

Mainland and Hong Kong
Closer Economic Partnership Arrangement (CEPA)

Frequently Asked Questions - Investment

Enhancement of CEPA

Q1. What is enhancement of CEPA?

A: The Mainland and Hong Kong signed the CEPA in 2003 and have since signed ten Supplements and five subsidiary agreements to broaden and enrich the content of CEPA through expanding market liberalisation and further facilitating trade and investment. Over the years, CEPA has brought significant benefits in promoting trade and economic development of the two places and fully sustained the complementary and mutually beneficial relations between the two places.

The National 13th Five-Year Plan states that the Central Government will step up efforts to further open up its markets to Hong Kong and advocate the enhancement of CEPA. The Mainland and Hong Kong signed the Agreement on Trade in Services in November 2015, the Investment Agreement and the Agreement on Economic and Technical Cooperation in June 2017, and the Agreement on Trade in Goods in December 2018 to complete the enhancement of CEPA, which becomes a modern and comprehensive free trade agreement. The CEPA enhancement sets up a framework comprehensively covering the trade and economic relationship between the two places supported by the four pillars of trade in goods, trade in services, investment, and economic and technical cooperation.

Investment

Q1. What benefits will the Investment Agreement bring to Hong Kong investors?

A: The Investment Agreement contains measures to promote and protect investment between the Mainland and Hong Kong. The Agreement provides for, amongst others, the commitments and cooperation of both sides relating to promotion of investment, national treatment (including pre-establishment national treatment) in sectors outside the coverage of sectors and forms of investment under the Agreement on Trade in Services (hereinafter referred to as “non-services sectors”) for investments and investors of the other side, full protection and safeguard for investments and investors of the other side, and rules for settlement of investment disputes.

In the past, treatment for admission of external investments (including investments from Hong Kong) by the Mainland was merely granted on a voluntary and unilateral basis but did not constitute any commitment under agreement. The Investment Agreement is the first agreement ever signed by the Mainland with commitments to providing full national treatment to external investments and investors. In general, the Mainland commits under the Investment Agreement to providing national treatment to investments and investors of Hong Kong in all non-services sectors, except the 26 measures listed in [Annex 2](#). The “Most-Favoured Treatment” provision of the Agreement specifies that any preferential treatment the Mainland accords to investments and investors from other countries or regions, if more preferential than that under CEPA, will be extended to Hong Kong investments and investors. The Agreement on Trade in Services has provided Hong Kong investors with pre-establishment national treatment for services sectors. The Investment Agreement will provide the same treatment to non-services sectors, making the market access commitments given by the Mainland to Hong Kong under CEPA

complete. The Investment Agreement will help boost investors' confidence, strengthen investment flows between Hong Kong and the Mainland, and further reinforce the trade and economic ties between the two places.

Q2. What important provisions and concepts have been introduced to the Investment Agreement?

A : The Investment Agreement follows the liberalisation approach of the Agreement on Trade in Services by adopting the “negative list” approach for the non-services sectors, and in accordance with the prevailing international practices, introducing provisions for national treatment and most-favoured treatment, which are integral parts for negative list approach for liberalisation.

Q3. What commitment has Hong Kong made in the Investment Agreement?

A : Under the Investment Agreement, Hong Kong has committed that it will not impose any new discriminatory measures on Mainland investments and investors in non-services sectors and will provide protection to all Mainland investments and investors in Hong Kong. The former is generally the same as the commitment made by Hong Kong to the Mainland services and service suppliers under the Agreement on Trade in Services, whereas the latter is generally the same as what Hong Kong has committed in respect of investment protection under the Investment Promotion and Protection Agreements that it concluded with foreign partners.

Q4. Will investors get compensation for expropriation?

A: The Investment Agreement provides that investments or returns of investors of one side shall not be expropriated by the other side except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation.

Such compensation shall be equivalent to the real value of the expropriated investment immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is earlier, and shall include interest at a normal commercial rate, accrued from the date of expropriation until the date of payment.

Q5. Is the Investment Agreement applicable to the investments made before the Agreement came into force?

A: The Investment Agreement is applicable to the investments that exist on the date of entry into force of the Agreement or are made or acquired thereafter. For example, the mechanism for settlement of investment disputes under the Investment Agreement is applicable to a breach of obligations by one side with respect to an investment that has been in existence before the Agreement came into force.

Q6. After signing the Investment Agreement, will the two sides continue to have consultation for further liberalisation of market access for investment to other non-services sectors?

A: The Hong Kong Special Administrative Region (HKSAR) Government will maintain close communication with the Mainland authorities to continue enriching the contents of CEPA and to discuss and formulate more measures on liberalisation and facilitation of trade and investment in due course.

Q7. Do provisions for national treatment and most-favoured treatment apply to all sectors?

A: National treatment and most-favoured treatment have been applied to Hong Kong investors in services sectors under the Agreement on Trade in Services, so national treatment and most-favoured treatment under the Investment Agreement are not applicable to those sectors covered by the Agreement on Trade in Services, i.e.

they are only applicable to investments in non-services sectors, including manufacturing, mining and investment in assets.

Q8. Does the application of national treatment mean that the operation of Hong Kong enterprises in the Mainland will no longer be restricted?

A: The application of national treatment means that Hong Kong investors will be treated equally with the Mainland investors. If Mainland investors are subject to relevant laws, regulations and rules, Hong Kong investors will also be subject to equal restrictions.

Q9. How to distinguish market access for investment between services sectors and non-services sectors?

A: The Investment Agreement will only cover admission of investments outside the scope of the Agreement on Trade in Services (including manufacturing and mining sectors, and investment in assets).

Q10. How to define Hong Kong investments and investors?

A: “Investor” means one side, or a natural person or an enterprise of one side, that seeks to make, is making or has made a covered investment¹.

According to Annex 1 (Related Requirements on the Definition of “Investor”) of the Investment Agreement, Hong Kong enterprises investing in the form of commercial presence in non-services sectors in the Mainland are required to fulfil the requirements for substantive business operations in Hong Kong and obtain the Certificates of Hong Kong Investor. The criteria of substantive business operations of “investor” are similar to the related

¹ “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 entry into force of this Agreement or is made or acquired thereafter.

requirements currently adopted for “Hong Kong Service Supplier”, including engaging in substantive business operations in Hong Kong for 3 years or more, payment of profit tax, owning or renting business premises, employment of more than 50% of its staff in Hong Kong being residents in Hong Kong without limit of stay and people from the Mainland staying in Hong Kong on One Way Permit.

Investors other than those making investments in the form of establishment of commercial presence, such as by acquiring assets, are not required to meet the specific requirements on substantive business operations in Hong Kong and are not required to apply for the Certificate of Hong Kong Investor.

Q11. Why are Hong Kong enterprises investing in the Mainland in the form of commercial presence subject to specific requirements of substantive business operations?

A: Hong Kong enterprises are subject to the requirements of substantive business operations only when they invest in the Mainland in the form of commercial presence in non-services sectors with preferential access to Hong Kong. For the Investment Agreement to adopt the shortest possible negative list for market access, it is essential to adopt a stricter definition of “investor”, or else investors of third parties may take advantage of the preferential treatment Hong Kong enjoys for entering the Mainland market.

Q12. Do Hong Kong enterprises need to apply for the Certificate of Hong Kong Investor prior to investing in the Mainland?

A: Hong Kong enterprises need to apply for the Certificate of Hong Kong Investor only when they invest in the Mainland in the form of commercial presence in non-services sectors with preferential access to Hong Kong. Since the Mainland has liberalised with effect from

28 July 2018² access by all external investors to the five nonservices sectors³ with preferential access to Hong Kong under the Investment Agreement, Hong Kong enterprises no longer need to apply for the Certificate of Hong Kong Investor prior to investing in the form of commerce presence in non-services sectors in the Mainland.

Investors making investments 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 investors in non-service sectors other than those with preferential access to Hong Kong, are not subject to the requirements of substantive business operations and are not required to apply for the Certificate of Hong Kong Investor.

Q13. Do Hong Kong investors in the Mainland need to fulfil the specific requirements of substantive business operations or apply for the Certificate of Hong Kong Investor so that they can enjoy the investment protection obligations under the Investment Agreement?

A: Hong Kong investors who are already investing legally in the Mainland immediately enjoy the treatment under the Investment Agreement when it comes into effect, including investment protection, without having to fulfil the specific requirements of substantive business operations or apply for the Certificate of Hong Kong Investor.

² Please refer to the "Special Administrative Measure on the Entry of Foreign Investment (Negative List) (2018 Version)" (<https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/201806/W020190905495140644002.pdf>) (available in Chinese only) for details.

³ Such sectors are: (a) manufacture of common ships (including subsection); (b) manufacture of civil aircrafts (for trunk and branch lines) and civil helicopters (of three tons or more); (c) manufacture of general purpose aircrafts; (d) mining of special and scarce coals; and (e) smelting of tungsten.

Q14. What are the available means for investors to settle investment disputes?

A: According to Article 19 (Dispute Settlement between a Hong Kong Investor and the Mainland) of the Investment Agreement, a dispute arising from a claim by a Hong Kong investor that it or its covered investment has suffered losses or damages resulting from a breach by the Mainland authorities or institutions of the obligations provided in the Investment Agreement⁴ in relation to the Hong Kong investors or their covered investments may be settled by the following means:

- (1) resolution through amicable consultation between the disputing parties;
- (2) resolution through the complaint handling organisations for foreign investors in the Mainland in accordance with the relevant requirements of the Mainland. For details, please refer to ["Measures on the Handling of Complaints by Foreign-invested Enterprises"](#) (in Chinese only);
- (3) resolution through the function of notification and coordination of investment disputes under Article 17 (Committee on Investment) of the Investment Agreement;
- (4) resolution through administrative review in accordance with the laws of the Mainland. For details, please refer to ["Law on Administrative Review"](#) (in Chinese only);
- (5) resolution through mediation whereby a Hong Kong investor may submit an investment dispute arising from the Investment

⁴ Limited to Article 4 (Minimum Standard of Treatment), Article 5 (National Treatment), Article 6 (Most-Favoured Treatment), Article 7 (Performance Requirements), paragraph 1 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), paragraph 2 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), Article 11 (Expropriation), Article 12 (Compensation for Losses) and Article 14 (Transfer).

Agreement⁴ between that investor and the Mainland to a mediation institution of the Mainland side;

- (6) recourse to the judicial proceedings under the laws of the Mainland.

According to Article 20 (Dispute Settlement between a Mainland Investor and Hong Kong) 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 resulting from a breach by the Hong Kong authorities or institutions of the obligations provided in the Investment Agreement⁴ in relation to the Mainland investors or their covered investment, may be settled by the following means:

- (1) resolution through amicable consultation between the disputing parties;
- (2) resolution through the [complaint handling mechanism established by the relevant Hong Kong authorities or institutions](#) in accordance with the relevant requirements of Hong Kong;
- (3) resolution through the function of notification and coordination of investment disputes established under Article 17 (Committee on Investment) of the Investment Agreement;
- (4) resolution through mediation whereby a Mainland investor may submit an investment dispute arising from the Investment Agreement⁴ between that investor and Hong Kong to a mediation institution of Hong Kong;
- (5) recourse to the judicial proceedings under the laws of Hong Kong.

Q15. How does the “Committee on Investment” specifically settle investment disputes requested by investors?

A: One of the functions of the “Committee on Investment” is to report the request for settlement of investment disputes by investors of the other side to the relevant authorities or institutions involved in the disputes, or to report to the other side the investment disputes in the area of one side, but not to involve directly in handling the disputes.

Q16. Is the mechanism for settlement of investment disputes under the Investment Agreement applicable to disputes between investors of one side and their business partners of the other side?

A: The mechanism for settlement of investment disputes under the Investment Agreement is only applicable to a dispute arising from a claim by an investor of one side that it or its covered investment has suffered losses or damages resulting from a breach by the relevant authorities or institutions of the other side of the obligations provided in the Investment Agreement⁴ in relation to the investors of one side or their covered investments. The mechanism for settlement of investment disputes is not applicable to other disputes, such as commercial disputes between investors of one side and their business partners of the other side. Investors should consider including dispute resolution clauses when signing contracts so as to protect their own interests, and seek legal advice whenever necessary.

Q17. What are the procedures for settlement of investment disputes through mediation under the Investment Agreement?

A: If 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, submits an application to mediate an investment dispute, such investment dispute must be mediated in

accordance with the mediation mechanism for investment disputes (mediation mechanism) established by the Mainland and Hong Kong under the Investment Agreement. Details of the mediation mechanism have been uploaded onto the Trade and Industry Department website <<https://www.tid.gov.hk/english/cepa/investment/mediation.html>>.

Q18. What are the mediation institutions to which investors can submit the applications for mediation?

A: Mediation under the Investment Agreement 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. The lists of mediation institutions mutually agreed by the two sides have been uploaded onto the Trade and Industry Department website <<https://www.tid.gov.hk/english/cepa/investment/mediation.html>>.

Q19. What are the principles that the mediation institutions and mediators base on when handling the investment disputes?

A: According to the mediation mechanism established by the Mainland and Hong Kong under the Investment Agreement, 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 Investment 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.

Q20. Will the lists of mediation institutions and mediators be revised in future?

A: According to the mediation mechanism established by the Mainland and Hong Kong under the Investment Agreement, the lists of mediation institutions and mediators may be revised upon consultation and consensus of the two sides.