

For information

On 28 June 2017

**LEGISLATIVE COUNCIL
PANEL ON COMMERCE AND INDUSTRY**

**TRADE RELATIONS BETWEEN THE MAINLAND
AND HONG KONG**

**THE MAINLAND AND HONG KONG
CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT:
INVESTMENT AGREEMENT AND
AGREEMENT ON
ECONOMIC AND TECHNICAL COOPERATION**

INTRODUCTION

This note informs Members of the Investment Agreement and Agreement on Economic and Technical Cooperation (Ecotech Agreement) signed on 28 June 2017 under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) between Hong Kong Special Administrative Region Government (HKSARG) and the Ministry of Commerce.

BACKGROUND

2. The Mainland and Hong Kong signed the CEPA in 2003. Thereafter, pursuant to Article 3 of CEPA, the two sides broadened and enriched the

content of CEPA and have since signed ten Supplements and two agreements¹, expanding market liberalisation and further facilitating trade and investment. The latest Agreement on Trade in Services consolidates and expands services liberalisation commitments introduced under CEPA since 2003. It was implemented on 1 June 2016 to basically achieve liberalisation of trade in services between the Mainland and Hong Kong.

3. The National 13th Five-Year Plan states that the Central Government will step up efforts to further open up its markets to Hong Kong and advocate the enhancement of CEPA. The Mainland and Hong Kong signed the Investment Agreement and Ecotech Agreement to enhance CEPA in line with a modern and comprehensive free trade agreement, providing for promotion and protection of increasing investments between the two places as well as fostering economic and technical cooperation and exploring new areas of cooperation. The legal texts of the Agreements are available at the Trade and Industry Department's (TID) website at –

http://www.tid.gov.hk/english/cepa/legaltext/cepa_legaltext.html

DETAILS

Investment Agreement

4. The Investment Agreement covers investments, in the forms of establishment of enterprises or acquisition of assets on one side by an investor from the other side. Similar to international investment agreements, including our Investment Promotion and Protection Agreements (IPPAs) with foreign partners, the Investment Agreement provides for commitments of both sides relating to promotion and protection of investments. In addition, the

¹ The two agreements are, namely, the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong signed in December 2014, and the Agreement on Trade in Services signed in November 2015. For details of these two agreements, please refer to this panel's information papers in Year 2014-15 No. CB(1)373/14-15(01) and in Year 2015-16 No. CB(1) 213/15-16(01) respectively.

Investment Agreement includes commitments of both sides with respect to admission of investments from the other side (i.e. the “market access” element). Since the commitments for admission of investments in services sectors have been covered under the Agreement on Trade in Services already implemented, the Investment Agreement will cover admission of investments outside the scope of the Agreement on Trade in Services (including manufacturing sectors, mining sectors and investment in assets, hereinafter referred to as “non-services sectors”). The provisions on investment protection under the Investment Agreement apply to investments in both services and non-services sectors. The key provisions of the Investment Agreement are highlighted in the following paragraphs.

Market Access

5. The substantive obligations relating to non-discriminatory treatment of investments and investors and “market access” for investments include –

- (a) Article 5 (National Treatment);
- (b) Article 6 (Most Favoured Treatment);
- (c) Article 7 (Performance Requirements); and
- (d) Article 8 (Senior Management, Boards of Directors and Entry of Personnel).

6. Pursuant to these obligations, both sides commit to according to investments and investors of the other side treatment no less favourable than that accorded to investments and investors of one side or any other party, imposing no performance requirements (such as requirement to export a given level or percentage of goods or services) on investments of the other side, and imposing no nationality requirements on senior management of enterprises which are investments of the other side, etc. Measures not conforming to the above obligations are scheduled under Annex 2 to the Agreement, using the negative listing approach. Under the Investment Agreement, Hong Kong

investors enjoy more preferential investment access to the Mainland than investors from other countries and regions in specific non-services sectors².

Investment Protection

7. The substantive obligations pertaining to investment protection are similar to those in our IPPAs with foreign partners, including –

- (a) Article 11 (Expropriation);
- (b) Article 12 (Compensation for Losses);
- (c) Article 13 (Subrogation); and
- (d) Article 14 (Transfers).

Under these provisions, the two sides commit to providing for investment protection including non-discriminatory treatment in compensation for losses owing to war, a state of emergency, riot, natural disaster or other similar events; compensation for expropriation of investments; recognition of transfer of rights under the Investment Agreement upon payment made by one side or its agency to an investor under a guarantee or a contract of insurance with respect to its investment; transfer abroad of investments and returns; etc.

Investment Facilitation and Settlement of Investment Disputes

8. The Investment Agreement puts in place measures on investment facilitation. For example, for examining and approving applications for establishment of investments by Hong Kong investors in the Mainland, the Mainland will endeavour to establish uniform standards and procedures in examining and approving investment applications, stipulate a reasonable timeframe for examining investment applications and making decisions, keep

² Including mining of special and scarce coals; smelting of tungsten; manufacture of common ships (including subsection); manufacture of civil aircrafts (for trunk and branch lines) and civil helicopters (of three tons or more); and manufacture of general purpose aircrafts. The Mainland also commits that when the franchise is completely liberalised to Mainland investors, Hong Kong investors will be allowed to perform, in the form of equity joint venture or cooperation, exploitation of land-based petroleum oil, natural gas and coal seam gas.

the costs of the investors in the application process to the lowest on a best endeavour basis, etc.

9. The Investment Agreement provides a mechanism for settlement of an investment dispute arising from an alleged breach of the substantive obligations of the Agreement by one side causing loss to an investor of the other side. The mechanism lists available means for dispute settlement by the respective sides –

- (a) amicable consultation between the disputing parties;
- (b) complaint handling procedures;
- (c) coordination within the government or between the two sides to oversee dispute resolution of the respective sides;
- (d) mediation; and
- (e) legal proceedings as provided for under the domestic laws on the respective sides.

Mainland's Liberalisation Measures

10. The Investment Agreement will be the first investment agreement of the Mainland with pre-establishment national treatment commitments in the form of negative list for investments in non-services sectors. In short, the Mainland commits to providing national treatment to investments and investors of Hong Kong in all non-services sectors, except the 26 measures³ listed in Annex 2.

11. Hong Kong enterprises seeking to establish commercial presence⁴ on the Mainland in non-services sectors with preferential access provided for

³ Covering sectors such as exploitation of petroleum oil and natural gas; exploitation and smelting of mineral products; manufacture of vehicles; manufacture of ground effect or water effect aeroplanes and the manufacture of drones and aerostats; production of tobacco products; investment in financial products; traditional arts and crafts and production of Chinese medicinal products, etc.

⁴ Constituting, acquiring or maintaining an enterprise.

under the Investment Agreement are required to meet the definition of “investors” under the Investment Agreement. The specific requirements include the Hong Kong enterprises must be incorporated or established in Hong Kong, and must fulfil the requirements of minimum period of operation, payment of profit tax, owning or renting business premises, and employment of staff for its substantive business operations. The Hong Kong enterprises must apply for Hong Kong Investor Certificates from Trade and Industry Department. Annex 1 to the Agreement sets out the requirements pertinent to the definition of “investor”. Such requirements are similar to those pertinent to Hong Kong Service Suppliers under the Agreement on Trade in Services at present. Investors other than those making investments in the form of establishment of commercial presence, such as by acquiring assets, are not required to meet the specific requirements on substantive business operations in Hong Kong and are not required to apply for the Hong Kong Investor Certificate.

12. The “Most-Favoured Treatment” provision of the Agreement specifies 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 Hong Kong investments and investors.

Hong Kong’s Liberalisation Measures

13. Following past practice, Hong Kong will not impose new discriminatory measures on Mainland investments and investors in non-services sectors covered by the Agreement.

14. The Agreement shall be implemented as from 1 January 2018.

Ecotech Agreement

15. The Ecotech Agreement updates and strengthens previous CEPA commitments on cooperation across various sectors and a range of trade and

investment facilitation areas, as well as adds new cooperation areas in relation to “Belt and Road” Initiative and Sub-regional Cooperation.

16. Substantive elements of the Ecotech Agreement include –
- (a) Chapter 3 on Cooperation in Economic and Trade Areas of the “Belt and Road” Initiative lays the foundation for the two sides to take forward cooperation at different levels and across a wide range of areas, including those where Hong Kong has expertise and advantages, and highlights participation by the Hong Kong business community in the “Belt and Road” Initiative. Under the framework of the Ecotech Agreement, relevant agencies and industry participants on the two sides can map out detailed activities of interest to them;
 - (b) Chapters 4 and 6 on Cooperation in Key Areas and Trade and Investment Facilitation respectively charts the course of and updates the activities in major sectors such as Financial Cooperation (Article 5), Cooperation in Tourism (Article 6), Cooperation in Legal and Dispute Resolution Services (Article 7), Cooperation in Accounting (Article 8), Cooperation in Innovation and Technology (Article 12), Cooperation in Electronic Commerce (Article 14), Cooperation in Intellectual Property (Article 16), and Quality Supervision, Inspection and Quarantine (Article 23).
 - (c) Chapter 5 on Sub-regional Economic and Trade Cooperation brings the ongoing cooperation between Hong Kong and different regions in the Mainland, including the Pan-Pearl River Delta Region (Article 19), Pilot Free Trade Zones (Article 20), as well as Qianhai, Nansha and Hengqin (Article 21), under a systematic framework. Responsible agencies on the two sides will continue to enhance cooperation under their respective purview in different regions.

A summary of major new cooperation activities in the Ecotech Agreement is at Annex. The Agreement came into force on the date of signing.

Conclusion

17. The Investment Agreement brings enhancement to the overall CEPA framework through expansion of market access commitments to non-services sectors and introduction of obligations on investment protection. The Investment Agreement ensures stability in the investment regimes of both sides, thereby upholding investors' confidence and promoting investment liberalisation and facilitation.

18. The Ecotech Agreement consolidates and updates the economic and technical cooperation activities set out in CEPA and its Supplements to cater for the trend and needs for the development of Hong Kong and the Mainland. It also builds the basis and sets the direction for closer cooperation between the two places in future. The Ecotech Agreement includes the cooperation in the economic and trade areas of the "Belt and Road" Initiative and Sub-regional Cooperation under the systemic framework of CEPA, thereby providing Hong Kong industries with conducive opportunities for participation in the national development strategies.

19. With the two new Agreements, CEPA becomes a comprehensive modern free trade agreement covering four important pillars of trade in goods, trade in services, investment, and economic and technical cooperation. CEPA ensures that Hong Kong traders continue to enjoy the most preferential treatment in accessing the Mainland market.

PUBLICITY

20. A media briefing was held by the relevant bureaux and departments right after the signing of the Agreements to introduce the Agreements to the media and the trade. Information papers will be issued to various trade-related

advisory bodies and trade associations. TID maintains a dedicated website to provide the public with the latest information on the Agreements.

Commerce and Economic Development Bureau
Trade and Industry Department
28 June 2017

Agreement on Economic and Technical Cooperation

Major New Cooperation Activities

Areas	Cooperation Activities
Cooperation in Legal and Dispute Resolution Services	<ul style="list-style-type: none">➤ Support professional institutions in promoting the legal and dispute resolution services of the two places, and building cooperation and exchange platforms to enhance business exchange and collaboration.➤ Support Hong Kong in establishing itself as a centre for international legal and dispute resolution services in the Asia-Pacific region.
Financial Cooperation	<ul style="list-style-type: none">➤ Enhance the two-way cross-border Renminbi (RMB) fund flow mechanism and closer financial cooperation between the two places, including actively promoting the development of cross-border investment activities, and increasing the investment quota of RMB Qualified Foreign Institutional Investors (RQFII) for Hong Kong.➤ On the basis of prudent risk management, study further expansion of the scope of eligible securities under the mutual capital market access scheme between the two places in an orderly manner, set a timetable for the establishment of an investor identification mechanism under the mutual market access scheme, and when the relevant conditions are fulfilled, to realise the inclusion of exchange-traded funds (ETFs) as eligible securities under the mutual market access scheme.

Areas	Cooperation Activities
	<ul style="list-style-type: none"> <li data-bbox="591 281 1386 604">➤ Review and assess the progress of the mutual recognition of funds between the Mainland and Hong Kong, and continuously adjust and enhance the rules and regulatory policies on mutual recognition in view of new situations and new issues that arise in the course of the mutual recognition process. <li data-bbox="591 646 1386 970">➤ Continue to encourage Mainland enterprises to issue bonds in RMB and in foreign currencies in Hong Kong, promote the realisation of Mainland enterprises issuing RMB-denominated stocks in Hong Kong and making use of Hong Kong platform to raise capital, and promote the full circulation of H-shares. <li data-bbox="591 1012 1386 1482">➤ Actively promote mutual access between bond markets in the two places, including the active promotion of mutual access between exchange-listed bond markets in the two places. Support Hong Kong's development of offshore risk management business for the Mainland financial markets, and study the models of mutual access between bonds, over-the-counter financial derivatives and commodity derivatives markets in the two places.
<p>Cooperation in Accounting</p>	<ul style="list-style-type: none"> <li data-bbox="591 1526 1386 1801">➤ Improve the operational mechanism of ongoing convergence of accounting and auditing standards between the two places, jointly contribute in the international accounting and auditing standards setting organisations, and facilitate the setting of relevant high-quality international standards. <li data-bbox="591 1843 1386 1877">➤ Support Hong Kong accounting professionals who

Areas	Cooperation Activities
	<p>have qualified as Chinese Certified Public Accountants to become partners of accounting firms in the Mainland, and support Mainland accounting professionals who have qualified as Hong Kong Certified Public Accountants to become partners of accounting firms in Hong Kong.</p> <ul style="list-style-type: none"><li data-bbox="591 646 1393 926">➤ Support the accounting sector of the two places to play a role in developing accounting and auditing standards, as well as establishing the management system of the accounting industry, and the appointment of Hong Kong accounting professionals as accounting advisory consultants.<li data-bbox="591 961 1393 1100">➤ Support Mainland accounting firms in setting up representative offices, branches, and developing member firms in Hong Kong.<li data-bbox="591 1136 1393 1415">➤ Encourage accounting firms of the two places to strengthen cooperation and exchanges in business activities, such as deepening the development of the “Belt and Road” Initiative, and the provision of auditing services for listing of Mainland enterprises outside the Mainland.

Areas	Cooperation Activities
Cooperation in Innovation and Technology	<ul style="list-style-type: none"><li data-bbox="591 281 1385 940">➤ Strengthen exchanges and cooperation between the two places in the area of innovation and technology, and through complementary advantages and synergy effect, bring in outstanding international research institutes and talent, and promote technological research and development, and the transfer of research and development results among institutes and enterprises in the Mainland, Hong Kong and overseas. In addition, the Mainland will support Hong Kong in developing innovation and technology industry in areas including robotics, bio-medicine, smart city and financial technology, and nurturing emerging industries.<li data-bbox="591 982 1385 1413">➤ Support the cooperation and exchanges of the high-tech zones and co-working space between the two places, encourage young people in Hong Kong to innovate and develop start-up businesses, and promote the commercialisation of innovation and technology. Enhance the communication and exchanges of young entrepreneurial talents between the two places, and provide them with room for development.
Cooperation in Electronic Commerce	<ul style="list-style-type: none"><li data-bbox="591 1446 1385 1623">➤ Strengthen exchanges between the two places regarding cross-boundary data flow, and form a joint working group to study feasible policy measures and arrangements.

Areas	Cooperation Activities
Cooperation in Intellectual Property	<ul style="list-style-type: none">➤ Continue to enhance cooperation between the Mainland and Hong Kong in the areas of nurturing talents and personnel training.➤ Promote cooperation between the Mainland and Hong Kong in the implementation and exploitation of intellectual property, intellectual property intermediary services, intellectual property trading, and handling of intellectual property disputes through alternative dispute resolution (including arbitration or mediation).➤ Continue to support the enhancement of Hong Kong patent system, provide technical support and assistance for the implementation of the patent system in Hong Kong in various areas covering substantive examination, review, post-grant patent disputes, and automation services.➤ Support the cooperation in intellectual property creation, exploitation, protection and the development of intellectual property trading between Guangdong and Hong Kong, promote the publicity and education of intellectual property between the two places, and assist the development of high-end intellectual property service industry.
Cooperation in Trademark and Branding	<ul style="list-style-type: none">➤ Strengthen exchanges and cooperation between the Mainland and Hong Kong in matters relating to the “Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks”.

Areas	Cooperation Activities
<p>Quality Supervision, Inspection and Quarantine (related to Testing and Certification)</p>	<ul style="list-style-type: none"> ➤ Actively consider recommending an eligible certification body located in Hong Kong to join the International Electrotechnical Commission System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) as a National Certification Body (NCB) of China. ➤ Consider applications of eligible certification bodies set up by Hong Kong enterprises in the Mainland to become designated certification bodies under the China Compulsory Certification (CCC) System.
<p>Deepening cooperation in economic and trade areas of the “Belt and Road” Initiative</p>	<ul style="list-style-type: none"> ➤ Establish an operational liaison mechanism, and strengthen information exchanges and communication on the “Belt and Road” Initiative between the two places. ➤ Encourage the establishment of multi-level communication channels by government departments, industry organisations and investment promotion agencies of the two sides for information sharing. ➤ Provide an exchange platform to support semi-official organisations, non-official organisations and the trade in the two places to play a part in facilitating the implementation of the “Belt and Road” Initiative. ➤ Give full play to Hong Kong’s strengths in financial services, professional services, logistics, trading, etc., and support the trade of Hong Kong in participating in the development of various

Areas	Cooperation Activities
	<p>industrial parks and economic zones.</p> <ul style="list-style-type: none"> ➤ Support the trade of the two places to strengthen cooperation, jointly participate in the major projects of the “Belt and Road” Initiative, and jointly explore the markets along the “Belt and Road”. Support Hong Kong in providing professional services for the “Belt and Road” Initiative, including the provision of professional services such as legal, dispute resolution, accounting and taxation services in a market-oriented approach for Mainland enterprises’ expansion into overseas markets and investment projects. Support the cooperation between the two places in the integration of large-scale infrastructure projects in respect of construction and operation. ➤ Enhance publicity campaigns related to the “Belt and Road” Initiative. Support Hong Kong in organising high-level “Belt and Road” thematic forums. Encourage Hong Kong investment promotion agencies, industry associations and trade organisations to launch activities, such as seminars and training, relating to the “Belt and Road” Initiative.
<p>Deepening Economic and Trade Cooperation in Pan-Pearl River Delta Region</p>	<ul style="list-style-type: none"> ➤ Give full play to existing cooperation platforms and liaison mechanisms to continue deepening economic and trade cooperation in Pan-Pearl River Delta Region. ➤ Capitalise on the advantage of Hong Kong as an international financial, trading and shipping centre, strengthen cooperation of industries such as

Areas	Cooperation Activities
	<p>finance, commerce and trade, technology, tourism, etc., in the Pan-Pearl River Delta Region, promote the expansion of mutual investment, and jointly explore the international markets.</p> <ul style="list-style-type: none"> ➤ Encourage enterprises in the Pan-Pearl River Delta Region to utilise Hong Kong as a platform to explore cooperation in investment with the countries and regions along the “Belt and Road”. ➤ Support the nine provinces/regions in the Pan-Pearl River Delta Region to leverage their own advantages to build various types of cooperation zones with Hong Kong. ➤ Actively promote the development of Guangdong-Hong Kong-Macao Bay Area building on the existing basis of economic and trade cooperation.
<p>Supporting the Participation of Hong Kong in the Development of Pilot Free Trade Zones</p>	<ul style="list-style-type: none"> ➤ Make use of the economic and trade cooperation mechanisms between the two places to enhance the notification of policies and information exchanges between the two sides on the development of the Mainland Pilot Free Trade Zones. ➤ Study the further liberalisation for Hong Kong service industries in the Pilot Free Trade Zones under the framework of CEPA; encourage Hong Kong to participate actively in the national strategies on major development through the Pilot Free Trade Zones; capitalise on the strategy of “leveraging on Hong Kong and Macao, serving the Mainland and reaching out globally” of the China (Guangdong) Pilot Free Trade Zone; and further

Areas	Cooperation Activities
	<p>promote the liberalisation of trade in services between Guangdong and Hong Kong.</p> <ul style="list-style-type: none"> ➤ Encourage Hong Kong micro, small and medium enterprises and youth to start their businesses in the Pilot Free Trade Zones. ➤ Give full play to Hong Kong's strength in the aspects of investment management, trade regulation and financial innovation, etc. to integrate with the reform and liberalisation in the Mainland Pilot Free Trade Zones, devise new modes of development and explore the potential for cooperation.
<p>Deepening the Cooperation between Hong Kong and Qianhai, Nansha and Hengqin</p>	<ul style="list-style-type: none"> ➤ Give full play to existing cooperation platforms and liaison mechanisms to promote the deepening of cooperation between Hong Kong and Qianhai, Nansha and Hengqin. ➤ Support Qianhai, Nansha and Hengqin in taking forward further liberalisation to Hong Kong in key areas such as finance, transportation and shipping, commerce and trade, professional services and technology on an early and pilot basis, and explore new modes to deepen economic cooperation with Hong Kong. ➤ Promote the setting up of cooperation demonstration zones for Guangdong and Hong Kong talents, and support Hong Kong youth to develop and start their businesses in Nansha, Qianhai and Hengqin, for example, at Guangdong Hong Kong and Macao Youth Entrepreneur Hub, and Youth Innovation and Entrepreneur Hub, etc.