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What is CEPA?

The Closer Economic Partnership Arrangement ("CEPA") is a free trade agreement between Mainland China and Hong Kong that offers Hong Kong products, companies and residents preferential access to the Mainland market. Many of the preferences go beyond China’s WTO concessions. CEPA is an open agreement and both sides hold regular meetings on further concessions and the details for implementation. Ten Supplements have been signed between 2004 and 2013 with the aim of expanding market liberalization and further facilitating trade and investment for the economic cooperation of the two places. In order to achieve more liberalisation of trade in services between Guangdong and Hong Kong, the two sides signed the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalization of Trade in Services in Guangdong ("Agreement") on 18 December 2014 under the CEPA framework. The Agreement was implemented on 1 March 2015.

CEPA mainly covers the following areas:

- the removal of tariffs and other barriers on trade in goods;
- the opening up of the Mainland market to Hong Kong service suppliers;
- measures for the promotion of trade and investment;
- mutual recognition of professional qualifications;
- strengthening of cooperation in the areas of finance, tourism and trade and investment facilitation between Mainland China and Hong Kong.

Trade in Goods

Qualifying goods

All products of Hong Kong exported to Mainland China may enjoy tariff free treatment except for certain types of prohibited articles on condition that the products meet the prescribed rules of origin ("ROO"). For products falling under a large number of tariff codes, the ROO have already been determined. For products that to date have no agreed ROO, there exists a mechanism whereby interested enterprises may apply and request to include the products in subsequent phases of ROO discussions which will be held twice a year.

To qualify for duty free import, products must satisfy the ROO requirements. Under these requirements products are deemed to be of Hong Kong origin if they satisfy either of the following conditions: the products are obtained entirely in Hong Kong or the goods have undergone substantial transformation in Hong Kong.

There are five different criteria for determining whether products have undergone substantial transformation in Hong Kong:

- "Manufacturing or processing operations": manufacturing or processing operations carried out in Hong Kong have conferred essential characteristics to the products;
- "Change in tariff heading": the tariff heading of the product under the Product Description and Harmonised System Code has changed as a result of manufacturing or processing operations exclusively carried out in Hong Kong;
- "Value-added content": the total value of raw materials and component parts originating in Hong Kong, combined with labour costs and product development costs incurred in Hong Kong, being greater than or equal to 30% of the FOB value of the exporting goods, and that the final manufacturing or processing operations should be completed in the area of Hong Kong. Where Hong Kong incorporates raw materials and components parts originating in Mainland China as part of the exporting goods, such raw materials and component parts should be regarded as originating in Hong Kong in the calculation of the valued-added content of the exporting goods; the value-added content of such exporting goods should
be greater than or equal to 30%, and moreover, when the value of raw materials and component parts originating in Mainland China is not taken into account, the value-added content should be greater than or equal to 15%;

- “Other criteria”: other criteria than the foregoing agreed by the two sides; and
- “Mixed criteria”: use of two or more of the above criteria to determine origin.

The ROO requirements applicable to each type of product are set out in detailed tables.

The two sides have also agreed not to adopt any anti-dumping or countervailing measures against the other side’s products. The Mainland has undertaken not to impose tariff rate quotas on products of Hong Kong origin.

Application procedure

A Hong Kong manufacturer must first apply to the Hong Kong Trade and Industry Department (“TID”) for Factory Registration. After having obtained Factory Registration, a manufacturer can lodge an electronic application for a Certificate of Hong Kong Origin - CEPA to the TID or any one of the five government-approved certification organisations. The Certificate must then be passed on to the Mainland importer who will produce the Certificate to the Mainland Customs in order to claim duty free treatment for the imports.

Overseas manufacturers

An overseas manufacturer is not required to establish itself a presence in Hong Kong to take advantage of CEPA. It can partner up with, or outsource production to, a Hong Kong manufacturer.

Trade in Services

Service sectors

CEPA provides for liberalised market access in a wide range of service sectors ahead of China’s liberalisation schedule pursuant to its WTO obligations and facilitates the recognition of Hong Kong professional and technical qualifications.

Under CEPA, Hong Kong service suppliers enjoy preferential treatment when setting up business in various service sectors in the Mainland. The Supplements and the Agreement continue to introduce further liberalisation measures.
The service sectors covered by CEPA are as follows:

<table>
<thead>
<tr>
<th>Accounting</th>
<th>Other transport</th>
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<tr>
<td>Advertising</td>
<td>Other services</td>
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<tr>
<td>After-death facilities services</td>
<td>Packaging</td>
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<tr>
<td>Air transport</td>
<td>Patent agency</td>
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<tr>
<td>Audiovisual</td>
<td>Photographic</td>
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<tr>
<td>Banking</td>
<td>Placement and supply services of personnel</td>
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<tr>
<td>Building-cleaning</td>
<td>Printing</td>
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<tr>
<td>Computer and related services</td>
<td>Public utility</td>
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<tr>
<td>Construction and related engineering</td>
<td>Rail transport</td>
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<tr>
<td>Convention and exhibition</td>
<td>Real estate</td>
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<tr>
<td>Courier</td>
<td>Related scientific and technical consulting services</td>
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<tr>
<td>Cultural</td>
<td>Rental/leasing relating to personal and household goods without operators</td>
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<tr>
<td>Distribution</td>
<td>Research and development</td>
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<tr>
<td>Education services</td>
<td>Road transport</td>
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<tr>
<td>Environmental</td>
<td>Securities and futures</td>
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<tr>
<td>Examinations for professional and technical qualification</td>
<td>Services incidental to fishing, agriculture, hunting and forestry</td>
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<tr>
<td>Factoring services</td>
<td>Services incidental to manufacturing</td>
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<tr>
<td>Freight forwarding agency</td>
<td>Services related to management consulting</td>
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<td>Individually owned stores</td>
<td>Social services</td>
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<tr>
<td>Insurance</td>
<td>Specialty design</td>
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<tr>
<td>Interdisciplinary research and experimental development services</td>
<td>Sporting</td>
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<tr>
<td>Investigation and security</td>
<td>Storage and warehousing</td>
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<tr>
<td>Legal</td>
<td>Taxation</td>
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<td>Library, archives, museums and other cultural services</td>
<td>Technical testing, analysis and product testing</td>
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<tr>
<td>Logistics</td>
<td>Telecommunications</td>
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<tr>
<td>Maintenance and repair of equipment</td>
<td>Tourism</td>
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<tr>
<td>Management consulting</td>
<td>Trade mark agency</td>
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<tr>
<td>Maritime transport</td>
<td>Translation and interpretation</td>
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<tr>
<td>Market research</td>
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<tr>
<td>Medical</td>
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In some sectors the concessions surpass China’s WTO commitments. Unless otherwise provided in CEPA, Hong Kong companies remain eligible to benefit from China's WTO commitments in the various service sectors.

Different from CEPA and its Supplements, the Agreement adopts a hybrid system of negative and positive listings in further liberalisation. Compared to the traditional positive listing, negative listing is a more transparent and comprehensive way of listing liberalisation commitments. The Agreement adopts negative listing in the mode of commercial presence (i.e., to provide services by establishing legal entities in China). It means that eligible Hong Kong service suppliers can receive national treatment (i.e., same treatment as the Mainland enterprises in Guangdong), except for the reserved restrictive measures set out in the Agreement.

Under the Agreement, the Mainland has opened up 153 services trade sub-sectors in Guangdong to Hong Kong services industry, accounting for 95.6% of the total 160 services trade sub-sectors. National treatment applies to Hong Kong service suppliers in 58 services trade sub-sectors. Examples of such services trade sub-sectors are taxation services, computer and related services, rental/leasing services without operators, advertising services and management consulting services.

The breadth and depth of liberalisation under the Agreement also surpass the previous measures and Hong Kong investors interested in entering the Guangdong may benefit from the liberalisation measures offered by the Agreement.

Benefits

The CEPA benefits in services are situated mainly in four areas:

- earlier market access: Hong Kong service suppliers can enter the PRC between one to five years earlier than under the WTO timetable;
- higher equity share: Hong Kong service suppliers are permitted to hold a higher equity share (in certain service sectors even up to 100%) in PRC service companies;
- lower capital thresholds: capital requirements to set up in the PRC have been reduced substantially thus opening up the field to smaller players; and
- recognition of Hong Kong qualifications: eligible Hong Kong residents are allowed to take qualification examinations for professionals and technicians in the Mainland in a wide range of specialisations and to obtain the relevant professional qualification certificates.

Qualifying criteria

Hong Kong service suppliers can be individuals or juridical persons. Where a Hong Kong individual is eligible for a benefit, the person must be a permanent resident of Hong Kong and in some cases also be a PRC national. A juridical person includes any form of organisation including corporation, trust, partnership, joint venture, sole proprietorship or association.

Except in the legal sector, a juridical person must satisfy the following criteria to qualify as a “Hong Kong service supplier”:

- it is incorporated or established in Hong Kong;
- it has obtained any licence or permit for providing such services if required by law;
- apart from meeting the requirements in Annex 4 and Annex 5 of CEPA, any restrictive requirements applicable to the nature and scope of the business of foreign investment entities in PRC laws, regulations and administrative regulations shall also apply;
- it pays profits tax in Hong Kong;
- it has at least three to five years (depending on the sector) of substantive operations in Hong Kong (this requirement does not apply to real estate service suppliers);
it owns or leases business premises in Hong Kong commensurate with the scope and the scale of its business; and

- 50% of its staff in Hong Kong are Hong Kong residents without limit of stay and persons from the Mainland staying in Hong Kong on a One Way Permit.

**Certification procedure**

To establish its status as a “Hong Kong service supplier”, an enterprise must apply to the TID for a Certificate of Hong Kong Service Supplier. On the strength of this Certificate, the Hong Kong service supplier can then apply to the relevant PRC authorities for permission to set up a presence in the PRC to supply the relevant services in the Mainland under CEPA. Some of the documentation to be submitted to the TID and the relevant PRC authorities needs to be verified by a China-appointed attesting officer. There may also be additional requirements for market entry depending on the service sector.

**Overseas service suppliers**

An overseas service supplier can take advantage of CEPA through a merger with, or acquisition of, a Hong Kong service supplier. Where more than 50% of the equity interest of a Hong Kong service supplier has been owned for at least one year since the merger or acquisition, it will be regarded as a Hong Kong service supplier and be eligible for any CEPA benefits accordingly.

**Financial Cooperation**

The two sides agreed to strengthen cooperation in the area of finance, by supporting Mainland banks to develop their international businesses via Hong Kong’s international financial platform, by supporting Hong Kong insurance companies to enter into Mainland insurance market via institutional set-up or capital injection, and by enhancing bilateral cooperation in the development of insurance products, business operation and operational management etc. Further, Mainland China shall amend and improve the relevant requirements in order to facilitate Mainland China enterprises to be listed in Hong Kong. Further, two sides will explore ways and means to deepen cooperation between their respective commodity futures markets and to promote the establishment of a futures market system. Two sides will also explore the lowering of the eligibility requirements for Hong Kong financial institutions to apply for Qualified Foreign Institutional Investor (QFII) status, and to support qualified Hong Kong financial institutions in setting up joint venture securities companies, fund management companies and futures companies in Mainland China. Under CEPA Supplement X, the Mainland agreed to actively study mutual recognition of fund products between the Mainland and Hong Kong; and to actively support qualified Hong Kong insurers to take part in compulsory traffic accident liability insurance business in the Mainland.

**Cooperation in Tourism**

The two sides agreed to strengthen cooperation in the area of tourism as follows:

- to jointly improve the quality of tourism services and to establish a coordination mechanism for strengthening the regulatory regime for the tourism market in the Mainland and Hong Kong etc.;
- to jointly promote overseas tourism and to build up closer cooperation between Mainland and Hong Kong in this respect;
- to encourage mutual entry of tourism enterprises and investments in Mainland and Hong Kong etc.;
- to introduce measures on joint personnel training between Mainland and Hong Kong and to support Hong Kong to develop cruise tourism.
Trade and Investment Facilitation

The two sides agreed to further strengthen economic and trade cooperation through trade and investment facilitation in ten areas: trade and investment promotion; customs clearance facilitation; commodity inspection and quarantine, food safety, quality and standardisation; electronic business; transparency in laws and regulations; cooperation of small and medium enterprises; cooperation in industries; protection of intellectual property; cooperation on branding; and cooperation on education. The two sides agreed to further strengthen cooperation in commodity inspection and quarantine, food safety, quality and standardization, and also in the area of intellectual property protection. Further, the two sides agreed to strengthen collaboration in science and technology, and to support the establishment of a branch of the Chinese National Engineering Research Centre in Hong Kong as well as to set up a High-Tech Industrialization Base in Hong Kong.

How Deacons Can Help You With CEPA

Deacons is Hong Kong's own world-class law firm, and one of the region's leaders in advising investors and trading companies on the opportunities available in the PRC. We were the first foreign law firm with 3 representative offices in the major Chinese cities of Beijing, Shanghai and Guangzhou.

Deacons can assist with CEPA in various ways:

- qualifying as a Hong Kong service supplier: we can advise on the requirements for qualifying as a Hong Kong service supplier per business sector and on Mainland business strategy under CEPA;
- application to the TID for the Certificate of Hong Kong Service Supplier: our China-appointed attesting officers can assist with the preparation and attend to the verification of the required documents and the administration of oaths of the requisite declaration as well as attending to the application to the TID;
- overseas service suppliers: we can assist with the legal matters for forming a joint venture or acquiring or merging with a Hong Kong service supplier;
- establishing Mainland China service company: we can assist with the procedures and documentation for establishing a service company in Mainland China under CEPA.

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