

[Courtesy Translation]

Annex 3

Definition of “Service Supplier” and Related Requirements

1. Pursuant to the Mainland and Macao Closer Economic Partnership Arrangement (hereinafter referred to as the “CEPA”) and this Agreement, the Mainland and Macao Special Administrative Region have concluded this Annex on the definition of “service supplier” and related requirements.

2. Unless otherwise stipulated in this Agreement and its Annexes, “service supplier” as used in this Agreement 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 Macao, means a permanent resident of the Macao Special Administrative Region of the People’s Republic of China;

2.3. “juridical person” means any legal entity duly constituted or organised under the applicable laws of the Mainland or the Macao 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 Macao service suppliers who provide services in the form of juridical persons:

3.1. with the exception of the legal services sector, a Macao service supplier, when applying to provide the relevant services under Annex 1 in the Mainland, should:

3.1.1. be registered pursuant to the Macao Commercial Code, Macao Commercial Registration Code or other relevant laws of the Macao Special Administrative Region.¹ 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 Macao. The criteria for determination are:

(1)The nature and scope of business

The nature and scope of the services provided in Macao by a Macao service supplier who intends to provide services in the Mainland should meet the requirements in this Agreement, 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 Macao service supplier should be registered in Macao, and have engaged in substantive business operations for

¹ 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 Macao, is not a Macao service supplier under this Annex.

3 years or more². In this context:

A Macao service supplier providing construction and related engineering services should be registered in Macao, and have engaged in substantive business operations for 5 years or more; there is no limitation on the years of substantive business operations in Macao for Macao service suppliers providing real estate services;

A Macao service supplier providing banking and other financial services (excluding insurance and securities), i.e. a Macao 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, pursuant to the Macao Financial System Act;

A Macao service supplier providing insurance and related services, i.e. a Macao insurance company, should be registered in Macao and have engaged in substantive business operations for 5 years or more;

A Macao service supplier providing air transport ground services should have obtained the relevant licence for the provision of the relevant air transport ground services in Macao, and have engaged in substantive business operations for 5 years or more, if a Macao service supplier providing airport management services is an associated enterprise of the airline company, relevant regulations and legislation of the Mainland shall apply;

² From the day the CEPA comes into effect, where more than 50% of the equity interest of a Macao 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 Macao service supplier.

A Macao service supplier providing third party international shipping agency services should have been registered in Macao and have engaged in substantive business operations for 5 years or more.

(3) Profits tax

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

(4) Business premises

A Macao service supplier should own or rent premises in Macao 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 Macao service supplier providing maritime transport services, 50% or more of the ships owned by it, calculated in terms of tonnage, should be registered in Macao.

(5) Employment of staff

More than 50% of the staff employed in Macao by the Macao service supplier should be residents staying in Macao without limit of stay, and persons permitted to reside in Macao in accordance with the relevant regulations of Macao.

3.2. A Macao law firm of the legal services sector, when applying to provide the relevant services under Annex 1 in the Mainland, should:

3.2.1. be registered and established as a Macao law firm pursuant to the relevant legislation of the Macao Special Administrative Region.

3.2.2. The sole proprietor and all the partners of the law firm should be registered Macao practising lawyers.

3.2.3. The principal scope of business of the law firm should be to provide Macao legal services in Macao.

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

3.2.5. The law firm should have engaged in substantive business operations in Macao for 3 years or more.

3.2.6. The law firm should own or rent premises in Macao to engage in substantive business operations.

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

5. Service suppliers of the Mainland should fulfil 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 this Agreement, a Macao service supplier should provide:

6.1. In the event that the Macao service supplier is a juridical person, the Macao service supplier should submit the following documents and information, and declaration, which have been verified by relevant institutions (persons) of Macao, as well as

the certificate issued by the Government of the Macao Special Administrative Region:

6.1.1. Documents and information (if applicable)

(1) Copy of the Certificate of Commercial and Movable Property Registration issued by the Registry for Commerce and Movable Property of the Macao Special Administrative Region;

(2) Copies of the Business Registration Tax M/1 format Declaration or Salaries Tax M1/M1A format Declaration of New Registration/Amendment for the 2nd Group Liberal and Technical Professions issued by the Financial Services Bureau of the Macao Special Administrative Region;

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

(4) Original or copy of document(s) substantiating that the Macao service supplier owns or rents business premises in Macao;³

(5) Copies of the Profits Tax Declaration Form or Salaries Tax Declaration Form and proof of tax payments in respect of the Macao service supplier for the past 3 years (or 5 years); in the event of loss, the Macao service supplier should provide copies of the Profits Tax Declaration Form or Salaries Tax Declaration Form and Profits Tax M/5 format Assessment Notice or Salaries Tax M/16 format Assessment Notice;

³ A Macao service supplier applying to provide maritime transport services in the Mainland should separately submit document(s) or its copy (verified) to attest that 50% or more of the ships owned by it, calculated in terms of tonnage, is registered in Macao.

(6) Copy of the Certificate of Contribution of the Macao service supplier to the Macao Social Security Fund in respect of its employees in Macao, 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) substantiating that the Macao service provider engages in substantive business operations in Macao, such as licences, permits, or confirmation letters issued by relevant authorities or bodies in Macao relevant to the nature and scope of business in Macao as required by the laws of Macao, Annex 1 or this Annex;

(8) A Macao service supplier providing logistics, freight forwarding services and warehousing services should have obtained the qualifications for the provision of comprehensive transportation services proven by the Macao Special Administrative Region Government.

6.1.2. Declaration

For any Macao service supplier applying to obtain treatment under this Agreement, its authorised representative should make a declaration to the Macao Special Administrative Region Government.⁴ The format of the declaration will be determined by the Mainland and the Macao Special Administrative Region through consultation.

6.1.3. Certificate

A Macao service supplier should submit the documents and

⁴ A person is subject to criminal liability of Macao if he knowingly makes a false or untrue declaration pursuant to the legislation applicable in Macao.

information, and the declaration as required under Articles 6.1.1 and 6.1.2 of this Annex to the Macao Economic Services of the Macao Special Administrative Region for examination. The Macao Economic Services may, in the circumstances it considers necessary, entrust other government departments of the Macao Special Administrative Region, bodies, or independent professional institutions (personnel) to conduct verification.⁵ The Macao Economic Services will issue a certificate to the applicant that it considers to have fulfilled the criteria of Macao service supplier as required under this Annex. The contents and format of the certificate will be determined by the Mainland and the Macao Special Administrative Region through consultation.

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

6.3. Declarations and copies of the identification documents of natural persons as required under Articles 6.1 and 6.2 of this Annex, as well as the documents and information that in the Macao Economic Services' view should be attested by notary public of the Macao Special Administrative Region Government or by notary recognised by the Mainland (excluding Macao permanent residents with Chinese citizenship applying for Mainland legal professional qualifications). The qualification of attestation and the examination procedures of the notarization will be determined by the Mainland and the Macao Special

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

Administrative Region through consultation.

7. When applying to the Mainland's examining authorities to obtain treatment under this Agreement, a Macao service supplier should follow the following procedures:

7.1. When it applies to provide the services under Annex 1 in the Mainland, a Macao service supplier should submit to the Mainland's examining authorities the documents and information, 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 Macao services, should at the same time verify the qualifications of the Macao service supplier.

7.3. When holding a different view in respect of the qualification of the Macao service supplier, the Mainland examining authority should inform the Macao service supplier within a stipulated period, and notify the Ministry of Commerce. The Ministry of Commerce will in turn inform the Macao Economic Services, giving the reasons for the divergent views. The Macao service supplier may, through the Macao Economic Services and with written justification, request the Ministry of Commerce for reconsideration. The Ministry of Commerce should give a written reply to the Macao Economic Services within a stipulated period.

8. Macao service suppliers who have already been providing services in the Mainland should apply for obtaining treatment under this Agreement in accordance with the requirements of Articles 6 and 7 of this Annex.