

**CEPA Agreement between the Mainland and Macao on Achieving Basic
liberalization of Trade in Services in Guangdong (Hereinafter referred to as “the
Agreement”) Frequently Asked Questions**

1. Why is the Agreement a subsidiary agreement signed under CEPA? How is it different from the Supplements signed in previous years? What is its relationship with CEPA and its Supplements?
 - Since the signing of the Agreement in 2003, liberalization measures under CEPA and its Supplements have been listed positively. The newly signed Agreement adopts an innovative management approach of positive and negative listings, and focuses on liberalization measures in Guangdong for Macao.
 - In view that the liberalization approach under the Agreement is different from the past, and that the Agreement is only applicable to Guangdong, the two sides have accorded in signing a subsidiary agreement under the framework of CEPA to differentiate it from the previous Supplements.
 - The liberalization measures under CEPA and its Supplements will remain in force. Within the area of the Guangdong Province, in the event that the provisions of CEPA conflict with those of the newly signed Agreement, the provisions of the newly signed Agreement shall prevail.

2. What new provisions are added to the Agreement?
 - In accordance with the WTO rules and the prevailing international practices, provisions for national treatment, most-favoured treatment and reserved restrictive measures among others have been introduced to the Agreement. This is the pre-requisite for liberalization in the form of negative listing.

3. Why is the Agreement applied to Guangdong only?
 - Due to the geographic proximity, the Guangdong Province has been the strategic location for Macao service suppliers to invest in the Mainland through CEPA. It is also the Mainland’s most liberalized region to Macao. In particular, from 2008 onwards, some measures under CEPA had an early and pilot implementation, for the services sectors of tourism, conventions and exhibitions as well as logistics, and so on, in the Guangdong Province. This implementation has yielded satisfactory results and some measures have been successfully extended and implemented nationwide, thus far.
 - The Agreement is the first free trade agreement signed by the Mainland with the pre-establishment national treatment and in the form of negative listing.

The achievement of early basic liberalization of trade in services in the Guangdong Province will enable the Mainland to accumulate experience for achieving basic liberalization of trade in services between the Mainland and Macao.

4. The Agreement has adopted the negative list approach for further liberalization. How is it different from the previous positive list? What are the advantages or significance? To what extent liberalization is reflected in trade in services?

- Since its signing in 2003, liberalization content under CEPA and its Supplements have been listed positively. Under the liberalization approach of positive list, it sets out the liberalization measures for Macao by the Mainland. This is in line with the actual situation of economic development in the Mainland, as well as the bilateral economic and trade cooperation at that time. It has also fulfilled the needs of Macao investors entering the Mainland market.
- “Negative list”, is also used, interchangeably, as “negative listing”. For the purpose of international investment agreements, negative list yields the contracting parties to set out a list in the annex of the agreement reserving measures or sectors that do not conform to the obligation of national treatment, most-favoured treatment and requirements for track record and high standard of management. With the deepening in trade and economic exchanges of the two places, together with the further opening up of the Mainland market, the newly signed Agreement has adopted the negative list under the mode of “commercial presence”.
- Measures listed in the negative list are reserved restrictive measures. With the adoption of negative list, except for those reserved restrictive measures as well as the measures on standards management, the Mainland will not impose any particular restrictions on eligible Macao service suppliers in the Guangdong Province in terms of market access requirement, namely “permitted if not forbidden”. The negative list is a more transparent and comprehensive way of listing liberalization commitments. Meanwhile, regarding the mode of cross-border supply, consumption abroad, movement of natural persons (collectively known as “cross-border services”), as well as sectors of telecommunications and cultural services, the Mainland’s additional liberalization measures for Macao in Guangdong will remain positively listed, on item basis.
- Upon implementation of the Agreement, the Guangdong Province has opened up 153 services trade sub-sectors to Macao service industry, accounting for

95.6% of the 160 sub-sectors under WTO’s Services Sectoral Classification System. According to the standards of WTO’s services classification, basic liberalization on trade in services has been achieved between Guangdong and Macao.

5. Are there any examples on how to interpret the negative list?

- Measures listed under the negative list are reserved restrictive measures. Upon the adoption of negative list, except for those reserved restrictive measures as well as the measures on standards management, the Mainland will not impose any particular restrictions on eligible Macao service suppliers in the Guangdong Province in terms of market access conditions, namely they can enjoy the same treatment as the Mainland enterprises. Illustrations are as follows:

Measures listed in the negative list	Interpretation
<ul style="list-style-type: none"> ➤ Can be in the Guangdong Province, while the Mainlandshall have the right of control over ➤ Except engagement in...services 	<p>Except for those reserved restrictive measures as well as the measures on standards management, the Mainland will not impose any particular restrictions on eligible Macao service suppliers in the Guangdong Province in terms of market access conditions.</p>

- However in a few sectors, the restrictive measure of “provision of ... services is restricted to... ”, which means that the services that Macao service suppliers can provide are restricted to those listed on the negative list. A specific example can be found under the sector of interdisciplinary research and development services.

6. Do provisions for national treatment and most-favoured treatment apply to all modes of services in all sectors? What are the advantages of the above-mentioned treatments?

- Provisions for National Treatment and Most-Favoured Nation treatment are the highest level of liberalization. Their specific application depends on the liberalization measures and the extent of liberalization of respective sectors. If there is no longer any restrictive measure for a particular sector in the negative list, it means that sector has achieved national treatment.
- In accordance with the provision for Most-Favoured Nation treatment, any liberalization measures included in the free trade agreements (FTA) signed

from now onwards by the Mainland with other countries and regions, which are more preferential than CEPA, will also be extended to Macao.

- The advantage of National Treatment is that it entitles Macao service suppliers the access to the Mainland market through “commercial presence” in the Guangdong Province, and the same treatment as the Mainland enterprises, in terms of market access, allowing Macao service suppliers to broaden their markets.

7. Does the application of national treatment mean that the operation of Macao enterprises in the Guangdong Province will no longer be restricted?

- The application of national treatment means that Macao service suppliers can enjoy the same treatment as the Mainland enterprises. If the Mainland enterprises are subject to relevant rules and regulations, Macao service suppliers will also be subject to the same restrictions.
- The Agreement liberalizes 130 services sectors that individually owned stores can operate, representing an additional 84 liberalized sectors under the existing CEPA and its Supplements. With the expansion of the business scope of individually owned stores, in addition to applicability of no restrictions on the number of persons engaged in the operation and that on the business area of individually owned stores, Macao residents can engage in business activities in Guangdong Province through the form of movement of natural persons, providing more opportunities for Macao’s SMEs and young entrepreneurs to starting business in the Mainland.

8. The highlight of the Agreement is the adoption of negative list for the Mainland’s specific commitments on liberalization of trade in services for Macao in the Guangdong Province as well as to accord National Treatment to Macao service suppliers. Yet, there are many restrictive measures in place for a number of sectors. Does it mean that National Treatment is not truly applied in those sectors? Why are some sectors still adopting the approach of positive list?

- Provision for National Treatment is the highest level of liberalization. Specific application depends on the liberalization measures and the extent of liberalization of respective sectors. If there is no longer any restrictive measure for a particular sector in the negative list, that sector has achieved National Treatment.
- The Agreement has opened up 153 services trade sub-sectors, accounting for 95.6% of 160 services trade sub-sectors, of which 58 sub-sectors under the mode of “commercial presence” can enjoy the national treatment. In respect

of the mode of “commercial presence” under the negative list, it covers 134 services trade sub-sectors setting out 132 measures that do not conform to and will not apply national treatment. In other words, with respect to the mode of “commercial presence”, except for the 132 reserved restrictive measures as well as the measures on standards management, the Mainland will not impose any particular restrictions on eligible Macao service suppliers in the Guangdong Province in terms of market access condition.

- In view of the particularity and complexity of individual sectors, these sectors still adopt the approach of positive list. In fact, the use of a market access management approach of positive and negative listings to set out details of liberalization in different sectors is commonly adopted under other existing FTAs.

9. Why negative list is only adopted in the mode of “commercial presence”?

- At present, Macao service suppliers operate in the Mainland mainly by setting up of enterprises, namely to provide services by means of “commercial presence”. As such, the use of negative list in respect of the mode of “commercial presence” is primarily to meet the most common business mode adopted by Macao industries, helping them to better tap into the Mainland market.

10. How could the “filing of record” improve the level of investment? How to apply “filing of record”? What are the necessary documents that Macao service supplier should prepare?

- In accordance with the Agreement, starting from 1 March 2015, investment in the liberalized services sectors by Macao Service Suppliers in Guangdong Province, except those mentioned in the Agreement, the establishment of a company and the change of contract/articles of association of a company will be subject to filing of record, followed by the application of formalities, in accordance with relevant regulations of the Mainland. In addition, the establishment and change of commercial presence other than a company will be subject to the existing regulations and formalities.
- According to the MOFCOM Announcement No. 712 of 2015, the “filing of record” of investment for Hong Kong and Macao service suppliers in the Guangdong province 《港澳服務提供者在廣東省投資備案管理辦法（試行）》，with effect from 1 March 2015, Macao services supplier can submit their application for establishment of a company and the change of contract/articles of association of a company online

(<http://wzzxbs.mofcom.gov.cn/app/entp/approve>) in the form of “filing of record”. Successful applications are entitled to certificates issued by the local departments, where the enterprises are registered. So far, the local competent commerce departments of Guangzhou, Shenzhen, Zhuhai and Shantou are responsible for the “filing of record” of the establishment and change of commercial presence for Macao services suppliers. Under normal circumstances, the certificate can be collected in three days.

- Change of commercial presence mainly include the following 12 types of changes: change in total investments or registered capital; transfer of share rights or assignment of interest; pledge of share rights; merge or division; change in scope of business or business term; early termination; change in contribution or term; withdrawal of contribution of Macau service suppliers from the joint venture; change in company name or registered address, and so on. Applicants shall be responsible for the truthfulness, completeness, and validity of the content while submitting the “filing of record”.