

# MAINLAND AND MACAO CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT

## Agreement on Trade in Services

To promote achieving basic liberalization of trade in services between the Mainland (1) and the Macao Special Administrative Region (hereinafter referred to as the "two sides"), to progressively reduce or eliminate substantially all discriminatory measures on trade in services between 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 to basically achieve liberalization of trade in services between the Mainland and the Macao Special Administrative Region (hereinafter referred to as "Macao").

(1) The "Mainland" refers to the entire customs territory of China.

## Chapter 1. Relationship with CEPA (2)

(2) CEPA is the abbreviation of the Mainland and Macao Closer Economic Partnership Arrangement.

### Article 1. Relationship with CEPA

1. To progressively reduce until eliminating substantially all discriminatory measures on trade in services between the two sides, the two sides decided to sign this Agreement based on the liberalization measures that have been implemented under CEPA and its Supplements, and the Agreement between the Mainland and Macao on Achieving Basic Liberalization of Trade in Services in Guangdong under CEPA (hereinafter referred to as "Guangdong Agreement"). This Agreement is the Agreement on Trade in Services under CEPA.

2. The relevant content of Articles 11 and 12 of Chapter 4 of CEPA shall be implemented in accordance with this Agreement. In the event that the provisions of this Agreement are in conflict with the provisions of the CEPA and its Supplements, and the Guangdong Agreement, 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 apply to trade in services between the Mainland and Macao.

2. 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 by contractual means in the form of purchase, lease, etc., and not with a view to commercial sale or resale or for use in the production or supply of the goods or services for commercial sale or resale.

4. The definition and related requirements of "service supplier" referred to in this Agreement are set out in Annex 3.

## **Chapter 3. Obligations and Disciplines**

### **Article 3. Obligations**

1. The specific measures applied by the Mainland to services and service suppliers of Macao are set out in Annex 1 of this Agreement. In respect of the implementation of the specific commitments set out in Table 2, Table 3 and Table 4 of Annex 1 of this Agreement, apart from applying the provisions of this Agreement, the relevant laws and regulations, and administrative regulations of the Mainland should also be applicable.

2. Macao will not impose any new discriminatory measures on Mainland's services and service suppliers in the areas of services covered in this Agreement. The two sides will, through consultations, formulate and implement further liberalization of trade in services of Macao for Mainland's services and service suppliers. The relevant specific commitments will be listed in Annex 2 of this Agreement.

3. At the request of either side, the two sides may, through consultations, further raise the level of liberalization of trade in services between them.

4. Any measures to raise the level of liberalization of trade in services pursuant to paragraph 3 of this Article shall be included in Annex 1 and Annex 2 of this Agreement for implementation.

### **Article 4. 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. (3)

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.

(3) 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.

### **Article 5. 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 6. 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. (4)

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. (5)

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 necessary to ensure compliance with laws or regulations that are consistent with the provisions of this Agreement, including measures relating to the prevention of false and fraudulent practices or measures to deal with the effects of 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 institution.

5. Each side reserves the right to implement restrictive measures for any sectors not clearly covered in existing regulations.

(4) 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.

(5) 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.

## **Article 7. Safeguard Measures**

1. Each side reserves the right to establish or maintain any restrictive measures relating to services in the event that the implementation of this Agreement causes substantial impact on its trade and relevant sectors.

2. One side should, on a best endeavor basis, notify the other side fully and in a timely manner, measures intended to be taken pursuant to paragraph 1, and resolution shall be sought through consultation.

## **Article 8. Exceptions**

1. The provisions of this Agreement and its Annexes shall not prevent 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 horizontal management measures 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 6**

### **Article 9. Reserved Restrictive Measures**

1. Article 4 National Treatment and Article 5 (Most-Favoured Treatment) shall not apply to:

(i) the reserved restrictive measures of one side set out in Table 1 of Annex 1 and Annex 2.

(ii) under general circumstances, the reserved restrictive measures referred to in sub-paragraph (i) may be amended, but the amended reserved measures shall be no less compliant with the obligations required in Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment) than the measures before amendment.

2. Article 4 (National Treatment) and Article 5 (Most-Favoured Treatment) shall not apply to:

(i) government procurement; or

(ii) subsidies or donation accorded by one side, including government-supported loan, guarantee and insurance. However, should the laws and regulations of one side provide otherwise for sub-paragraphs (i) and (ii), such laws and regulations shall prevail.

(6) Under this Agreement, commercial presence under this Chapter does not include commercial presence with respect to services under Article 11 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 12 (Cultural Services) of Chapter 7 (Cultural Services).

## **Chapter 5. CROSS-BORDER SERVICES (7)**

### **Article 10. Cross-border Services**

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

(7) Under this Agreement, cross-border services under this Chapter do not include cross-border services with respect to services under Article 11 (Telecommunications Services) of Chapter 6 (Telecommunications) and Article 12 (Cultural Services) of Chapter 7 (Cultural Services).

## **Chapter 6. TELECOMMUNICATIONS**

### **Article 11. Telecommunications Services**

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific 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 12. Cultural Services**

The two sides agree to maintain consultations to progressively reduce discriminatory measures. Specific 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 13. 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 4 (National Treatment) shall not be construed as a measure preventing the former side from adopting or maintaining the special procedures relating to services.

2. Notwithstanding Article 4 (National Treatment) and Article 5 (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 statistical purposes. The former side shall protect confidential commercial information from leakage which may adversely affect 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 14. Investment Facilitation**

To enhance the level of investment facilitation, the Mainland agrees, with respect to Macao service suppliers investing in the Mainland in sectors of trade in services as liberalised for Macao under this Agreement, to adopt filing administration, in lieu of prior approval, of contracts and articles of association for establishment and change of enterprises. After filing, the related procedures will be processed in accordance with the relevant regulations of the Mainland. This Article does not apply to the following two situations:

- (i) The reserved restrictive measures under Article 9 of Chapter 4 and the establishment and change of a company in the telecommunications or cultural services sectors or of a financial institution will be processed in accordance with the provisions of the prevailing foreign investments laws and regulations and related regulations; or
- (ii) The establishment and change of commercial presence other than in the form of a company will be processed in

accordance with the relevant prevailing regulations.

## **Chapter 10. OTHER PROVISIONS**

### **Article 15. Annexes**

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

### **Article 16. 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 June 2016.

This Agreement is signed in duplicate in the Chinese language.

This Agreement is signed on 28 November 2015 in Macao.

Vice Minister of Commerce People's Republic of China

(Signature)

(Signature)

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