

[Courtesy Translation]

**MAINLAND AND MACAO CLOSER ECONOMIC PARTNERSHIP  
ARRANGEMENT**

**Agreement between the Mainland and Macao on Achieving  
Basic Liberalization of Trade in Services  
in Guangdong**

***Preamble***

To promote achieving basic liberalization of trade in services between the Mainland<sup>1</sup> and the Macao Special Administrative Region (hereinafter referred to as the “two sides”), as well as to further enhance the level of bilateral economic and trade exchanges and cooperation, the two sides decided to sign this Agreement on achieving basic liberalization of trade in services in Guangdong Province between the Mainland and the Macao Special Administrative Region (hereinafter referred to as “Macao”).

**CHAPTER 1  
RELATIONSHIP WITH CEPA**

***Article 1***

***Relationship with CEPA***

1. With a view to progressively reducing until eliminating substantially all discriminatory measures between the two sides, the

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<sup>1</sup> In CEPA, the "Mainland" refers to the entire customs territory of China.

two sides decided to sign this Agreement based on the liberalization measures that have been implemented under the Mainland and Macao Closer Economic Partnership Arrangement (including its Supplements, hereinafter referred to as the “CEPA”).

2. In the event that the provisions of this Agreement are in conflict with those provisions of the CEPA, the provisions of this Agreement shall prevail.

## **CHAPTER 2**

### **SCOPE AND DEFINITION**

#### ***Article 2***

##### ***Scope and Definition***

1. All measures in Annex 1 and Annex 2 to this Agreement only apply to the trade in services between the Guangdong Province of the Mainland and Macao.

2. The trade in services referred to in this Agreement means:

- (i) the supply of a service from the area of one side into the area of the other side;
- (ii) the supply of a service in the area of one side to the service consumer of the other side;
- (iii) the supply of a service by a service supplier of one side, through commercial presence in the area of the other side;
- (iv) the supply of a service by a service supplier of one

side, through presence of natural persons of one side in the area of the other side.

Sub-paragraphs (i), (ii) and (iv) above shall collectively be referred to as cross-border services.

3. For the purposes of this Agreement:

- (i) “measure” means any measure by one side, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form.

In fulfilling its obligations and commitments under this Agreement, each side shall take such reasonable measures as may be available to it to ensure observance of such obligations and commitments by governments and authorities as well as non-governmental bodies within its area.

- (ii) “services” includes any service in any sector except services supplied in the exercise of governmental authority.

- (iii) “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

- (iv) “commercial presence” means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or operation of a juridical person, or
- (b) the constitution or operation of a branch or a representative office,

within the area of one side for the purpose of

supplying a service.

- (v) “government procurement” means procuring the use of goods or services or procuring goods or services or both, by the government for governmental purposes by contractual means in the form of purchase, lease and rental or hire purchase, with or without an option to buy, as well as build-operate-transfer contracts and public works concession contracts, etc., and not with a view to commercial sale or resale or with a view to use or supply in the production the goods or services for commercial sale or resale.

4. “Service suppliers” referred to in this Agreement shall comply with the requirements set out in the ‘Definition of "Service Supplier" and Related Requirements’ of Annex 5 under CEPA.

## **CHAPTER 3**

### **General Obligations and Disciplines**

#### ***Article 3***

##### ***National Treatment***

1. One side shall accord to services and service suppliers of the other side, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>2</sup>

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<sup>2</sup> Specific commitments assumed under this Article shall not be construed to require either side to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers of the other side.

2. Either side may meet the requirement of paragraph 1 by according to services and service suppliers of the other side, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of one side compared to like services or service suppliers of the other side.

#### **Article 4**

##### *Most-Favoured Treatment*

1. With respect to any measure covered by this Agreement, each side shall accord immediately and unconditionally to services and service suppliers of the other side treatment no less favourable than that it accords to like services and service suppliers of any other party.

2. The provisions of this Agreement shall not be so construed as to prevent one side from conferring or according advantages to adjacent countries or regions in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

#### **Article 5**

##### *Prudential Principle on Financial Services*

1. Notwithstanding any other provisions of this Agreement,

one side shall not be prevented from taking or maintaining measures relating to financial services for prudential reasons. These prudential reasons include the protection of investors, depositors, policy holders or persons to whom a fiduciary obligation is owed by a financial service supplier, or to ensure the integrity and stability of the financial system<sup>3</sup>.

2. No provisions of this Agreement shall apply to non-discriminatory measures of general application in implementing monetary or related credit policies or exchange rate policies<sup>4</sup>.

3. The term "financial service" shall bear the same meaning of financial service as defined in paragraph 5(a) of the *Annex on Financial Services* to the *WTO General Agreement on Trade in Services* and the term "financial service supplier" contained in that paragraph also includes public entity as defined in paragraph 5(c) of the *Annex on Financial Services*.

4. To avoid ambiguity, this Agreement shall not be construed as preventing one side from adopting measures that are applicable to a financial institution, or from enforcing measures in a financial institution, relating to the service suppliers of the other side or covered services, which are necessary to ensure compliance with those laws or regulations that are consistent with the provisions of this Agreement, including those measures relating to the prevention

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<sup>3</sup> The term "prudential reasons" shall be interpreted as including the security, stability, integrity and financial responsibility of a single financial institution or a financial system, as well as protecting the security of payment and clearing system and the stability of finance and operation.

<sup>4</sup> To avoid ambiguity, measures of general application in implementing monetary or related credit policies or exchange rate policies do not include measures which expressly declare invalid or modify a contract term stipulating the denomination in a currency or exchange rate of a currency.

of false and fraudulent practices or to deal with the effects of a default on financial services contracts, provided that the manner in which such measures are applied would not constitute a means of arbitrary or unjustifiable discrimination to countries (or regions) where like conditions prevail or a disguised restriction on the investment of the financial authorities.

5. Either side reserves the right of implementing restrictive measures for any sectors not clearly covered in existing regulations.

## **Article 6**

### *Safeguard Measures*

1. One side shall reserve the right of establishing or maintaining any restrictive measures relating to services in accordance with the relevant provisions of the “Specific Commitments on Liberalization of Trade in Services” of Annex 4 under CEPA.

2. The other side shall be notified fully and in a timely manner the measure taken under paragraph 1, and resolution shall be sought through consultation.

## **Article 7**

### *Exceptions*

1. The provisions of this Agreement and its Annexes shall not prejudice one side from maintaining or adopting any measures on exceptions consistent with Article XIV and Article XIV bis of the

*WTO General Agreement on Trade in Services.*

2. The measures on standards management adopted by one side regarding the foreign character of the services or service suppliers of the other side shall not be considered as less favourable treatment.

## **CHAPTER 4**

### **COMMERCIAL PRESENCE<sup>5</sup>**

#### ***Article 8***

##### *Reserved Restrictive Measures*

1. Article 3 (National Treatment) and Article 4 (Most-Favoured Treatment) shall not apply to:

- (i) the reserved restrictive measures of one side, which are set out in Table 1 of Annex 1 and Annex 2.
- (ii) under the general circumstances, the reserved restrictive measures referred to in sub-paragraph (i) that may be amended, but the amended reserved measures, when comparing with those before amendment, shall be no less compliant with the obligations required in Article 3 (National Treatment) and Article 4 (Most-Favoured Treatment).

2. Article 3 (National Treatment) and Article 4 (Most-Favoured Treatment) shall not apply to:

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<sup>5</sup> Under this Agreement, commercial presence under this Chapter does not include commercial presence with respect to services under Article 10 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 11 (Cultural Services) of Chapter 7 (Cultural Services).



- (i) government procurement ; or
- (ii) subsidies or donation accorded by one side, including government-supported loan, guarantees and insurance.

Provided that should the laws and regulations of one side provide otherwise for sub-paragraphs (i) and (ii), such laws and regulations shall prevail.

## **CHAPTER 5<sup>6</sup>**

### **CROSS-BORDER SERVICES**

#### ***Article 9***

##### *Cross-border services*

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific additional liberalization measures are set out in Table 2 of Annex 1 and Annex 2 and no other commitment is made.

## **CHAPTER 6**

### **TELECOMMUNICATIONS**

#### ***Article 10***

##### *Telecommunications Services*

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific additional

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<sup>6</sup> Under this Agreement, cross-border services under this Chapter do not include cross-border services with respect to services under Article 10 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 11 (Cultural Services) of Chapter 7 (Cultural Services).

liberalization measures are set out in Table 3 of Annex 1 and Annex 2 and no other commitment is made.

## **CHAPTER 7**

### **CULTURAL SERVICES**

#### ***Article 11***

##### ***Cultural Services***

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific additional liberalization measures are set out in Table 4 of Annex 1 and Annex 2 and no other commitment is made.

## **CHAPTER 8**

### **REQUIREMENT ON**

### **SPECIAL PROCEDURES AND INFORMATION**

#### ***Article 12***

##### ***Requirement on Special Procedures and Information***

1. If the requirement on special procedures does not substantially prejudice the obligations of one side owed to the service suppliers of the other side under this Agreement, then Article 3 (National Treatment) shall not be construed as a measure preventing the one side from adopting or maintaining the special procedures relating to services.

2. Notwithstanding Article 3 (National Treatment) and Article

4 (Most-Favoured Treatment), one side may request information relating to services or service suppliers from the service suppliers of the other side only for information or statistics purposes. The first-mentioned side shall protect confidential commercial information from leakage which may injure the competitive position of the service supplier. This paragraph shall not be construed as preventing either side from acquiring or disclosing information relating to the laws on the application of fairness and integrity.

## **CHAPTER 9**

### **INVESTMENT FACILITATION**

#### ***Article 13***

##### *Investment Facilitation*

To enhance the standard of investment facilitation, the Mainland agrees that, with respect to Macao service suppliers investing in Guangdong Province in sectors of trade in services as liberalized for Macao under this Agreement, except for those encouraged projects and restricted projects that require majority shareholding of the Mainland (including relative controlling shareholding) under the Catalogue for the Guidance of Industries for Foreign Investment which shall be subject to approval, the other investment projects together with the Mainland investment projects will be dealt with according to the same authority and procedures, and agrees to conduct filing administration for establishing enterprises, change of contracts, as well as approval of article of associations. The related procedures for the completed filing will be

processed in accordance with the relevant regulations in the Mainland. The following two situations are excepted:-

- (i) The reserved restrictive measures under Article 8 of Chapter 4 and the establishment and change of a company or a financial authority in the telecommunications or cultural services sector will be processed in accordance with the provisions of the existing foreign investments laws and regulations and related regulations;
- (ii) The establishment and change of commercial presence other than in the form of a company will be processed in accordance with the relevant existing regulations.

## **CHAPTER 10**

### **OTHER PROVISIONS**

#### ***Article 14***

##### *Annexes*

The Annexes to this Agreement form an integral part of this Agreement.

#### ***Article 15***

##### *Coming into Effect and Implementation*

This Agreement shall come into effect on the day of signature by the representatives of the two sides, and shall be

implemented on 1 March 2015.

Signed in duplicate in the Chinese language.

This Agreement is signed on 18 December 2014 in  
Macao.

Vice Minister of Commerce  
People's Republic of China

Secretary for Economy and Finance  
Macao Special Administrative Region  
of the People's Republic of China

(Signature)

(Signature)