

Extracts of Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) and its Supplements and its Related Agreement

Definition of “Service Supplier” and Related Requirements  
[Cursory Translation]

*(Article 3 of Annex 5 to CEPA)*

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,<sup>1</sup> 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.

*(Article 3.1.2.(1) of Supplement VIII to CEPA) (this amended provision was implemented with effect from 1 April 2012)*

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<sup>1</sup> Any overseas company, representative office, liaison office, “mail box company” and company specifically established for providing certain services to its parent company, which is registered in Hong Kong, is not a Hong Kong service supplier under this Annex.

1. To amend Article 3.1.2.(1) as:

“The nature and scope of the services provided in Hong Kong by a Hong Kong service supplier who intends to provide services in the Mainland should meet the requirements in Annex 4 and this Annex, and any restrictive requirements applicable to the nature and scope of the business of foreign investment entities in the laws, regulations and administrative regulations of the Mainland shall apply.”

(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.<sup>2</sup>

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

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<sup>2</sup> From the day the "CEPA" comes into effect, where more than 50% of the equity interest of a Hong Kong service supplier has been owned for at least one year since a merger or acquisition by a service supplier other than one from either side, the service supplier which has been acquired or merged will be regarded as a Hong Kong service supplier.

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

more than 50% of the staff employed in Hong Kong by the Hong Kong service supplier 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. be registered and established as a Hong Kong law firm (office) and have obtained a valid Business Registration Certificate pursuant to the relevant legislation of the Hong Kong Special Administrative Region.

3.2.2. The sole proprietor and all the partners of the law firm (office) should be registered Hong Kong practising lawyers.

3.2.3. The principal scope of business of the law firm (office)

should be to provide Hong Kong legal services in Hong Kong.

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

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

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

*(Article 3.(2) of Supplement to CEPA)*

(2) The following is added to Article 3.1.2(2) of Annex 5 of “CEPA” – “Definition of “Service Supplier” and Related Requirements”: A Hong Kong service supplier providing air transport ground services should have obtained the relevant licence in the provision of the relevant air transport ground services in Hong Kong, and have engaged in substantive business operations for 5 years or more.

*(Footnote 1 to the Specific Commitments on Maritime Transport Services in Annex 3 of Supplement to CEPA)*

<sup>1</sup> The requirement that “50% or more of the ships owned by it, calculated in terms of tonnage, should be registered in Hong Kong” as set out in Annex 5 of “CEPA” is not applicable to Hong Kong service suppliers which provide feeder transport services.

*(Footnote 1 to the Specific Commitments on Maritime Transport Services in Annex 2 of Supplement II to CEPA)*

<sup>1</sup> The requirement that “50%, or more of the ships owned by it, calculated in terms of tonnage, should be registered in Hong Kong” as

set out in Annex 5 of “CEPA” is not applicable to Hong Kong service suppliers which provide towing services.

*(Article 1.(3) of Supplement IV to CEPA)*

- (3) “Service suppliers” as referred to in the Annex of this Supplement IV shall meet the relevant requirements of Annex 5 of “CEPA” – “Definition of “Service Supplier” and Related Requirements”. In this regard :
- (i) The number of years of having engaged in substantive business operations required of a Hong Kong bank or finance company is relaxed. Under Article 3.1.2 (2) of Annex 5 of “CEPA”- “Definition of “Service Supplier” and Related Requirements”, the part concerning a Hong Kong bank or finance company is amended as follows: 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; or should have operated as a branch for 2 years and also engaged in substantive business operations as a locally incorporated entity for 3 years or more, after it has been granted a relevant licence by the Monetary Authority pursuant to the Banking Ordinance.
  - (ii) The following is added to Article 3.1.2(2) of Annex 5 of “CEPA” – “Definition of “Service Supplier” and Related Requirements” : A Hong Kong service supplier providing third party international shipping agency services should have been incorporated or established in Hong Kong and have engaged in substantive business operations for 5 years or more.