

# **Enhancement of the Mainland and Macao Closer Economic Partnership Arrangement (CEPA)**

## **Q&A**

### **1. What is enhancement of CEPA?**

The Mainland and Macao signed the Mainland and Macao Closer Economic Partnership Arrangement (CEPA) in 2003, which has been officially implemented since 2004, and have since signed ten Supplements until 2013. The CEPA agreements cover three economic and trade areas, namely Trade in Goods, Trade in Services and Trade and Investment Facilitation.

To accomplish the objective of achieving basic liberalisation of Trade in Services between the Mainland and Macao through CEPA by the end of the “12<sup>th</sup> Five-Year Plan” as requested by the Central Government, the two sides signed the Agreement between the Mainland and Macao on Achieving Basic Liberalisation of Trade in Services in Guangdong under CEPA in 2014 to achieve liberalisation of Trade in Services between the Mainland and Macao in advance in Guangdong Province; the signing of the Agreement on Trade in Services under CEPA in 2015 symbolises the full achievement of basic liberalisation of Trade in Services between the Mainland and Macao.

In 2016, the Ministry of Commerce recommended a comprehensive enhancement of CEPA for the reason that, although the Mainland has signed 13 CEPA-related agreements with Hong Kong and Macao respectively since 2003, part of the agreements’ contents has lagged behind the development of situation. The enhancement of CEPA will optimise and harmonise the existing provisions and contents of the CEPA texts with the signing of 4 subsidiary agreements including the Agreement on Trade in Services, Agreement on Trade in Goods, Investment Agreement and Agreement on Economic and Technical Cooperation, among which the Agreement on Trade in Services was signed in 2015 and has officially been implemented since 1 June 2016, and the major task in 2017 is to achieve the signing of two of the subsidiary agreements, the Investment Agreement and the Agreement on Economic and Technical Cooperation.

## **About Investment:**

### **2. What is the Investment Agreement under CEPA?**

The Investment Agreement is a new subsidiary agreement under CEPA covering comprehensively admission of investments and investment protection and facilitation, and broadening the commitments on investment under the framework of CEPA by extending the liberalisation of market access for investment from services sectors to non-services sectors with the related protection measures apply to investments in both services and non-services sectors, favouring the establishment of an investment environment with certainty and stability, as well as facilitating investment activities and economic integration between the two places.

### **3. What benefits will the Investment Agreement bring to Macao investors?**

Before the signing of the Investment Agreement, commitments on treatment for admission of investments given by the Mainland to Macao were only limited to services sectors. Treatment for admission of investments in non-services sectors was merely a voluntary liberalisation measure but not a commitment under agreement.

After the signing of the Investment Agreement, the Mainland commits under the Investment Agreement to accord national treatment, the same treatment accorded to Mainland investors, to investments and investors of Macao in all non-services sectors, except the 26 measures listed in Annex 2 (covers mainly investments in the areas of development of exclusive economic zones and continental shelf, exploitation of petroleum oil and natural gas, exploitation and smelting of mineral products, manufacture of transportation carriers, franchise authorised by the government, atomic energy, traditional arts and crafts and Chinese medicines, etc.). Furthermore, the most-favoured treatment provision of the Agreement stipulates that any preferential treatment the Mainland accords to investments and investors from other countries or regions, if more preferential than that under CEPA, will be extended to Macao investments and investors.

### **4. To which sectors the provisions for national treatment and most-favoured treatment under the Investment Agreement are applicable?**

National treatment and most-favoured treatment under the Investment Agreement are only applicable to investments in non-services sectors, including mainly manufacturing and mining. As for services sectors, national treatment and most-favoured treatment under the Agreement of Trade in Services are applicable.

#### **5. What does enjoying national treatment mean to Macao investors?**

To Macao investors, enjoying national treatment means enjoying the same treatment as the Mainland investors. Macao investors are subject to the same laws, regulations and rules that regulate the Mainland investors.

#### **6. What protection does the Investment Agreement provide for investments between the two places?**

In terms of investment protection, protections committed by the Mainland and Macao to investors of the other side include: protection measures related to expropriation; compensations for losses owing to expropriation of investments; non-discriminative compensations for losses owing to war, state of emergency, riot, natural disaster or other similar events. Meanwhile, the mechanism for settlement of investment disputes under the Investment Agreement provides various means to settle investment disputes between investors of one side and the government of the other side, establishing a complete investment protection system.

#### **7. Is the Investment Agreement applicable to the investments made before the Agreement came into force?**

The Investment Agreement is applicable to the investments that exist on the date of entry into force of the Agreement or are made or acquired thereafter. If an investment of one side of the Agreement has been in existence before the Agreement came into force and breaches the obligations under the Agreement, the mechanism for settlement of investment disputes under the Investment Agreement can be resorted for resolution.

#### **8. Will investors get compensation for expropriation?**

The Investment Agreement provides that investments or returns of investors of one side shall not be expropriated by the other side except for a public purpose, in accordance with due process of law, in a

non-discriminatory manner and on payment of compensation.

Such compensation shall be equivalent to the real value of the expropriated investment immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is earlier, and shall include interest at a normal commercial rate, accrued from the date of expropriation until the date of payment. Compensation shall be fully realisable, freely transferable, and paid without delay. The affected investor shall have a right under the laws of the side making the expropriation to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that side in accordance with the principles set out in Article 11 “Expropriation” of the Investment Agreement.

## **9. How to define Macao investor?**

According to Annex 1 - Relevant Requirements on the Definition of "Investor" of the Investment Agreement, Macao enterprises investing in the form of commercial presence in non-services sectors in the Mainland are required to fulfil the requirements for substantive business operations in Macao and obtain the Macao Investor Certificate.

Requirements on engagement in substantive business operations in Macao for Macao investors include being established in Macao and engaging in substantive business operations for 3 years or more, payment of profits tax in accordance with law, owning or renting the relevant business premises, and employment of more than 50% of its staff being residents in Macao without limit of stay and people permitted to reside in Macao pursuant to the relevant laws of Macao.

## **10. Do Macao enterprises need to apply for the Macao Investor Certificate prior to investing in the Mainland?**

Macao enterprises need to apply for the Macao Investor Certificate from the Economic and Technological Development Bureau only when they invest in the Mainland in the form of commercial presence in non-services sectors with preferential access to Macao. Such sectors are:

- (1) manufacture of common ships (including subsection) ;
- (2) manufacture of civil aircrafts (for trunk and branch lines) and civil helicopters (of three tons or more) ;

- (3) manufacture of general purpose aircrafts ;
- (4) mining of special and scarce coals ;
- (5) smelting of tungsten.

When the franchise is completely liberalised to Mainland investors, Macao investors will also need to apply for the Macao Investor Certificate from the Economic and Technological Development Bureau in order to perform, in the form of equity joint venture or cooperation, exploitation of land-based petroleum oil, natural gas and coal seam gas.

Besides, investors making investments in forms other than commercial presence, such as purchase of financial products, properties and intangible assets, etc., or investors in the form of natural persons, or investors in non-services sectors other than those with preferential access to Macao, are not subject to the requirements of substantive business operations and are not required to apply for the Macao Investor Certificate.

**11. Do Macao investors having invested in the Mainland before the entry into force of the Investment Agreement need to apply for the Macao Investor Certificate?**

For Macao investors having invested in the Mainland before the entry into force of the Investment Agreement, they are subject to specific requirements of substantive business operations and need to apply for the Macao Investor Certificate only when they have new investment in the Mainland in non-services sectors with preferential access to Macao.

**12. Do Macao investors in the Mainland need to apply for the Macao Investor Certificate so that they can enjoy the investment protection obligations under the Investment Agreement?** Investments made legally in the Mainland by Macao investors

immediately enjoy the treatment under the Investment Agreement when it comes into effect, including investment protection, without having to fulfil the specific requirements of substantive business operations or apply for the Macao Investor Certificate.

**13. If a dispute arises between a Mainland investor and relevant Macao authorities or institutions over the Investment Agreement,**

**to what means may the Mainland investor resort to resolve the dispute?**

If a Mainland investor claims that it or its covered investment has suffered losses or damages resulting from a breach by the Macao authorities or institutions of the obligations provided in the Investment Agreement in relation to the Mainland investor or its covered investment, the investor may resort to one of the five means listed in Article 20 “Dispute Settlement between a Mainland Investor and Macao” of the Investment Agreement for resolution, including: amicable consultation, complaint coordination, notification and coordination, mediation and judicial proceedings.

**About Economic and Technical Cooperation:**

**14. What is the Agreement on Economic and Technical Cooperation (Ecotech Agreement) under CEPA?**

The Ecotech Agreement adds new elements on the basis of harmonising and updating the contents of the CEPA texts and the ten Supplements in relation to economic and technical cooperation, enhancing the level of economic and technical cooperation between the Mainland and Macao.

Among which, specific chapters on deepening economic and trade cooperation areas of the “Belt and Road” Initiative, deepening the development of Macao as a commerce and trade cooperation service platform between China and Portuguese-speaking countries (PSCs), and sub-regional economic and trade cooperation are provided to cater for the needs arising from future economic development, so as to raise the industrial cooperation between the two places to a new level of development.

**15. The Ecotech Agreement includes new economic and trade cooperation areas in relation to the “Belt and Road” Initiative and sub-regional cooperation, what advantages can the trade of Macao capitalise on to participate in the related cooperation?**

In terms of deepening cooperation in economic and trade areas of the “Belt and Road” Initiative, the specific chapter includes contents such as capitalising on Macao’s advantages of being a world centre of tourism and leisure and a commercial and trade cooperation service platform

between China and PSCs, and of featured finance, professional services, logistics, convention and exhibition, and personal networks of the family members of overseas Chinese, supporting the trade in participating in various development projects of the “Belt and Road” Initiative, supporting Macao in providing featured finance, convention and exhibition and other professional services for the development of the “Belt and Road” Initiative, as well as supporting the China-Portuguese Speaking Countries Cooperation and Development Fund in enhancing its role.

In terms of sub-regional economic cooperation, apart from reserving room for development for Macao’s participation in the development of the Guangdong-Hong Kong-Macao Bay Area, existing cooperation projects between Macao and various regions of the Mainland are also incorporated in the framework, including the Pan-Pearl River Delta Region, Pilot Free Trade Zones, cooperation between Macao and regions such as Hengqin, Nansha and Qianhai, supporting the development of Jiangsu-Macao Cooperation Park, and supporting the deepening of cooperation between Macao and Zhongshan Cuiheng New Area, etc.

## **16. How does the Ecotech Agreement contribute to deepening the development of Macao as a commercial and trade cooperation service platform between China and PSCs?**

In terms of deepening the development of Macao as a commercial and trade cooperation service platform between China and PSCs, the specific chapter proposes that, on the basis of the “Forum for Economic and Trade Co-operation between China and PSCs (Macao)” (Forum Macao), the two sides continue to capitalise on the advantages of Macao as the permanent hosting place of Forum Macao and the seat of the Permanent Secretariat of Forum Macao to promote the development of “One Platform, Three Centres” (Note 1) in Macao with a view to optimising the function of promoting trade and investment between China and PSCs, giving full play to the role of enabling people-to-people exchange between China and PSCs and expanding the channels for cooperation between Mainland provinces/municipalities and PSCs. In addition, the specific chapter also supports Macao actively in forging a financial service platform between China and PSCs and developing a Renminbi clearing centre for PSCs, etc. with a view to promoting the development of feature finance in Macao.

The provisions display the content of Macao's development as a commercial and trade cooperation service platform between China and PSCs, provide favourable conditions for the implementation of work in future, and sufficiently reflect the expectation, attention and support of the Mainland on Macao's development as a commercial and trade cooperation service platform between China and PSCs.

(Note 1: "One Platform, Three Centres" refers to "Information-sharing Platform for Bilingual Professionals and Business Cooperation, Exchanges and Interaction between China and PSCs", "Commerce and Trade Service Centre for Small and Medium Enterprises of Forum Macao Participating Countries", "Convention and Exhibition Centre for Economic and Trade Cooperation between Forum Macao Participating Countries" and "Food Product Distribution Centre for PSCs".)

#### **17. Will there be any substantive measures introduced in major cooperation areas after the conclusion of the Ecotech Agreement?**

The Ecotech Agreement does not cover market access commitments or substantive liberalisation measures, but lays the foundation and charts the course for future cooperation between the two sides.

"Major cooperation areas" are sequenced by consideration factors such as the importance, scales and development prospects of Macao's industries, reflecting specifically the own features of Macao's economic development and demonstrating clearly the development trends and planning of Macao's industries, making the Agreement respond better to the need arising from Macao's development and favours the future commencement of work.

Apart from strengthening the cooperation measures in the existing areas, including 12 areas such as tourism, convention and exhibition, traditional Chinese medicine and medicinal products industry, finance, electronic commerce, etc., the Agreement includes cooperation in legal and dispute resolution and in accounting as two new major cooperation areas (Note 2), i.e. 14 areas in total, among which state expressly to promote the development of Macao as an arbitration centre for resolving commercial disputes between enterprises from China and PSCs, and at the same time enhance the training of and exchanges between arbitrators of legal and dispute resolution from the Mainland and Macao. This measure does not only strengthen the arbitration system of Macao, but also highlights the important role of Macao as a commercial and trade cooperation service platform between China and PSCs.



(Note 2: The 14 major cooperation areas are: tourism, convention and exhibition, traditional Chinese medicine and medicinal products industry, finance, electronic commerce, environment, cooperation in legal and dispute resolution, accounting, culture, innovative technology, education, small and medium enterprises, intellectual property, trademark and branding.)

**18. The Ecotech Agreement does not cover commitments on access to markets and substantive liberalisation measures to provide basic conditions for future cooperation between the Mainland and Macao and clarify the direction for cooperation, how does it benefit the trade in general?**

The Ecotech Agreement includes 14 major cooperation areas of which the contents are very specific and clear, such as strengthening training, publicity and promotion, and market supervision, etc. for cooperation in tourism, further facilitations for endorsement of travel documents of Mainland personnel visiting Macao and cross-border payment of convention and exhibition fees to the trade for cooperation in convention and exhibition, and supporting Macao in establishing an export credit insurance system for financial cooperation, etc. Such contents of cooperation provide favourable business conditions for the trade.

**19. What areas of cooperation are included in trade and investment facilitation under the Ecotech Agreement?**

In the area of trade and investment promotion, promoting trade and investment between the two sides and PSCs is proposed in a targeted manner, contents in respect of statistics and tax administration are also included; In the area of quality supervision, inspection and quarantine, facilitations that favour the import of food products from PSCs into the Mainland through Macao are included with a view to forging a food product distribution centre for PSCs. Furthermore, content of cooperation in workforce training and employment and youth entrepreneurship is included to provide a wider space for Macao residents' professional development, youth entrepreneurship and career planning.