

## [Cursory Translation]

### Annex 1

#### Relevant Requirements on the Definition of “Investor”<sup>1</sup>

1. A Macao enterprise investing in the Mainland in the form of commercial presence may constitute an “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement if the following conditions are fulfilled:

1.1. be incorporated or established pursuant to the Commercial Code, the Commercial Registration Code or other relevant laws of the Macao Special Administrative Region<sup>2</sup>, and have provided a Commercial and Movable Property Registration Certificate issued by the Commercial and Movable Property Registry Office; and

1.2. engage in substantive business operations in Macao. The criteria for determination are:

(1) Years of operation required

A Macao investor should be incorporated or established in

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<sup>1</sup> For greater certainty, without prejudice to the other provisions and the requirements under the annexes to this Agreement, an investor of one side must fulfil the relevant requirements in relation to the definition of “investor” referred in Annex 1 to this Agreement in order to enjoy the treatment of investments as set out under Article 5 (National Treatment), Article 6 (Most-Favoured Treatment), Article 7 (Performance Requirements) and Article 8 (Senior Management, Boards of Directors and Entry of Personnel).

<sup>2</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 a Macao investor under this Annex.

Macao, and have engaged in substantive business operations for 3 years or more<sup>3</sup>;

(2) Profits tax

During the period of substantive business operations in Macao, a Macao investor should have paid profits tax in accordance with the laws;

(3) Business premises

A Macao investor 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 in Macao; and

(4) Employment of staff

More than 50% of the staff employed in Macao by the Macao investor should be residents staying in Macao without limit of stay and people permitted to reside in Macao pursuant to the relevant laws of Macao.

For greater certainty, a Macao enterprise investing in the Mainland in any forms other than commercial presence does not need to fulfil the

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<sup>3</sup> From the day this Agreement comes into effect, where more than 50% of the equity interest of a Macao investor has been owned for at least one year since a merger or acquisition by an investor other than one from either side, the investor which has been acquired or merged will be regarded as a Macao investor.

conditions as stipulated in Articles 1.1 and 1.2.

2. Unless otherwise provided in this Agreement and its Annexes, a Macao natural person investing in the Mainland shall constitute “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement only if he or she is a permanent resident of the Macao Special Administrative Region of the People’s Republic of China.

3. To become a qualified “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement, a Macao investor applying to invest in the Mainland in the form of commercial presence in accordance with this Agreement should meet the following requirements:

3.1. A Macao investor in the form of an enterprise should submit a certificate issued by the Macao Economic Bureau of the Government of the Macao Special Administrative Region (hereinafter referred to as the “DSE”). When applying for the certificate, a Macao investor must declare the nature and scope of its business in Macao together with the nature and scope of its intended investment in the Mainland, and submit the following documents and information, and the declaration to the DSE for examination:

3.1.1. Documents and information (if applicable)

1) Copy of the Commercial and Movable Property Registration Certificate issued by the Commercial and Movable Property Registry Office of the Macao Special

Administrative Region;

2) Copy of the Business Tax Form M/1 or of the Salaries Tax – Group 2 Liberal or Specialized Profession - Initial Registration/Amendment Form M1/M1A issued by the Financial Services Bureau of the Macao Special Administrative Region;

3) Annual reports or audited financial statements of the Macao investor for the past 3 years;

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

5) Copy of the Profits Tax Form or Salaries Tax Income Declaration and evidence of tax payment in respect of the Macao investor for the past 3 years; in the event of loss, the Macao investor should still provide the relevant copy of Profits Tax Form or Salaries Tax Income Declaration and Profits Tax – Income Assessment Notification M/5 or Salaries Tax - Income Assessment Notification M/16;

6) Copy of the Social Security Fund Contribution Payment Advice of the Macao investor in respect of the Social Security Fund contributions 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 1.2(4) of this Annex on the percentage threshold;

7) Original or copy of other relevant document(s) substantiating that the Macao investor 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 or this Annex.

### 3.1.2. Declaration

For any Macao investor applying to obtain treatment under this Agreement, its authorised representative should declare to the Macao Special Administrative Region<sup>4</sup>. The form of the declaration will be determined by the relevant authorities of the Mainland and the Macao Special Administrative Region through consultation.

### 3.1.3. Application form for certificate

The DSE may, in the circumstances it considers necessary, entrust other government departments of the Macao Special Administrative Region, statutory bodies, or independent professional institutions (personnel) to conduct verification. The DSE will issue a certificate to an applicant that it considers to have fulfilled the criteria of Macao investor as

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<sup>4</sup> A person is subject to legal liability under the Macao Law if he wilfully makes a false or untrue declaration.

required under this Annex. The contents and form of the certificate will be determined by the relevant authorities of the Mainland and the Macao Special Administrative Region through consultation. The relevant authorities of the Mainland and the Macao Special Administrative Region may discuss and announce circumstances that allow the exemption of such certificate.

3.2. A Macao investor in the form of a natural person should provide identification of his or her Macao permanent resident status. For Chinese citizens among such investors, their Home Visit Permit for Hong Kong and Macao Residents or Macao Special Administrative Region passport should also be provided.

4. To be qualified as an “investor” under paragraph 2 of Article 2 (Definitions) of this Agreement, when applying to the Mainland’s examining authorities to invest in the form of commercial presence under this Agreement, a Macao investor should follow the following procedures:

4.1. When applying to engage in a covered investment in the Mainland within the scope of Annex 2, a Macao investor should submit to the Mainland’s examining authorities the certificate as required under Article 3 of this Annex.

4.2. Pursuant to the powers conferred under Mainland laws, the Mainland’s examining authorities, in examining the application for Macao investments, may at the same time

verify the qualifications of the Macao investor when they consider necessary. The Mainland's examining authorities should request the Macao investor to provide documents and information, and declaration as required in Article 3 of this Annex within a stipulated period, and submit written justification for verifying the qualifications of the Macao investor to the Ministry of Commerce.

- 4.3. When holding a different view in respect of the qualification of the Macao investor, the Mainland's examining authorities should inform the Macao investor within a stipulated period, and notify the Ministry of Commerce. The Ministry of Commerce will in turn inform the DSE, giving the reasons for the divergent views. The Macao investor may, through the DSE and with written justification, request the Ministry of Commerce for reconsideration. The Ministry of Commerce should give a written reply to the DSE within a stipulated period.

5. A Mainland investor investing in Macao shall comply with the requirements in paragraph 2 of Article 2 (Definitions) of this Agreement.

6. In this Annex, "commercial presence" means any type of business or professional establishment of one side, including through:

- 6.1. the constitution, acquisition or operation of an enterprise, or
- 6.2. the constitution or operation of a branch or a representative

office,

within the area of the other side.