

**[Cursory Translation]**

**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.