

**[Cursory Translation]**

**China Council for the Promotion of International Trade/  
China Chamber of International Commerce Mediation Center**

**CEPA Investment Agreement**

**Investment Dispute Mediation Rules**

**Chapter 1 General Provisions**

**Article 1**

These Rules are formulated by the China Council for the Promotion of International Trade/China Chamber of International Commerce Mediation Center (hereinafter referred to as the “Mediation Center”) with a view to promoting and protecting investments by investors of the Mainland and the Hong Kong Special Administrative Region/Macao Special Administrative Region (hereinafter referred to as the “two sides”) in the other side, protecting the rights of investors of the two sides, as well as resolving, in accordance with the relevant provisions of the Investment Agreement of the Mainland and Hong Kong Special Administrative Region Closer Economic Partnership Arrangement/Investment Agreement of the Mainland and Macao Special Administrative Region Closer Economic Partnership Arrangement (hereinafter referred to as the “CEPA Investment Agreement”), investment disputes between Hong Kong/Macao investors and particular Mainland authorities or institutions implementing specific administrative acts by means of mediation.

(1) In 2017, the Mainland signed the CEPA Investment Agreements with the Hong Kong Special Administrative Region (“Hong Kong”) and the Macao Special Administrative Region (“Macao”) under the frameworks of the Mainland and Hong Kong CEPA and of the Mainland and Macao CEPA respectively, with a view to:

1. promoting and protecting investments by investors of the Mainland and Hong Kong in the other side, and by those of the Mainland and Macao in the other side;
2. progressively reducing or eliminating substantially all discriminatory measures on investments between the Mainland and Hong Kong and between the Mainland and Macao;
3. protecting the rights of investors of the Mainland and Hong Kong/ Macao;
4. promoting the achieving of progressive liberalisation and facilitation of investments of the Mainland and Hong Kong/Macao;
5. further enhancing the level of bilateral economic and trade exchanges and cooperation between the Mainland and Hong Kong and between the Mainland and Macao.

(2) Pursuant to Article 19 of the CEPA Investment Agreement, in the event a dispute arising from a claim by a Hong Kong/Macao investor that it or its covered investment has suffered losses or damages resulting from a breach by the Mainland authorities or

institutions of the obligations provided in the CEPA Investment Agreement in relation to the Hong Kong/Macao investors or their covered investments, it may be settled by means of resolution through mediation whereby a Hong Kong/Macao investor may submit an investment dispute to a mediation institution of the Mainland side.

## **Article 2**

For the purposes of these Rules,

- (1) The definition of “investment” is the same as the one provided in the CEPA Investment Agreement.
- (2) “one party” means a party who submits a claim under Article 19 (Dispute Settlement between a Hong Kong/Macao Investor and the Mainland) of the CEPA Investment Agreement, that is, a Hong Kong/Macao investor;
- (3) “other party” means a Mainland party against which a claim is filed under Article 19 (Dispute Settlement between a Hong Kong/Macao Investor and the Mainland) of the CEPA Investment Agreement, that is, a particular authority or institution implementing a specific administrative act;
- (4) “the parties” means a Hong Kong/Macao investor and a particular authority or institution of the Mainland side implementing a specific administrative act.
- (5) In the event of a conflict between any provisions of these Rules and legal provisions that any party cannot derogate from, such

legal provisions shall prevail.

(6) For the purposes of these Rules, unless the context otherwise requires:

1. words and expressions not defined by these Rules shall bear the meaning given by the CEPA Investment Agreement to such words and expressions;
2. words and expressions defined by any provisions of these Rules shall bear the same meanings when used in other provisions of these Rules;
3. the following words and expressions bear the meanings given below:

“force majeure” any subsequently occurred events that are unpredictable, unavoidable or insuperable by an investor, and prevent an investor from submitting an investment dispute to mediation, such events include:

(a) war, hostility (whether or not war is or has been declared), invasion, act of foreign enemies, riot, disturbance, flu pandemic, fire, or natural disaster in any other places affecting Hong Kong, Macao and /or the Mainland; or

(b) any subsequently occurred disastrous

events like the aforementioned;

“the parties” means all of the parties to an investment dispute;

“mediation settlement agreement” means an agreement reached by the parties to an investment dispute on all or part of the dispute;

“investor” means a Mainland investor or a Hong Kong/Macao investor;

“CEPA Investment Agreement” means the CEPA Investment Agreement described in sub-paragraph (1) of Article 1 of these Rules, and its amended and supplemented version from time to time;

“investment dispute” means the dispute described in sub-paragraph (2) of Article 1 of these Rules;

“Mediation Mechanism for Investment Disputes” means the Mediation Mechanism for Investment Disputes established by the Mainland and Hong Kong/Macao under the CEPA Investment Agreement for mediation of investment disputes;

“Panel of Appointed Mediators” means the Panel of Mediators that consists of appointed mediators prepared and maintained by a mediation institution for mediation of investment disputes;

“appointed mediator” means a person who is recognised as a mediator by the sides to the CEPA Investment Agreement under the Mediation Mechanism for Investment Disputes;

“Hong Kong/Macao investor” means a Hong Kong/Macao investor that seeks to make, is making or has made a covered investment in the Mainland;

“Mediation Application Form” means the Mediation Application Form referred to in Article 9 of Chapter 2, that is, all of the information described in paragraph (1) of Article 9;

“mediation court” formed of one or two mediators, as decided by negotiation between the parties;

“Mediation Consent Form” means a written agreement between the parties on submitting an investment dispute between them to mediation, regardless of:

(a) whether the agreement is in the form of a mediation clause in another agreement or in the form of a separate agreement;

(b) whether the agreement is made before

or after the investment dispute arises;  
and

(c) whether or not a mediator is appointed at the time the agreement is made;

“mediation term” means the 120-day time limit counting from the day the mediation court is formed, or other time limits, agreed by the parties, within which the mediation proceedings must be concluded;

“Mediation Notification” means the notification delivered by the mediation institution to the investor and the other party as described in Article 10;

“Mediation Request Letter” means the request letter delivered by the mediation institution to the respondent party as described in Article 11;

“mediation institution” means the China Council for the Promotion of International Trade /China Chamber of International Commerce Mediation Center.

4. A reference to a person includes an individual, a body corporate, business or any body corporate or unincorporate, and also any public body.

### **Article 3**

These Mediation Rules shall only be applicable to applications for mediation submitted under paragraph 1.5 of Article 19 (Dispute Settlement between a Hong Kong/Macao Investor and the Mainland) of the CEPA Investment Agreement by Hong Kong/Macao investors to the China Council for the Promotion of International Trade/China Chamber of International Commerce Mediation Center (hereinafter referred to as the “Mediation Center”), which is confirmed and announced by the sides to the Agreement.

The mediation for a dispute arising from investment made in the Mainland by a Hong Kong/Macao investor may only be undertaken by a mediation institution of the Mainland.

#### **Article 4**

Where the parties submit a dispute to the Mediation Center for mediation, these Rules shall apply. Should the CEPA Investment Agreement provide otherwise, the Agreement shall prevail.

#### **Article 5**

Mediation shall, in compliance with the principle of voluntary participation by the parties, handle disputes in accordance with the CEPA Investment Agreement and relevant laws and regulations in an impartial, equitable, fair and reasonable manner, with reference to international practices.

#### **Article 6**

The parties to a dispute shall participate in mediation in an active and sincere manner without unjustifiable procrastination, and shall voluntarily



observe the Mediation Rules and relevant legal requirements, as well as perform the mediation settlement agreement reached.

### **Article 7**

A party who submits an application for mediation to the Mediation Center shall make such submission not more than three years from the date on which the party first acquired, or should have first acquired, knowledge of the alleged breach of Article 3 of these Rules by the other party and knowledge that it or its covered investment has suffered loss or damage thereby. The Mediation Center will not accept late submissions. However, any delay resulting from force majeure shall not be taken into account in counting the aforementioned three-year period.

## **Chapter 2 Mediation Proceedings**

### **Section 1 Application for Mediation and Acceptance of Cases**

### **Article 8**

Pursuant to paragraph 6 of Article 19 or paragraph 4 of Article 20 of the CEPA Investment Agreement, the methods of resolution of disputes involving tax matters specified in Article 23 (Mutual Agreement Procedure) of the *Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* do not apply to investment disputes.

The Mediation Center accepts cases and commences the mediation proceedings on an application made by one party or a joint application

made by the parties.

## **Article 9**

When making an application for mediation to the Mediation Center, a party shall:

- (1) submit a Mediation Application Form, which shall contain:
  1. the names, addresses, telephone numbers and electronic mail addresses of the parties, as well as the name, address, telephone number and electronic mail address of an enterprise that is a covered investment of the investor which has suffered from loss or damage in the disputing side (if any);
  2. the provisions alleged to have been breached and any other related provisions under the CEPA Investment Agreement;
  3. the legal and factual basis for the claim, including the measures involved, and
  4. the means of compensation sought and the approximate amount of compensation;
  5. the signature and/or stamp of the applicant party or its authorised representative.
- (2) provide appropriate evidence materials;
- (3) provide identification documents;
- (4) a written letter of authorisation, where a representative is authorised to participate in mediation;

- (5) submit documents establishing that it is an investor protected by the CEPA Investment Agreement;
- (6) at least one month prior to the submission of Mediation Application Form in accordance with the requirements set out under paragraph (1) of this Article, the investor should have requested amicable consultation with the disputing side in accordance with sub-paragraph 1(i) of Article 19 (Dispute Settlement between a Hong Kong/Macao Investor and the Mainland) of the CEPA Investment Agreement;
- (7) the investor has, in relation to the measure(s) alleged to constitute a breach by the disputing side of its obligations that are specified in the CEPA Investment Agreement, waived its right to initiate or continue dispute settlement procedures under any agreement between any other party and the disputing side;
- (8) the applicant party shall pay the case registration fee in accordance with the fee schedule of the Mediation Center.

### **Article 10**

Upon receiving a joint application from the parties, the Mediation Center shall deliver in a timely manner a Mediation Notification, these Mediation Rules and the Panel of Mediators to the parties.

### **Article 11**

For an application for mediation initiated by one party, the Mediation Center shall deliver to the respondent a Mediation Request Letter, the Mediation Application Form of the applicant party and other materials.

## **Article 12**

The respondent party shall, within 15 working days from the receipt of the Mediation Request Letter, confirm in writing with the Mediation Center whether or not it consents to mediation, except for applications jointly made by the parties.

A respondent party who consents to mediation shall submit the following materials within 20 working days upon submission of the written confirmation of consent to mediation:

1. written opinion on the applicant's request for mediation;
2. appropriate evidence materials;
3. identification documents;
4. a written letter of authorisation, where a representative is authorised to participate in mediation;

## **Article 13**

The parties shall submit the materials in quadruplicate. Where there are more than two parties or three mediators, the number of copies shall be increased accordingly.

## **Article 14**

A respondent party who has a real difficulty to confirm its consent to mediation within the time limit specified in Article 12 may apply for an extension prior to the expiry of the time limit; the mediation proceedings will be terminated should there be no response by the expiry of the time limit or a disagreement to mediation is clearly expressed. However, in the

event the respondent party confirms its consent to mediation after the expiry of the specified time limit, the Mediation Center may decide whether to continue with the mediation proceedings upon seeking the applicant party's opinion.

### **Article 15**

Where the parties consent to mediation, they shall prepay the mediation fees in equal proportions in accordance with the fee schedule of the Mediation Center within 10 days upon the date of receipt of the payment notice from the Mediation Center. Where the parties have agreed otherwise on the sharing ratio of fees, such agreement shall prevail.

Where one party consents to mediation but does not prepay the mediation fees, the Mediation Center may notify the other party to prepay fully the mediation fees.

Where a party has not prepaid the mediation fees, the Mediation Center may decide whether to continue with or suspend or terminate the mediation proceedings based on the situation.

## **Section 2 Selection (Appointment) of Mediators**

### **Article 16**

Unless otherwise agreed by the parties, mediation shall be conducted by a mediation court, which is formed of one or two mediators as determined by negotiation between the parties.

Where the parties opt for a mediation court formed of one mediator to conduct the mediation, they shall jointly select from the Panel of Mediators of the Mediation Center, or jointly authorise the Mediation Center to appoint, a mediator within 10 days upon receipt of the notification of request to select a mediator from the Mediation Center.

Where the parties opt for a mediation court formed of two mediators to conduct the mediation, each of them shall select from the Panel of Mediators of the Mediation Center, or authorise the Mediation Center to appoint, one mediator within 10 days upon receipt of the notification of request to select a mediator from the Mediation Center.

Where the parties have not reached a consensus on whether to opt for a one-man or two-man mediation court within 10 days upon the submission of written letter of consent to mediation by the respondent party, the mediation will be conducted by a mediation court formed of two mediators.

Where the parties have not selected or authorised the Mediation Center to appoint a mediator(s) within the time limit, the Mediation Center will select a mediator(s) upon seeking the parties' opinions. If no success, the mediation proceedings will be terminated.

### **Article 17**

A mediator shall remain impartial. A mediator who has accepted a selection or an appointment shall disclose, in a timely manner, situations that may affect his or her independence and equity in mediation in writing to the Mediation Center and the parties.

## **Article 18**

Where a mediator is unable to perform, unable to continue performing or not suitable to perform his or her duties, another mediator shall be selected or appointed in accordance with the requirements set out in Article 16 of these Rules, unless otherwise agreed by the parties.

### **Section 3 Means of Mediation**

## **Article 19**

At the beginning of mediation proceedings, a mediation court shall inform the parties of the follows:

- (1) the voluntary principle of mediation;
- (2) the means of conducting the mediation proceedings;
- (3) the role and impartiality of mediator;
- (4) the confidentiality of mediation;
- (5) other matters that shall be made available as required by laws or agreed between the parties.

## **Article 20**

Unless otherwise agreed by the parties, the mediation court may conduct the mediation by adopting any means that it deems appropriate and favourable to facilitating a settlement between the parties. Such means includes, but is not limited to:

- (1) the mediation court may meet the parties and/or their

representatives one at a time or together;

- (2) during the mediation proceedings, the mediation court may request the parties to offer written or oral suggestions or solutions to resolve the dispute;
- (3) upon obtaining the parties' consent, the mediation court may hire relevant experts to provide consultation or verification opinions on technical issues, with the fees arising therefrom prepaid by the parties;
- (4) during the mediation proceedings, the mediation court may offer the parties suggestions to resolve the dispute. The mediation court shall endeavour to assist the parties to communicate with each other and facilitate the parties to dispute in finding a solution and in turn reaching a consensus.

### **Article 21**

The solutions available to the disputing parties under a mediation settlement agreement shall be limited to the following:

- (1) monetary compensation and any applicable interest;
- (2) restitution of property, or monetary compensation and any applicable interest in lieu of restitution of property;
- (3) other legitimate means of compensation agreed upon by all disputing parties.

### **Article 22**

Mediation shall be conducted at the place where the Mediation



Center is located. Should the parties agree otherwise, or the mediation court consider necessary, with the consent of the parties, it may be conducted in other places, with the fees arising therefrom borne by the parties. Mediation shall be conducted in Chinese, should the parties request the provision of other languages, the translation/interpretation expenses incurred therefrom shall be borne by the parties.

### **Article 23**

Mediation shall be conducted in private, unless otherwise agreed by the parties.

Mediators, parties and their representatives, witnesses, experts, staff of the Mediation Center and other participants in the mediation proceedings have a duty of confidentiality with respect to the matter of mediation, unless the parties agree otherwise or the laws and regulations provide otherwise.

### **Article 24**

The parties can establish a mediation term. With the consent of the parties, the mediation court can join in to determine a mediation term.

Where a mediation term has not been established by the parties or determined by the mediation court with the parties, the mediation court shall conclude the mediation within 120 days upon the formation of the mediation court, unless an extension is agreed by the parties.

### **Article 25**

After all disputing parties have reached a consensus on resolution of the investment dispute through mediation, the mediation court shall

produce a mediation settlement agreement according to the content of the consensus. The agreement shall be signed or stamped by each disputing party and the mediator(s), and affixed with the seal of the Mediation Center. The agreement is binding on the parties.

On the basis of a mediation settlement reached over part of the mediation request, the parties may sign a partial mediation settlement agreement.

### **Article 26**

The mediation proceedings shall be terminated if one of the following situations arises:

- 1) the parties have reached a mediation settlement agreement;
- 2) the parties or any one of the parties declares in writing to terminate the mediation proceedings;
- 3) the mediation term expires, unless an extension is agreed by the parties;
- 4) The mediation court concludes that it is unlikely to have successful mediation and declares in writing to terminate the mediation proceedings.

### **Article 27**

Where the parties have reached a mediation settlement agreement, the parties can apply for enforcement of the agreement in accordance with the relevant laws and regulations of the side where the enforcement takes place.

### **Chapter 3 Supplementary Provisions**

#### **Article 28**

Unless otherwise agreed by the parties, the mediator(s) shall not take part in subsequent arbitration, judicial or any other proceedings for the same or related dispute(s) as an arbitrator, a judge, or a representative or legal consultant of any party.

The parties shall not require the mediator(s) to testify in the abovementioned proceedings.

#### **Article 29**

Unless otherwise agreed by the parties, neither party may, in subsequent administrative reviews or judicial proceedings for the same dispute, adduce any statements, admissions or concessions made by the other party or the mediator in the aforementioned procedures as information or evidence to the prejudice of that other party.

#### **Article 30**

Mediation fees and other fees payable by the parties shall be shared equally among the parties, unless otherwise agreed by the parties. Mediation fees are charged in accordance with the mediation fee schedule formulated by the Mediation Center.

Where the parties and the mediator(s) agree otherwise on the remuneration of mediator, such agreement shall prevail.

#### **Article 31**

The Mediation Center is responsible for the interpretation of these Rules.

**Article 32**

These Rules shall be implemented from 12 December 2018.