

DECISION OF THE JOINT EFTA-HONG KONG, CHINA COMMITTEE  
(HEREINAFTER REFERRED TO AS “THE JOINT COMMITTEE”)

No. 4 of 2017

(Adopted on 31 October 2017)

AMENDMENTS TO ANNEX VII “DISCIPLINES ON DOMESTIC REGULATION”  
OF THE EFTA-HONG KONG, CHINA FREE TRADE AGREEMENT

THE JOINT COMMITTEE,

HAVING regard to the Free Trade Agreement between the EFTA States on the one part, and the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “Hong Kong, China”), on the other, signed in Schaan on 21 June 2011, hereinafter referred to as “the Agreement”,

NOTING that Annex VII of the Agreement provides that Hong Kong, China, Iceland, Liechtenstein and Switzerland shall continue to develop and conclude a set of comprehensive disciplines on domestic regulation,

DECIDES:

1. The text of Annex VII of the Agreement shall be replaced with the text set out in the Annex to this Decision.
  2. Annex VII shall apply to Hong Kong, China, and Switzerland when this Decision enters into force. It shall become applicable to other EFTA States pursuant to a decision of the Joint Committee in accordance with Article 9.1 of the Agreement.
  3. This Decision shall enter into force on the day the Depositary notifies to the other Parties that Hong Kong, China, and Switzerland have fulfilled their internal requirements.
  4. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.
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**ANNEX VII**

REFERRED TO IN ARTICLE 3.21

DISCIPLINES ON DOMESTIC REGULATION

ANNEX VII

REFERRED TO IN ARTICLE 3.21

DISCIPLINES ON DOMESTIC REGULATION<sup>1</sup>

Article 1

*Scope*

This Annex applies to measures by Parties referred to in subparagraph 4 (a) of Article 3.7 of the Agreement. Except for Article 9, this Annex only applies to sectors and subsectors in which a Party has undertaken specific commitments under Article 3.5 or 3.6 of the Agreement.

Article 2

*Definitions*

For the purposes of this Annex:

- (a) “licensing requirements” means substantive requirements, other than qualification requirements, with which a natural or juridical person is required to comply in order to obtain, amend or renew authorisation to supply a service;
- (b) “licensing procedures” means administrative or procedural rules that a natural or juridical person, seeking authorisation to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements;
- (c) “qualification requirements” means substantive requirements relating to the competence of a natural person in relation to the supply of a service, and whose fulfilment is required to be demonstrated for the purpose of obtaining authorisation to supply a service;
- (d) “qualification procedures” means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service;

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<sup>1</sup> This Annex applies to Hong Kong, China and Switzerland. This Annex shall become applicable to other EFTA States pursuant to a decision of the Joint Committee in accordance with Article 9.1 of the Agreement.

- (e) “technical standards” means technical requirements contained in a measure that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the compliance with and enforcement of such standards.

### Article 3

#### *Objectives and General Provisions*

1. Recognising the right to regulate, and to introduce new regulations, on the supply of services within their Areas in order to meet government policy objectives and in a manner consistent with their obligations and commitments under Chapter 3 of the Agreement, the Parties have agreed to this Annex with the objective of facilitating trade in services by ensuring that measures referred to in subparagraph 4 (a) of Article 3.7 of the Agreement are not formulated, introduced, implemented, administered or applied with a view to or with the effect of creating unnecessary barriers to trade in services between the Parties.<sup>2</sup>
2. In applying the disciplines in this Annex, the Parties shall comply with Article 3.7 of the Agreement and ensure that measures referred to in subparagraph 4 (a) of Article 3.7 of the Agreement that they adopt or maintain are not more burdensome than necessary to ensure the quality of the service.
3. The Parties shall ensure that measures referred to in subparagraph 4 (a) of Article 3.7 of the Agreement are:
  - (a) pre-established subject to their respective laws;
  - (b) based on objective and transparent criteria; and
  - (c) relevant to the supply of the services to which they apply.
4. Nothing in this Annex prevents the Parties from exercising their right to introduce or maintain regulations in order to ensure provision of universal service, in a manner consistent with their obligations and commitments under Chapter 3 of the Agreement.

### Article 4

#### *Licensing Requirements*

Where a Party imposes licensing requirements for the supply of a service, it shall ensure that adequate procedures exist for assessing the fulfilment of such requirements by applicants of another Party.

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<sup>2</sup> For the avoidance of doubt, nothing in this Annex affects the rights and obligations of the Parties pursuant to their Lists of Reservations and Commitments referred to in Articles 3.4, 3.5 and 3.6 of the Agreement.

## Article 5

### ***Licensing Procedures***

1. While recognising the need to take into account the nature of the requirements to be met and of the criteria to be assessed, each Party shall ensure that licensing procedures, including where applicable those for renewal, are as simple as possible, reasonable and clear, and do not in themselves constitute a restriction on the supply of services. Each Party shall ensure that such procedures are not more burdensome than necessary for demonstrating compliance with the licensing requirements for the supply of a service.
2. Each Party shall ensure that the procedures used by, and the related decisions of, the competent authorities in the licensing process are impartial with respect to all applicants. The competent authorities should be operationally independent of, and not accountable to, any supplier of the service for which the licence is required.
3. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application in order to demonstrate compliance with licensing requirements.
4. To the extent practicable, the competent authorities shall accept applications in electronic format under the same conditions of authenticity as paper submissions.
5. The competent authorities of each Party shall, in accordance with its law and practices, accept authenticated copies in place of original documents.
6. Each Party shall ensure that licensing fees<sup>3</sup> are commensurate with the costs incurred by the competent authorities, including those for supervision of the relevant service. This shall not preclude the recovery of additional costs of administering related licensing requirements and other related administrative activities.
7. The competent authorities shall, to the extent practicable, permit an applicant to submit an application at any time. Where specific time periods for applications exist, they shall be of reasonable length.
8. Each Party shall, to the extent practicable, establish the normal timeframe for the processing of an application.
9. The competent authorities shall:
  - (a) initiate the processing of an application without undue delay; and

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<sup>3</sup> Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

- (b) at the request of the applicant, provide without undue delay information concerning the status of the application.

10. The competent authorities shall, within a reasonable period of time after the receipt of an application which they consider incomplete:

- (a) inform the applicant that the application is considered incomplete;
- (b) to the extent practicable, identify the additional information required to complete the application; and
- (c) provide the applicant the opportunity to complete its application or, if appropriate, to submit a new application.

11. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable period of time from the submission of a complete application. The applicant shall be informed of the final decision without undue delay.

12. Each Party shall ensure that a licence is granted when all the applicable requirements have been fulfilled and, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

13. If the competent authorities reject an application, they shall:

- (a) inform the applicant without undue delay, and to the extent practicable in writing;
- (b) in principle, inform the applicant, upon request, of the reasons for rejection of the application and, where applicable, identify any deficiencies;
- (c) inform the applicant of the timeframe for any available review or appeal against the decision; and
- (d) permit the applicant to resubmit an application within reasonable time limits, except where licences are limited in number, including in public tendering, or where the decision of an appellate body would exclude a resubmission.

## Article 6

### ***Qualification Requirements***

Where a Party imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for verification and assessment of qualifications of applicants of another Party. In verifying and assessing qualifications of an applicant, the competent authorities shall give due consideration to relevant

professional experience of the applicant. Where the competent authorities consider that membership in a relevant professional association or registry in the Area of another Party is indicative of the level of competence or the extent of experience of the applicant, such membership shall also be taken into account.

## Article 7

### *Qualification Procedures*

1. While recognising the need to take into account the nature of the requirements to be met and of the criteria to be assessed, each Party shall ensure that qualification procedures, including where applicable those for renewal, are as simple as possible, reasonable and clear, and do not in themselves constitute a restriction on the supply of services. Each Party shall ensure that such procedures are not more burdensome than necessary for demonstrating compliance with the qualification requirements for the supply of a service.

2. Each Party shall ensure that the procedures used by, and the related decisions of, the competent authorities in the qualification process are impartial with respect to all applicants.

3. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application in order to demonstrate compliance with qualification requirements.

4. To the extent practicable, the competent authorities shall accept applications in electronic format under the same conditions of authenticity as paper submissions.

5. The competent authorities of each Party shall, in accordance with its law and practices, accept authenticated copies in place of original documents.

6. Each Party shall ensure that fees charged for qualification procedures are commensurate with the costs incurred by the competent authorities, including those for supervision of the relevant service. This shall not preclude the recovery of additional costs of administering related qualification requirements and other related administrative activities.

7. The competent authorities shall, to the extent practicable, permit an applicant to submit an application at any time.

8. Each Party shall ensure that examinations for the assessment of qualifications, if required:

- (a) are scheduled at reasonably frequent intervals;
- (b) are open for all eligible applicants of all the Parties; and

- (c) provide the applicants a reasonable period for the submission of applications for examinations.

9. Each Party shall, to the extent practicable, establish the normal timeframe for the processing of an application.

10. The competent authorities shall:

- (a) initiate the processing of an application without undue delay; and
- (b) at the request of the applicant, provide without undue delay information concerning the status of the application.

11. The competent authorities shall, within a reasonable period of time after the receipt of an application which they consider incomplete:

- (a) inform the applicant that the application is considered incomplete;
- (b) to the extent practicable, identify the additional information required to complete the application; and
- (c) provide the applicant the opportunity to complete its application or, if appropriate, to submit a new application.

12. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authorities, in verifying and assessing qualifications, shall identify any deficiencies and inform the applicant of requirements to meet the deficiencies. Such requirements may include course work, examinations, training or work experience.

13. Each Party shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable period of time from the submission of a complete application. Once the applicable qualification requirements have been fulfilled, the applicant shall without undue delay be informed and be authorised to supply the service provided that any applicable licencing requirements have also been fulfilled.

14. If the competent authorities reject an application, they shall:

- (a) inform the applicant without undue delay, and to the extent practicable in writing;
- (b) in principle, inform the applicant, upon request, of the reasons for rejection of the application and, where applicable, identify any deficiencies;
- (c) inform the applicant of the timeframe for any available review or appeal against the decision; and



- (d) permit the applicant to resubmit an application within reasonable time limits.

## Article 8

### *Technical Standards*

1. Each Party shall ensure that technical standards are not prepared or adopted with a view to or with the effect of creating unnecessary obstacles to trade in services.
2. Each Party shall ensure that procedures relating to the compliance with, and enforcement of, technical standards are not more burdensome than necessary to ensure that the service conforms with the relevant technical standards, taking into account the risks that non-fulfilment would create.
3. Where technical standards are required and relevant international standards<sup>4</sup> exist or their completion is imminent, each Party should take them or the relevant parts of them into account in formulating its technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of specific government policy objectives.
4. The Parties shall, through existing means available to them, encourage transparency of relevant processes relating to the development and application of domestic and international standards<sup>5</sup> by non-governmental bodies.

## Article 9

### *Transparency*

1. In the application of Article 3.10 of the Agreement, each Party shall publish promptly all measures of general application which are referred to in subparagraph 4 (a) of Article 3.7 of the Agreement, as well as detailed information regarding these measures, through printed or electronic means. Where publication is not practicable, such information shall be made otherwise publicly available. This information shall include:
  - (a) whether any authorisation, including renewal where applicable, is required for the supply of a service;

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<sup>4</sup> For the purpose of this paragraph, “international standard” means a document approved by an international recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for services or the manner in which it is supplied, with which compliance is not mandatory.

<sup>5</sup> For the purpose of this paragraph, domestic or international standard means a document approved by a domestic or international recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for services or the manner in which it is supplied, with which compliance is not mandatory.

- (b) the official names, addresses and contact information of relevant competent authorities;
- (c) applicable licensing requirements and procedures, including criteria and applicable fees;
- (d) applicable qualification requirements and procedures, including criteria and applicable fees;
- (e) applicable technical standards;
- (f) applicable procedures relating to appeals or reviews of decisions concerning applications for licenses and for the verification and assessment of qualifications;
- (g) applicable procedures for the monitoring and enforcement of the terms and conditions of licences and of the continued fulfilment of qualifications requirements, including applicable procedures for informing service suppliers in case of non-compliance with such terms and conditions or requirements;
- (h) how, if made available, public involvement in the licensing process, such as hearings and opportunity for comment, is provided for;
- (i) exceptions to, and derogations from, measures of general application referred to in subparagraph 4 (a) of Article 3.7 of the Agreement; and
- (j) established timeframes, where applicable, for the processing of an application.

2. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers of the Parties regarding its measures referred to in subparagraph 4 (a) of Article 3.7 of the Agreement.

3. Each Party shall endeavour to ensure that laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of this Annex are published in advance. Each Party should endeavour to provide reasonable opportunity for service suppliers of the Parties to comment on such proposed laws and regulations and to address collectively in writing substantive issues raised in the comments received.

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