

Annex 5

Definition of "Service Supplier" and Related Requirements

1. Pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement (hereinafter called "CEPA"), the Mainland and Hong Kong Special Administrative Region have concluded this Annex on the definition of "service supplier" and related requirements.

2. Unless otherwise stipulated in CEPA and its Annexes, "service supplier" as used in CEPA and its Annexes refers to any person that supplies a service. In this context:

2.1. "person" means either a natural person or a juridical person;

2.2. "natural person":

2.2.1. in the case of the Mainland, means a citizen of the People's Republic of China;

2.2.2. in the case of Hong Kong, means a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China;

2.3. "juridical person" means any legal entity duly constituted or otherwise organized under the applicable laws of the Mainland or the Hong Kong Special Administrative Region, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association (business association).

3. The specific criteria for Hong Kong service suppliers who provide services in the form of juridical persons:

3.1. with the exception of the legal services sector, a Hong Kong service supplier, when applying to provide the relevant services under Annex 4 in the Mainland, should:

3.1.1. be incorporated or established pursuant to the Companies Ordinance or other relevant laws of the Hong Kong Special Administrative Region,¹ and have obtained a valid Business Registration Certificate. If required by law, it should also have obtained the licence or permit for providing such services; and

3.1.2. engage in substantive business operations in Hong Kong. The criteria for determination are:

(1)The nature and scope of business

The nature and scope of the services provided by a Hong Kong service supplier in Hong Kong should encompass the nature and scope of the services it intends to provide in the Mainland.

(2)Years of operation required

A Hong Kong service supplier should be incorporated or established in Hong Kong, and have engaged in substantive business operations for 3 years or more.²

A Hong Kong service supplier providing construction and related engineering services should be

¹ Registered overseas companies in Hong Kong, their offices, liaison offices, "mail box companies" and companies specifically established for providing certain services to their parent companies are not Hong Kong service suppliers under this Annex.

² For the Hong Kong service supplier that has been acquired by or merged with service suppliers other than those of the two sides on or after the day CEPA comes into effect, and as a result of the acquisition or merger, the latter service suppliers have acquired more than 50% of its equity interest, that Hong Kong service supplier will be regarded as a Hong Kong service supplier after one year of the acquisition or merger.

incorporated or established in Hong Kong, and have engaged in substantive business operations for 5 years or more; there is no limitation on the years of substantive business operations in Hong Kong for Hong Kong service suppliers providing real estate services;

A Hong Kong service supplier providing banking and other financial services (excluding insurance and securities), i.e. a Hong Kong bank or finance company should have engaged in substantive business operations for 5 years or more after it has been granted a relevant licence by the Monetary Authority pursuant to the Banking Ordinance;

A Hong Kong service supplier providing insurance and related services, i.e. a Hong Kong insurance company should be incorporated or established in Hong Kong and have engaged in substantive business operations for 5 years or more.

(3) Profits tax

During the period of substantive business operations in Hong Kong, a Hong Kong service supplier should have paid profits tax in accordance with the law.

(4) Business premises

A Hong Kong service supplier should own or rent premises in Hong Kong to engage in substantive business operations. The scale of its business premises should be commensurate with the scope and the scale of its business.

For a Hong Kong service supplier providing maritime transport services, 50% or more of the ships owned by it, calculated in terms of tonnage, should be registered

in Hong Kong.

(5) Employment of staff

Among the staff employed by the Hong Kong service supplier in Hong Kong, more than 50% should be residents staying in Hong Kong without limit of stay, and people from the Mainland staying in Hong Kong on One Way Permit.

3.2. A Hong Kong law firm (office) of the legal services sector, when applying to provide the relevant services under Annex 4 in the Mainland, should:

3.2.1. pursuant to the relevant legislation of the Hong Kong Special Administrative Region be registered and established as a Hong Kong law firm (office) and have obtained a valid Business Registration Certificate.

3.2.2. the sole proprietor and all the partners of the relevant law firm (office) should be registered practising lawyers,

3.2.3. The principal scope of business of the relevant law firm (office) should be to provide Hong Kong legal services in Hong Kong.

3.2.4. The relevant law firm (office) or its sole proprietor or partners should pay profits tax in accordance with the law.

3.2.5. The relevant law firm (office) should have engaged in substantive business operations in Hong Kong for 3 years or more.

3.2.6. The relevant law firm (office) should own or rent premises in Hong Kong to engage in substantive business operations.

4. Unless otherwise stipulated in CEPA and its Annexes, Hong Kong service suppliers providing services in the form of natural persons should be permanent residents of the Hong Kong Special Administrative Region of the People's Republic of China.

5. Service suppliers of the Mainland should fulfill the definition of Article 2 of this Annex. Specific criteria will be determined by the two sides through consultation.

6. To obtain the treatment under CEPA, a Hong Kong service supplier should provide:

6.1. In the event that the Hong Kong service supplier is a juridical person, the Hong Kong service supplier should submit the following documents and information, and statutory declaration, which have been verified by relevant institutions (persons) of Hong Kong, as well as the certificate issued by the Government of the Hong Kong Special Administrative Region:

6.1.1. Documents and information (if applicable)

(1) Copy of the Certificate of Incorporation issued by the Companies Registry of the Hong Kong Special Administrative Region;

(2) Copy of Hong Kong Special Administrative Region's Business Registration Certificate and an Extract of Information on the Register of Businesses;

(3) Annual reports or audited financial statements of the Hong Kong service supplier for the past 3 years (or 5 years);

(4) Original or copy of document(s) substantiating the owning or renting of business premises in Hong Kong by the Hong Kong service supplier;³

³ A Hong Kong service supplier applying to provide maritime transport services in the

(5) Copy of the Profits Tax Returns, Notice of Assessment and Demand for Tax in respect of the Hong Kong service supplier for the past 3 years (or 5 years); in the event of loss, the Hong Kong service supplier should provide supporting document(s) from the relevant department of the Hong Kong Special Administrative Region regarding the loss;

(6) Copy of the Employer's Return of Remuneration and Pensions of the Hong Kong service supplier in respect of the remuneration and pension of its employees in Hong Kong, and the original or a copy of other relevant document(s) substantiating that the company fulfils the requirement of Article 3.1.2.(5) of this Annex on the percentage threshold;

(7) Original or copy of other relevant document(s) that can substantiate the nature and scope of the business in Hong Kong of the Hong Kong service supplier.

6.1.2. Statutory declaration

For any Hong Kong service supplier applying to obtain treatment under CEPA, its authorized representative should make a statutory declaration pursuant to the procedures and requirements of the Oaths and Declarations Ordinance of the Hong Kong Special Administrative Region.⁴ The form of the declaration will be decided by the relevant authorities of the Mainland and the Hong Kong Special Administrative Region through consultation.

6.1.3. Certificate

A Hong Kong service supplier should submit the

Mainland should separately submit document(s) or its copy (attested) to verify that 50% or more of the ships owned by it, calculated in terms of tonnage, is registered in Hong Kong.

⁴ A person is subject to criminal liability of Hong Kong if he knowingly makes a false or untrue declaration pursuant to the Oaths and Declarations Ordinance.

documents and information, and the statutory declaration as required under Article 6.1.1 and 6.1.2 of this Annex to the Trade and Industry Department of the Hong Kong Special Administrative Region (hereinafter called "TID") for examination. TID may, in the circumstances it considers necessary, entrust other government departments of the Hong Kong Special Administrative Region, statutory bodies, or independent professional personnel (institutions) to conduct verification.⁵ TID will issue a certificate to the applicants that it considers to have fulfilled the criteria of Hong Kong service suppliers as required under this Annex. The contents and form of the certificate will be decided by the relevant authorities of the Mainland and the Hong Kong Special Administrative Region through consultation.

6.2. In the event that a Hong Kong service supplier is a natural person, the Hong Kong service supplier should provide identification of his or her Hong Kong permanent resident status, and for Chinese citizens among such service suppliers, they should also provide their Home Visit Permit for Hong Kong and Macau Residents or Hong Kong Special Administrative Region passport.

6.3. Copies of the statutory declarations and the identification documents of natural persons, as well as the documents and information that in TID's view should be attested by a lawyer, as required under Article 6.1.1 and 6.1.2, and 6.2 of this Annex, should be attested by attesting officers recognized by the Mainland.

7. When applying to the Mainland's examining authorities to obtain treatment under CEPA, Hong Kong service suppliers should follow the following procedures:

⁵ In the telecommunications sector, TID will entrust the authority of the Government of the Hong Kong Special Administrative Region that regulates telecommunications to conduct verification with a view to substantiating the nature and scope of business of the Hong Kong service suppliers providing internet data centre services, call centre services, and content services.

7.1. When a Hong Kong service supplier applies to provide the services under Annex 4 in the Mainland, it should submit to the Mainland's examining authorities the documents and information, statutory declaration and certificate as required under Article 6 of this Annex.

7.2. Pursuant to the powers conferred under Mainland laws and regulations, the Mainland examining authorities, in examining the application for supplying Hong Kong services, should at the same time verify the qualifications of the Hong Kong service supplier.

7.3. When the Mainland examining authority holds a different view in respect of the qualification of the Hong Kong service supplier, it should inform the Hong Kong service supplier within a stipulated period, and notify the Ministry of Commerce. The Ministry of Commerce will in turn inform TID, giving the reasons for divergent views. The Hong Kong service supplier may, through TID and with written justification, request the Ministry of Commerce to reconsider. The Ministry of Commerce should give a written reply to TID within a stipulated period.

8. Hong Kong service suppliers who are already providing services in the Mainland should apply to obtain treatment under CEPA in accordance with the requirements of Articles 6 and 7 of this Annex.

9. This Annex will come into effect on the day of signature by the representatives of the two sides.

Signed in duplicate at Hong Kong, this 29th day of September 2003 in the Chinese Language.

Vice Minister of Commerce
People's Republic of China

Financial Secretary
Hong Kong Special
Administrative Region of the
People's Republic of China

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