

## Courtesy Translation

### Annex 5

#### Definition of “Service Supplier” and Related Requirements

1. Pursuant to the Mainland and Macao Closer Economic Partnership Arrangement (hereinafter referred to as the “CEPA”), 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 the “CEPA” and its Annexes, “service supplier” as used in the “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 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 otherwise 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 4 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.<sup>1</sup> If required by law, it should also have obtained the licence or permit for providing such services; and

3.1.2. be engaged in substantive business operations in Macao. The criteria for determination is:

(1) The nature and scope of business

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

(2) Years of operation required

A Macao service supplier should be registered in Macao, and have engaged in substantive business operations for 3 years or more.<sup>2</sup>

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 pursuant to the Macao Financial System Act;

A Macao service supplier providing insurance and related services, i.e.

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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 Macao, is not Macao service supplier under this Annex.

<sup>2</sup> 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 insurance company should have engaged in substantive business operations for 5 years or more.

(3) Complementary tax

During the period of substantive business operations in Macao, a Macao service supplier should have paid complementary 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 4 in the Mainland, should:

3.2.1. be registered 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 lawyer(s).

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

3.2.4. The law firm or its sole proprietor or partners should pay complementary tax or income 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 the “CEPA” 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 the “CEPA”, 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 statutory declaration, which have been verified by relevant institutions (persons) of Macao, as well as the certificate issued by the Macao Special Administrative Region Government:

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 Industrial Tax M/1 format Declaration issued by the Macao Finance Services 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;<sup>3</sup>
- (5) Copy of the Complementary 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 copy of the relevant Complementary Tax Declaration Form and proof of tax payments for the past 3 years (or 5 years);
- (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 service supplier fulfils the percentage requirement of Article 3.1.2.(5) of this Annex;
- (7) Original or copy of other relevant document(s) that can substantiate the nature and scope of the business in Macao of the Macao service supplier;
- (8) Macao service supplier of logistics, freight forwarding agency and warehousing should obtain certificate, issued by the Macao Special Administrative Region Government, of the right to provide intermodal transport service.

#### 6.1.2. Declaration

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

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<sup>3</sup> A Macao service supplier applying to provide maritime transport services in 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 Macao.

<sup>4</sup> 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.

### 6.1.3. Certificate

A Macao service supplier should submit the documents and 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.<sup>5</sup> Macao Economic Services will issue a certificate to the applicants that it considers to have fulfilled the criteria of Macao service suppliers as required under this Annex. The content 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 proof 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. The qualification of attestation and the examination procedures of the notarization will be determined by the Mainland and the Macao Special Administrative Region through consultation.

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

7.1. When it applies to provide the services under Annex 4 in the Mainland, a Macao service supplier should submit to the Mainland's examining authorities

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<sup>5</sup> In the telecommunications sector, 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.

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 the “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 in Macao, this 17th day of October 2003 in the Chinese Language.

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)