  - (a) the mediation of the Dispute shall only be handled by the Institution;
  - (b) the Investor consents that the mediation shall be conducted in accordance with the procedures set out in the Investment Agreement and the Mediation Mechanism, while the Investor has duly signed and delivered to the Institution and the other Party a notice of such consent;
  - (c) the Investor has delivered to the Institution and the other Party the duly signed Request for Mediation which contains all the information set out in Paragraph 4 of this Article 2;
  - (d) the Investor has delivered to the Institution such evidence to prove that it

is a qualified investor as referred to in Article 2.2 of the Mediation Mechanism (i.e. such evidence to prove that the Investor is a government authority of the Mainland, a citizen of the People's Republic of China or an enterprise of the Mainland side) at the time of the submission of the Request for Mediation;

- (e) at least one month prior to the submission of the Request for Mediation, the Investor has requested amicable consultation with the other Party in accordance with paragraph 1(i) of Article 20 of the Investment Agreement and the Investor has delivered to the Institution written proof of the request for such amicable consultation;
- (f) in relation to the measures alleged to constitute a breach by the other Party of its obligations under the Investment Agreement, the Investor has waived its right to initiate or continue any dispute settlement or resolution procedures under any agreement made between any other party and a Party;
- (g) not more than three years have elapsed since the date on which the Investor knew or should have known about:
  - (i) the alleged breach by the other Party of its obligations under the Investment Agreement;
  - (ii) the Investor or its Covered Investment has suffered loss or damage as a result of the alleged breach; and
  - (iii) no account shall be taken of any delay caused by Force Majeure for the purpose of calculating the above period of three years;
- (h) the other party to the Dispute is the relevant Hong Kong authorities or institutions as specified in paragraph 1 of Article 20 of the Investment Agreement;

- (i) the Investor agrees that the solutions under the Mediated Settlement Agreement shall be confined to one or more of the following types:
  - (i) monetary compensation and any applicable interest;
  - (ii) restitution of property or monetary compensation and any applicable interest in lieu of restitution of property; and
  - (iii) other legitimate means of compensation agreed upon by the Parties;  
and
- (j) According to paragraph 4 of Article 20 of the Investment Agreement, methods of resolution of disputes involving tax matters shall be governed by Article 23 (Mutual Agreement Procedure) of the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

4. The Request for Mediation shall contain:

- (a) the name, address, telephone number and electronic mail address of the Investor;
- (b) if applicable, the name, address, telephone number and electronic mail address of an enterprise that is a Covered Investment of the Investor which is alleged to have suffered from loss or damage;
- (c) the provision alleged to have been breached by the other Party and any other relevant provisions under the Investment Agreement;
- (d) the legal and factual basis for the Investor's claim, including the measures involved; and

- (e) the remedy sought and, if applicable, the approximate amount of damages sought.
5. The relevant laws and regulations of Hong Kong as referred in Paragraphs 1 and 2 of this Article mean the Laws of Hong Kong (including Hong Kong Ordinances), Practice Directions of the Judiciary of Hong Kong and other documents related to mediation issued by the Judiciary of Hong Kong.

### **Article 3 Mediation Principles**

1. All Parties may, in accordance with the principle of voluntary participation, choose whether to participate in or to withdraw from mediation. Prior to withdrawing from mediation, a Party shall notify the other Party, the Institution and the Commission in writing of its intention to withdraw, stating its reasons as far as possible.
2. During mediation, the Parties shall cooperate with the Commission and each other in good faith and to participate in the mediation actively so as to advance the mediation expeditiously and efficiently.

### **Article 4 Request for Mediation**

1. If an Investor fulfils the conditions as stated in Article 2, such Investor shall be treated as making an application to mediate the Dispute with the other Party at the time of submission of the Request for Mediation.
2. An Investor shall submit to the Institution together with the Request for Mediation:
  - (a) documentary proof and other supporting information to show that the Investor has satisfied the conditions set out in Article 2;

- (b) other relevant document or evidence;
  - (c) proof of the Investor's identity; and
  - (d) the relevant power of attorney or authorization document if an agent is to attend the mediation on behalf of the Investor.
3. If the Institution is satisfied that the Investor has met the conditions set out in Article 2, it shall, within 21 days after the submission of the documents as required in Paragraph 2 of this Article, deliver to the Investor and the other Party an Invitation to Mediation, together with these Rules and a copy of its Specified Panel of Mediators.
4. Within 21 days after receipt of the Invitation to Mediation, the other Party to the Dispute shall reply to the Institution whether it agrees to submit the Dispute to the Institution for mediation.
5. If the other Party to the Dispute agrees to submit the Dispute to the Institution for mediation, it shall, within the period specified in Paragraph 4 of this Article, submit to the Institution:
- (a) its written consent that the mediation shall be conducted in accordance with the requirements set out in the Investment Agreement, the Mediation Mechanism and these Rules (save to the extent that any of these Rules are excluded or varied by agreement of the Parties pursuant to Paragraph 2 of Article 1 or is in conflict with any provisions of law as referred to in Paragraph 3 of Article 1);
  - (b) written response to the Investor's request to mediate;
  - (c) other relevant document or evidence; and
  - (d) the relevant power of attorney or authorization document if an agent is to attend the mediation on its behalf.

6. If the other Party does not submit to the Institution the written consent referred to in Paragraph 5(a) of this Article within the period specified in Paragraph 4 of this Article, it shall be deemed to have rejected mediation.
7. If the other Party delivers the written consent referred to in Paragraph 5(a) of this Article after the period specified in Paragraph 4 of this Article, the Institution shall obtain the consent of the Investor to continue with the mediation. If the Investor agrees, the Parties and the mediator may proceed with the mediation notwithstanding the delay in delivering the written consent by the other Party.
8. The Institution shall within ten days after receipt of the written consent from the other Party referred to in Paragraph 5(a) of this Article, notify the Investor in writing of the consent by the other Party to the Dispute to mediate the Dispute.

#### **Article 5 The Commission and Appointment of Mediators**

1. Unless agreed by the Parties otherwise, the mediation shall be conducted by a Commission. The Commission shall be comprised of three Designated Mediators. Each Party shall appoint one mediator to the Commission. The Parties shall jointly appoint a third mediator, who shall be the chairperson of the Commission.
2. Within ten days after the date of the Mediation Notification, the Investor shall notify the other Party :
  - (a) the name of the person it intends to appoint as a mediator; and
  - (b) propose another person to be jointly appointed by it and the other Party as the third mediator, and seek the agreement of the other Party of such proposed appointment and to appoint the remaining mediator.
3. Promptly upon receipt of the notification referred to in Paragraph 2 of this Article,

the other Party shall, in its reply:

- (a) name the person it intended to appoint as a mediator; and
  - (b) notify the Investor whether it agrees at the appointment of the person as proposed by the Investor as the third mediator and, if not, counter-propose another person as the third mediator.
4. If the other Party counter-proposes another person as the third mediator, the Investors shall, upon receipt of the reply referred to in Paragraph 3 of this Article from the other Party, forthwith notify the other Party whether it agrees at the proposed appointment of the person counter-proposed by the other Party as the third mediator.
  5. The communications referred to in this Article shall be made or promptly confirmed in writing and shall either be transmitted through the Institution or directly between the Parties with a copy to the Institution.
  6. If the Commission is not constituted within 20 days after the Mediation Notification is issued, the Institution shall, after consulting the Parties, appoint the mediator or mediators not yet appointed.
  7. The Institution shall forthwith arrange the mediators to confirm acceptance of their respective appointment. If any mediator refuses to accept his appointment, the Institution shall promptly notify the Parties. The Parties or the Institution shall proceed with the appointment of another mediator in accordance with the method of appointment of mediator refused to be appointed.
  8. The Parties and the Institution may only appoint mediators who are on the Specified Panel of Mediators as members of the Commission.
  9. The Commission shall be deemed to be constituted on the date the Institution notifies the Parties that all mediators have accepted their appointment.

10. Motion of the Commission shall be decided by a majority vote of all its members. Abstention shall be counted as a vote against the motion.

## **Article 6 Replacement and Resignation of Mediator**

1. At any time before the Commission is constituted, any Party may replace the mediator it appoints and the Parties may by mutual consent replace any mediators. The relevant Party shall promptly notify the Institution and the other Party its intention to replace its appointed mediator. The procedures specified in Paragraphs 2 to 9 of Article 5 shall apply.
2. If, in the course of mediation, a Party (“Objecting Party”) objects to a mediator (“Relevant Mediator”) continuing to act for whatever reasons, the Objecting Party shall notify the Relevant Mediator, the other Party and the Institution, and state the reasons for the objection in the notification. After the Institution receives such notification, the mediation proceedings shall be suspended until a decision is made by the Commission or the Institution as to the objection and as to whether to replace the Relevant Mediator.
3. If the other Party has any comment on the objection, it shall submit its written comments to the Relevant Mediator, the Objecting Party and the Institution within 10 days after receiving the notification referred to in Paragraph 2 of this Article.
4. The Relevant Mediator may, within 10 days after he receives the notification of objection and the comment from the other Party (if any), furnish written explanations to the Commission and the Institution.
5. Unless the objection relates to a majority of the members of the Commission, the other members of the Commission shall promptly consider and vote on the objection in the absence of the Relevant Mediator. If the number of vote for and against the objection equals to one another, those other members of the

Commission shall promptly notify the Institution of such matter together with reasons for the failure to reach a decision. The Institution shall decide on the objection and whether to replace the Relevant Mediator within 30 days after receipt of the notification from those other members.

6. If a mediator is incapacitated or otherwise becomes unable to perform the mediator's functions, the procedures set out in Paragraphs 2 to 5 of this Article shall apply.
7. A mediator may resign by submitting his resignation letter to the other members of the Commission and the Institution. The Commission shall consider the reasons for his resignation and decide whether it agrees at the resignation. The Commission shall promptly notify the Institution of its decision.
8. The Institution shall promptly notify the Parties of a decision to replace a Relevant Mediator or the death, incapacity or resignation of a mediator. Upon such notification by the Institution, the mediation proceedings shall be suspended or remain suspended until the vacancy is filled.
9. Except as provided in Paragraph 10 of this Article, a vacancy resulting from a decision to replace a Relevant Mediator or the death, incapacity or resignation of a mediator as agreed by the Commission shall be promptly filled by the same method by which his appointment had been made.
10. In addition to filling vacancies of mediators appointed by the Institution, the Institution shall appoint a person from the Specified Panel of Mediators:
  - (a) to fill a vacancy caused by resignation of a mediator not agreed by the Commission; and
  - (b) at the request of a Party, to fill other vacancy.
11. As soon as a vacancy of the Commission has been filled, the mediation

proceedings shall continue from the point it had reached at the time the vacancy occurred.

12. If at any time, the chairperson of the Commission should be unable to act, his functions shall be performed by one of the other members of the Commission based on the order in which the Institution has received notice of their acceptance of appointment to the Commission.

## **Article 7 Independence and Impartiality of Mediator**

1. Each mediator shall be independent and impartial. He shall mediate the Dispute in a manner that is transparent, objective, equitable, fair and reasonable, and in accordance with the requirements of the Investment Agreement, the Mediation Mechanism and these Rules (save to the extent that these Rules are excluded or varied by agreement of the Parties pursuant to Paragraph 2 of Article 1 or is in conflict with any provisions of law as referred to in Paragraph 3 of Article 1).
2. Prior to accepting an appointment as mediator, a person who is selected by any of the Parties or by the Institution as mediator shall sign and deliver to each of the Parties a written statement as follows:

*“To the best of my knowledge and belief, there is no factor which will adversely affect myself to be a mediator of the Dispute between [ ] and [ ].*

*I hereby undertake that, I shall keep confidential all information arising out of or in connection with the mediation of the Dispute. Such information shall include, but not limited to, Mediation Communication, the written report of the Commission after the termination of mediation and any content therein.*

*I hereby undertake that, unless otherwise specified under these Rules, in respect of the mediation of the Dispute, I shall not accept any*

*instruction, remuneration or compensation, regardless of the source.”*

3. The mediator shall ensure that he has the capacity to conduct the mediation and avoid his performance (whether in the preparation or in the course of mediation) from being affected by his own financial, business, professional, family or social relationships or responsibilities.
4. Unless agreed by the Parties otherwise, by accepting an appointment as mediator of a Dispute, the mediator is deemed to agree not to act in any other role (including but not limited to counsel, arbitrator, expert or witness) in respect of:
  - (a) any differences or disputes which are the subject of the mediation; or
  - (b) any other differences or disputes in which a Party is involved as a disputant pending the resolution of the Dispute in mediation.
5. If, during the course of the mediation, a mediator becomes aware of any facts or circumstances that may call into question the mediator’s independence or impartiality in the eyes of the Parties, the mediator shall forthwith disclose those facts or circumstances to the Parties in writing without delay. The Parties shall inform the mediator as soon as practicable whether they agree to his remaining as mediator of the Dispute.
6. If the Parties are unable to resolve a Dispute through mediation, the mediators who were appointed to conduct the mediation shall not be appointed as judge, arbitrator, agent or legal adviser of any Party to the Dispute in any subsequent proceedings (including litigation and arbitration proceedings) of the same or related dispute, unless the Parties otherwise agree.

## **Article 8 Role of the Commission**

1. The Commission shall clarify the issues in dispute between the Parties, facilitate the communication of the Parties, explore the common interest of the Parties and

endeavor to bring about the Mediated Settlement Agreement based on terms acceptable to both Parties.

2. The Commission shall assist the Parties to, on a voluntary basis, make informed and self-determined choices as to the process and the outcome of the mediation. The Commission shall have no right to impose on any of the Parties partial or complete settlement of any Dispute.
3. In order to clarify the issues in dispute between the Parties, the Commission shall hear the Parties (including their representatives) separately or collectively and shall endeavor to obtain relevant information for this purpose.
4. For the purpose of bringing about agreement between the Parties, the Commission may in the course of the mediation proceedings:
  - (a) make recommendations to the Parties and point out the basis why its recommendations are desirable, but such recommendations shall not be binding on the Parties;
  - (b) recommend specific terms of settlement to the Parties but such recommendations shall not be binding on the Parties.
5. The Commission may fix time limits within which each Party shall inform the Commission of its decision concerning the recommendations made by the Commission.
6. In order to obtain information that enables it to discharge its functions, the Commission may, in the course of the mediation proceedings:
  - (a) request from any of the Parties verbal explanations, documents, materials and other information;
  - (b) request information and documents from other persons; and

- (c) with the consent of the Party concerned, visit any place connected with the Dispute or conduct investigation there, provided that the Parties may participate in any such visits and investigation.
- 7. Following consultation with the Parties, the Commission may decide the procedural matters of the mediation, including the place, the format, time and dates of the mediation meetings (other than the language to be used for the mediation).
- 8. In conducting the mediation and in deciding the procedural matters, the Commission shall take into account the intention of the Parties, the circumstances of the case and the overall goal of a cost-efficient and timely settlement of the Dispute.
- 9. The chairperson of the Commission shall preside at all its meetings (including meetings with the Parties or any of the Parties), hearing evidence and at the Commission's deliberations.
- 10. Unless agreed by the Parties otherwise, the presence of a majority of the members of the Commission shall be required at all its meetings (including the meetings for hearing evidence).
- 11. The chairperson of the Commission shall fix the date and time of all its meetings (including the meetings for hearing evidence).

## **Article 9 Mediation Management Conference**

- 1. As soon as practicable following constitution of the Commission, the Commission shall forthwith convene a mediation management conference with the Parties, whether in person, by telephone or by any other means of communication, to discuss:

- (a) the conduct of the mediation, in particular any outstanding procedural matters such as the languages and location of the mediation meetings;
  - (b) a provisional timetable for conduct of the mediation;
  - (c) confidentiality and privacy arrangements, including any statutory disclosure obligation that may affect such arrangements;
  - (d) the applicability of any relevant limitation periods and whether the Parties wish to specify such periods by agreement;
  - (e) whether special arrangements for the acceptance of a Mediated Settlement Agreement need to be made; and
  - (f) the financial arrangements, such as the calculation and payment of the mediator's fees and expenses.
2. During the mediation management conference, each Party shall inform the other Party and the Commission of the name and contact details of its representative(s) and any other person who will participate in the mediation on its behalf.
3. Each Party shall, as far as possible at the mediation management conference, or as soon as possible thereafter:
- (a) describe the internal confirmation process necessary for reaching the Mediated Settlement Agreement;
  - (b) if applicable, identify a representative who is authorized to settle the Dispute on its behalf; and
  - (c) communicate to the Commission and the other Party the names of any non-Party whom it regards to be beneficial for facilitating the settlement of the Dispute.

4. By agreeing to mediate under these Rules, a Party undertakes to participate in the mediation management conference.

#### **Article 10 Commencement and Conduct of Mediation**

1. Mediation proceedings shall be regarded as having commenced on the date of constitution of the Commission. Unless otherwise agreed by the Parties, the Commission shall complete the mediation within the Term.
2. The Commission shall conduct the mediation in such language as agreed by the Parties.
3. The Commission may communicate with the Parties verbally or in writing, jointly or separately, at any point during the mediation. The Commission may conduct meetings jointly with both Parties or with one Party only.
4. The Commission shall not disclose any information provided by a Party to the Commission in caucus to the other Party unless the first-mentioned Party expressly authorizes otherwise. Any written materials provided by a Party to the Commission with the intention that the same shall not be disclosed to the other Party shall be clearly labeled as "Confidential - For the Commission's Use Only" or words to similar effect.
5. At the request of the Commission, each Party shall furnish all relevant documents, information and explanations. Each Party shall also facilitate the Commission to:
  - (a) hear evidence so as to obtain evidence from witnesses and views from experts regarded as necessary by the Commission; and
  - (b) undertake those site visits relevant to the Dispute.

6. At the request of any Party or with the consent of the Parties, the Commission may:
  - (a) hear or consult one or more experts;
  - (b) hear witnesses whose evidence the Party or the Commission considers relevant.
7. If a witness or expert is unable to appear before the Commission (including the meeting for hearing evidence), the Commission, with the agreement of the Parties, may make appropriate arrangement for evidence to be given by the witness or expert in writing.
8. The witness and the expert shall be governed, *mutatis mutandis*, by Article 7. The costs and fees of such expert shall be governed, *mutatis mutandis*, by Article 13.

## **Article 11 Privacy and Confidentiality**

1. The mediation shall be held in camera and the mediation proceedings shall not be disclosed and shall remain confidential, save as otherwise agreed by the Parties and the Commission.
2. Save as otherwise agreed by the Parties and the Commission, only the following persons may attend, hear or view all or any part of the mediation proceedings:
  - (a) the members of the Commission;
  - (b) if a Party is an individual, the individual;
  - (c) a person named by a Party pursuant to Paragraphs 2 and 3(b) of Article 9 as its representative or as a person who will participate in the mediation on behalf of that Party; and

- (d) any non-Party to the Dispute who has participated in any part of the mediation proceedings, provided that such non-Party may only attend, hear or view such part of the mediation proceedings as specified by the Commission.
- 3. Save as provided for in these Rules, the Parties, the Institution (including all its employees), each member of the Commission and the persons who participate in the mediation shall not disclose any Mediation Communication to any other person. Without prejudice to the foregoing, none of the Parties shall, in any subsequent administrative review (if applicable), arbitration, judicial or any other proceedings, adduce as evidence, or invoke or rely on, any views expressed, statements, admissions or concessions made by the other Party, the Commission or individual member of the Commission; or any report or recommendations made by the Commission or individual member of the Commission.
- 4. The confidentiality obligation described in this Article shall not extend to:
  - (a) the fact that the Parties have agreed to mediate or a settlement has been reached from the mediation, unless otherwise agreed by the Parties in writing;
  - (b) the disclosure of Mediation Communication is:
    - (i) agreed by the Parties and the Commission and for such purposes as approved by the Parties and the Commission;
    - (ii) in accordance with the Laws of Hong Kong, including the Mediation Ordinance (Chapter 620 of the Laws of Hong Kong).
- 5. All persons agreeing to participate in the mediation shall be deemed to have agreed to be bound by the provisions of this Article. At the request of the Commission, those persons shall confirm such agreement in writing.

6. Except for the sole purpose of handling a dispute regarding the mediator's fees or expenses arising after the mediation is completed, no Party or other participants in the mediation shall:
  - (a) attempt to compel any member of the Commission to disclose anything in relation to or about the mediation (including any records or other documents made by the member) or any information or documents obtained during the mediation (including information as to whether a Mediated Settlement Agreement was made); or
  - (b) call, attempt to call or compel any member of the Commission to appear as a witness in any legal or other proceedings relating to the mediation or cause any member of the Commission to be compelled to disclose Mediation Communication obtained by the member in relation to the mediation.
  
7. The provisions of this Article shall survive the termination of the mediation and continue in full force and effect unless agreed otherwise by a signed agreement among all Parties and the members of the Commission.

## **Article 12 Mediated Settlement Agreement and Termination of Mediation**

1. If through mediation, the Parties reach a Mediated Settlement Agreement in relation to the Dispute, the Commission shall produce a written Mediated Settlement Agreement incorporating all the terms agreed by the Parties for execution. The Mediated Settlement Agreement shall be duly signed and stamped by each Party and each member of the Commission, and be affixed with the seal of the Institution.

2. The solutions under the Mediated Settlement Agreement shall be confined to the following:
  - (a) monetary compensation and any applicable interest;
  - (b) restitution of property or monetary compensation and any applicable interest in lieu of restitution of property; and
  - (c) other legitimate means of compensation agreed upon by the Parties.
3. A Mediated Settlement Agreement is binding and enforceable. An Investor may apply for enforcement of a Mediated Settlement Agreement in accordance with the relevant laws and regulations of Hong Kong and the Mainland. The Parties shall endeavor to perform the Mediated Settlement Agreement.
4. The Commission shall by notice in writing to the Parties declare the termination of the mediation of a Dispute:
  - (a) upon the Parties signing a Mediated Settlement Agreement for the Dispute;
  - (b) upon the withdrawal of any Party pursuant to Paragraph 1 of Article 3;
  - (c) upon the expiry of the Term and the Parties have neither agreed to extend the Term nor to the terms of a Mediated Settlement Agreement;
  - (d) upon the Parties' agreement that the mediation should be terminated;
  - (e) at any stage of the mediation, it appears to the Commission that it is highly unlikely that the Parties will be able to reach an agreement.
5. If a Party fails to appear or participate in the mediation, the Commission shall, after notifying the Parties, declare the mediation terminated.

6. The mediation shall be deemed terminated as of the date when the declaration of termination of mediation is issued to the Parties.
7. After the termination of mediation, the Commission shall compile a report in writing, which shall contain:
  - (a) a precise designation of each Party;
  - (b) the establishment of the Commission and a description of how it was constituted;
  - (c) the names of the members of the Commission and the identity of their respective appointor;
  - (d) the names of the representatives, agents and (if applicable) Counsel or advocates of the Parties;
  - (e) the dates and place of the meetings of the Commission (including meetings for hearing evidence);
  - (f) a summary of the mediation proceeding;
  - (g) if a Mediated Settlement Agreement has been signed by the Parties, the issues in dispute and a statement that the Parties have reached a Mediated Settlement Agreement;
  - (h) if the mediation is terminated on any of the grounds set out in Paragraph 4(c), (d) and (e) of this Article, the submission of the Dispute to mediation, the failure of the Parties to reach agreement and the settlement option(s) that the Parties may consider;
  - (i) if the mediation is terminated on the ground set out in Paragraph 4(b) of this Article, a description that the Dispute was submitted to mediation but

the relevant Party withdrew from mediation;

- (j) if the mediation is terminated on the ground set out in Paragraph 5 of this Article, a description that the Dispute was submitted to mediation but the relevant Party fails to appear or to participate in mediation; and
  - (k) any agreement by the Parties concerning the use of any Mediation Communication in other proceedings.
8. Unless any member of the Commission refuses to sign the report, the report shall be signed by all members of the Commission and the date of each signing shall be specified. The fact that any member refuses to sign the report shall be recorded in the report.
9. Upon signing of the report by all members of the Commission who have agreed to sign, the Institution shall promptly authenticate the original text of the report and deposit it with the Institution. The Institution shall also provide to each Party a certified copy of the report.
10. The Institution shall not publish the report without the consent of the Parties.

### **Article 13 Costs and Fees**

1. The fees and expenses of the members of the Commission, the charges for use of the facilities of the Institution and other administrative expenses of the Institution (if any) (collectively, the “Costs”) shall be borne by the Parties in equal shares. A Party may pay any other Party’s share of the Costs if it so wishes. A Party shall be responsible for any other expenditure that it has incurred in relation to the mediation. The Parties shall pay the Costs referred to in this Article irrespective of whether a Mediated Settlement Agreement is concluded.
2. If a member of the Commission resigns prior to the termination of the mediation, the Parties shall pay the fees and expenses that that member incurred prior to

termination of the mediation in equal shares, unless otherwise agreed by that member and the Parties.

3. The fees of the mediator shall be calculated on the basis of the hours spent by the mediator on the mediation, unless a flat fee or other basis is agreed among the Parties and the mediator. The mediator's hourly rate shall be agreed upon in writing before the commencement of the mediation proceedings. The mediator shall be reimbursed for reasonable expenses incurred in the course of the proceedings, such as travel, accommodation or other expenses.
4. After the termination of the mediation, the mediator shall send a final invoice to the Parties as to his fees and expenses.
5. The Institution shall set the amount of its administrative charges and shall inform the Parties of the mediation before the appointment of the mediator.

#### **Article 14 Notification**

1. On 31 December each year, the Institution shall submit to the parties to the Investment Agreement, in a format specified by those parties, an annual report in relation to Disputes.
2. By agreeing to submit a Dispute to the Institution for mediation, the Parties shall be deemed to have agreed to the disclosure by the Institution of the information in the annual report referred to in paragraph 1 of this Article.

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

**Investment Agreement**

**Mediation Mechanism for Investment Disputes**

**1. Mediation Principles**

- 1.1. This Mediation Mechanism shall only be applicable to an investor of one side, in accordance with sub-paragraph 1(v) of Article 19 (Dispute Settlement between a Hong Kong Investor and the Mainland) or sub-paragraph 1(iv) of Article 20 (Dispute Settlement between a Mainland Investor and Hong Kong) of the Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter referred to as “the Agreement”), to submit an application to mediate an investment dispute to a mediation institution of the other side where the investment is made.
- 1.2. The disputing parties (that is, the disputing investor and the disputing side) may at any time choose to participate in or withdraw from mediation on a voluntary basis.
- 1.3. Disputing side, in the case of the Mainland, is limited to the particular authority(ies) or institution(s) implementing the specific administrative

action; and in the case of Hong Kong, is the relevant Hong Kong authority(ies) or institution(s) referred to in paragraph 1 of Article 20 (Dispute Settlement between a Mainland Investor and Hong Kong) of the Agreement.

- 1.4. Mediation shall be undertaken by a mediation institution at the side where the investment is made, that is, the mediation for a dispute arising from investment made in the Mainland by a Hong Kong investor may only be undertaken by a mediation institution of the Mainland, and the mediation for a dispute arising from investment made in Hong Kong by a Mainland investor may only be undertaken by a mediation institution of Hong Kong.
- 1.5. After the Agreement has come into effect, one side shall promptly designate its mediation institutions and mediators, and publish the lists of mediation institutions and mediators that are mutually agreed by the two sides. The lists of mediation institutions and mediators may be revised upon consultation and consensus of the two sides.
- 1.6. The mediation institutions and their mediators shall handle the investment disputes in a manner that is objective, equitable, fair and reasonable in accordance with the requirements of the Agreement. The mediators shall have attained the relevant qualification in mediation, and shall have professional knowledge and experience in the fields of cross-border or international trade and investment and law, and shall remain impartial in resolving the investment disputes.

## **2. Conditions for Submission of Investment Dispute to Mediation**

A disputing investor may submit an application to mediate an investment dispute to a mediation institution only if the following conditions are met:

- 2.1. the investor consents to mediation in accordance with the procedures set out in the Agreement and this Mediation Mechanism, and delivers notice of such consent together with its submission in relation to the investment dispute to be mediated to the mediation institution and the disputing side. The notice should specify:
  - 2.1.1. the name, address, telephone number and electronic mail address of the investor, as well as the name, address, telephone number and electronic mail address of an enterprise that is a covered investment of the investor which has suffered from loss or damage in the disputing side (if any),
  - 2.1.2. the provisions alleged to have been breached and any other related provisions under the Agreement,
  - 2.1.3. the legal and factual basis for the claim, including the measures involved, and
  - 2.1.4. the means of compensation sought and the approximate amount of compensation;
- 2.2. the investor has delivered proof establishing that it is a qualified investor of the other side at the time of its submission of an investment dispute for mediation in accordance with the requirements set out under

paragraph 2.1 of this Mediation Mechanism;

- 2.3. at least one month prior to the delivery of notice in accordance with the requirements set out under paragraph 2.1 of this Mediation Mechanism, the investor should have requested amicable consultation with the disputing side in accordance with sub-paragraph 1(i) of Article 19 (Dispute Settlement between a Hong Kong Investor and the Mainland) or sub-paragraph 1(i) of Article 20 (Dispute Settlement between a Mainland Investor and Hong Kong) of the Agreement;
- 2.4. the investor has, in relation to the measure(s) alleged to constitute a breach by the disputing side of its obligations that are specified in Article 19 (Dispute Settlement between a Hong Kong Investor and the Mainland) or Article 20 (Dispute Settlement between a Mainland Investor and Hong Kong) of the Agreement, waived its right to initiate or continue dispute settlement procedures under any agreement between any other party and the disputing side;
- 2.5. not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor or a covered investment of the investor has suffered loss or damage thereby. However, any delay resulting from force majeure shall not be taken into account in counting the aforementioned three-year period.

### **3. Use of Information and Confidentiality**

- 3.1. Unless otherwise agreed by all disputing parties, the mediation process

shall not be disclosed.

- 3.2. Except for matters that all disputing parties agree to disclose and matters for the notification to the two sides as required under paragraph 5 (Notification) of this Mediation Mechanism, the mediation institution to which the investment dispute was submitted for mediation and its personnel, as well as the mediator shall keep all information relating to an investment dispute confidential.
- 3.3. If an investment dispute remains unresolved after undergoing the procedures provided in this Mediation Mechanism, unless otherwise agreed by all disputing parties, neither disputing party may, in subsequent administrative reviews or judicial proceedings for the same dispute, adduce any statements, admissions or concessions made by the other disputing party or the mediator in the aforementioned procedures as information or evidence to the prejudice of that other disputing party.
- 3.4. Should the laws of one side provide otherwise for the matters under paragraph 3.1, 3.2 or 3.3 of this Mediation Mechanism, such laws shall prevail.

#### **4. Mediation Settlement Agreement**

- 4.1. After all disputing parties have reached a consensus on resolution of the investment dispute through mediation, the mediator shall produce a mediation settlement agreement according to the content of the consensus. The agreement shall be signed or stamped by each disputing party and the mediator, and affixed with the seal of the

mediation institution to which the investment dispute was submitted for mediation.

4.2. The solutions available to the disputing parties under a mediation settlement agreement shall be limited to the following:

4.2.1. monetary compensation and any applicable interest;

4.2.2. restitution of property, or monetary compensation and any applicable interest in lieu of restitution of property;

4.2.3. other legitimate means of compensation agreed upon by all disputing parties.

4.3. Investors can apply for enforcement of a mediation settlement agreement in accordance with the relevant laws and regulations of the side where the investment is made.

## **5. Notification**

5.1. One side shall notify the other side and publish the mediation rules of the mediation institutions of its side as designated under this Mediation Mechanism or their amendments.

5.2. Each mediation institution as designated by the two sides under this Mediation Mechanism shall report annually to the two sides on matters

relating to its handling of investment disputes referred to in the Agreement that are submitted to the mediation institution for mediation.