

31 October 2017

DECISION OF THE JOINT EFTA-HONG KONG, CHINA COMMITTEE
(HEREINAFTER REFERRED TO AS “THE JOINT COMMITTEE”)

No. 7 of 2017

(Adopted on 31 October 2017)

AMENDMENTS TO APPENDIX 1 AND 5 TO ANNEX X OF THE EFTA-HONG
KONG, CHINA FREE TRADE AGREEMENT

THE JOINT COMMITTEE,

HAVING regard to the Free Trade Agreement between the EFTA States on the one part, and the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “Hong Kong, China”), on the other, signed in Schaan on 21 June 2011, hereinafter referred to as “the Agreement”,

HAVING regard to paragraph 7 of Article 9.1 of the Agreement providing that the Joint Committee may decide to amend the Annexes and Appendices to the Agreement,

DECIDES:

1. Appendix 1 to Annex X “First list of reservations of Hong Kong, China” shall be amended with immediate effect as follows:

(a) The text listing the measures in reservation I-HKC-11, which reads:

“**Measures** Sections 2(3), 6(1), 7, 8(3)(e), 66(3)(a) of the Insurance Companies Ordinance (Cap. 41)

Item 11(a) of the Guidance Note 1 – Authorisation Guidelines issued by the Office of the Commissioner of Insurance pursuant to Section 4A(3) of the Insurance Companies Ordinance (Cap. 41)”

shall be replaced with the following text:

“**Measures** Sections 2(3), 6(1), 7, 8(3)(e), 66(3)(a) of the Insurance Ordinance (Cap. 41)

Paragraph 3.5(a) of the Guideline 1 - Authorisation Guideline issued by the Insurance Authority pursuant to Section 133(1) of the Insurance Ordinance (Cap. 41)”

(b) The text listing the measures in reservation I-HKC-12, which reads:

“**Measures** Sections 2(3), 6(1), 7, 8(3)e, 51(b) and 66(3)(a) of the Insurance Companies Ordinance (Cap. 41)

Item 1(1), Part 1 of the Third Schedule to the Insurance Companies Ordinance (Cap. 41)

Item 11(a) of the Guidance Note 1 – Authorisation Guidelines issued by the Office of the Commissioner of Insurance pursuant to Section 4A(3) of the Insurance Companies Ordinance (Cap. 41)”

shall be replaced with the following text:

“**Measures** Sections 2(3), 6(1), 7, 8(3)e, 51(b) and 66(3)(a) of the Insurance Ordinance (Cap. 41)

Item 1(1), Part 1 of Schedule 3 to the Insurance Ordinance (Cap. 41)

Paragraph 3.5(a) of the Guideline 1 - Authorisation Guideline issued by the Insurance Authority pursuant to Section 133(1) of the Insurance Ordinance (Cap. 41)”

(c) The text listing the measures in reservation I-HKC-13, which reads:

“**Measures** Sections 65, 69, 70 of the Insurance Companies Ordinance (Cap. 41)

Part III item (A) of the “Minimum Requirements for Insurance Brokers” issued by the Office of the Commissioner of Insurance pursuant to Sections 69(2) and 70(2) of the Insurance Companies Ordinance (Cap. 41)”

shall be replaced with the following text:

“**Measures** Sections 65, 69, 70 of the Insurance Ordinance (Cap. 41)

Paragraph 3(A) of the “Guideline on Minimum Requirements for Insurance Brokers” issued by the Insurance Authority pursuant to Sections 69(2) and 70(2) of the Insurance Ordinance (Cap. 41)”

2. Appendix 5 to Annex X “List of reservations of Switzerland” shall be amended with immediate effect as follows:

(a) The text describing the reservation in reservation 35, which reads:

“Description Pension funds must be established in Switzerland in order to operate in the statutory pension funds scheme (“Berufsvorsorge”; “prévoyance professionnelle”; “previdenza professionale”). Participation in the statutory pension funds scheme requires pension funds to be organised in the form of a co-operative society or of a foundation (Stiftung; fondation; fondazione) (Article 48).

Employers employing persons subject to compulsory insurance must be affiliated to a provident institution (“institution de prévoyance”; “Vorsorgeeinrichtung”; “istituto di previdenza”) entered in the Register for occupational benefit plans (“Register für die berufliche Vorsorge”; “registre de la prévoyance professionnelle”; “registro della previdenza professionale”) according to Law (Article 11).”

shall be replaced with the following text:

“Description Pension funds must be established in Switzerland in order to operate in the statutory pension funds scheme (“berufliche Vorsorge”; “prévoyance professionnelle”; “previdenza professionale”). Participation in the statutory pension funds scheme requires pension funds to be organised in the form of a foundation (Stiftung; fondation; fondazione) (Article 48).

Employers employing persons subject to compulsory insurance must be affiliated to a provident institution (“Vorsorgeeinrichtung”; “institution de prévoyance”; “istituto di previdenza”) entered in the Register for occupational benefit plans (“Register für die berufliche Vorsorge”; “registre de la prévoyance professionnelle”; “registro della previdenza professionale”) according to Swiss Law (Article 11).”

(b) The text listing the measures and describing the reservation in reservation 36, which reads:

“Measures Federal Law on health insurance (SR 832.10), Articles 3 and 4

Federal Ordinance on health insurance (SR 832.102), Article 12

Description Participation in the basic health insurance scheme requires health insurance suppliers to be organised in one of the following legal entities: an association (Verein; association; associazione), a co-operative society, a foundation or a joint-stock company with non-profit purposes (SR 832.102).

Foreign health insurance suppliers must be established in Switzerland in order to operate in the basic health insurance scheme (SR 832.102). Persons subject to compulsory health insurance must choose a health insurance participating in the basic health insurance scheme or a private insurer according to Swiss law as their insurance supplier (SR 832.10).”

shall be replaced with the following text:

“**Measures** Federal Law on health insurance (SR 832.10), Articles 3 and 4

Federal Law on the supervision of health insurance (SR 832.12), Articles 2 and 5

Description Participation in the basic health insurance scheme requires health insurance suppliers to be organised in one of the following legal entities: an association (Verein; association; associazione), a co-operative society, a foundation or a joint-stock company with non-profit purposes (SR 832.12).

Foreign health insurance suppliers must be established in Switzerland in order to operate in the basic health insurance scheme (SR 832.12, Article 5). Persons subject to compulsory health insurance must choose a health insurance participating in the basic health insurance scheme or a private insurer according to Swiss law as their insurance supplier (SR 832.10).”

(c) The text listing the measures in reservation 40, which reads:

“**Measures** Federal Law on banks and savings banks (SR 952.0), Articles 3*bis* and 3*ter*

Federal Ordinance on banks and savings banks (SR 952.02), Article 5

Federal Ordinance on foreign banks in Switzerland (SR 952.111), Articles 4, 12 and 14”

shall be replaced with the following text:

“Measures Federal Law on banks and savings banks (SR 952.0),
Articles *3bis* and *3ter*

Federal Ordinance on banks and savings banks (SR
952.02), Article 19

Federal Ordinance on foreign banks in Switzerland (SR
952.111), Articles 4 and 14”

(d) The text listing the measures in reservation 41, which reads:

“Measures Federal Law on banks and savings banks (SR 952.0),
Article *3bis*

Federal Ordinance on foreign banks in Switzerland (SR
952.111), Articles 4 and 12”

shall be replaced with the following text:

“Measures Federal Law on banks and savings banks (SR 952.0),
Article *3bis*

Federal Ordinance on foreign banks in Switzerland (SR
952.111), Article 4”

(e) The text listing the measures and describing the reservation in reservation
44, which reads:

“Measures Federal Law on stock exchanges and securities trading (SR
954.1), Article 37

Federal Ordinance on stock exchanges and securities
trading (SR 954.11), Articles 14, 41, 49, 53 and 56

Description I. If its ultimate shareholders and/or beneficial
owners are nationals and/or residents of a non-party,
authorisation of a foreign stock exchange or of a stock
exchange controlled by foreign persons domiciled abroad
may be refused if the non-party in which the foreign stock
exchange has its registered office or in which the
controlling foreign persons are domiciled does not accord
Swiss stock exchanges effective access to its markets and
does not offer them the same competitive opportunities as
to the local stock exchange. The same rule shall apply to
the authorisation of securities dealers.

II. Stock exchanges and securities dealers which
subsequently come under foreign control must obtain the
approval of the Swiss Financial Market Supervisory

Authority (Eidgenössische Finanzmarktaufsicht; Autorité fédérale de surveillance des marchés financiers; Autorità federale di vigilanza sui mercati finanziari). The same condition shall apply to foreign-controlled stock exchanges or securities dealers, if there is a change in the foreign persons with significant interests.

Stock exchanges and securities dealers organised under Swiss law shall be considered foreign-controlled, if foreign persons (see below) with significant interests in them hold over half the voting rights directly or indirectly, or otherwise exert a controlling influence on them.

The following shall be deemed foreign persons:

- (a) natural persons who have neither Swiss nationality nor a residence permit conferring the right of establishment in Switzerland;
- (b) juridical persons and partnerships which have their registered office abroad or, if they have their registered office in Switzerland, are controlled by persons mentioned under (a) above.”

shall be replaced with the following text:

“Measures Federal Law on financial markets infrastructure (SR 958.1), Article 40

Federal Ordinance on stock exchanges and securities trading (SR 954.11), Articles 41, 49 and 56

Description I. If its ultimate shareholders and/or beneficial owners are nationals and/or residents of a non-party, authorisation of a foreign trading platform controlled by foreign persons domiciled abroad may be refused if the non-party in which the foreign trading platform has its registered office or in which the controlling foreign persons are domiciled does not accord Swiss trading platform effective access to its markets and does not offer them the same competitive opportunities as to the local trading platform. The same rule shall apply to the authorisation of securities dealers.

II. Trading platforms and securities dealers which subsequently come under foreign control must obtain the approval of the Swiss Financial Market Supervisory Authority (Eidgenössische Finanzmarktaufsicht (FINMA); Autorité fédérale de surveillance des marchés financiers (FINMA); Autorità federale di vigilanza sui mercati finanziari (FINMA)). The same condition shall apply to

foreign-controlled trading platform or securities dealers, if there is a change in the foreign persons with significant interests.

Trading platforms and securities dealers organised under Swiss law shall be considered foreign-controlled, if foreign persons (see below) with significant interests in them hold over half the voting rights directly or indirectly, or otherwise exert a controlling influence on them.

The following shall be deemed foreign persons:

- (a) natural persons who have neither Swiss nationality nor a residence permit conferring the right of establishment in Switzerland;
- (b) juridical persons and partnerships which have their registered office abroad or, if they have their registered office in Switzerland, are controlled by persons mentioned under letter (a).³

- (f) The text listing the measures and describing the reservation in reservation 46, which reads:

“Measures Federal Law on financial market supervision (SR 956.1), Article 26

Federal Ordinance on financial market supervisory audit (SR 956.161), Articles 2 to 7

Federal Law on collective investment schemes (SR 951.31), Article 127

Federal Law on money laundering in the financial sector (SR 955.0), Article 19*b*

As qualified by the Description element

Description Financial services suppliers may be obliged to mandate an auditing company to audit compliance with all supervisory provisions (supervisory audit service). The choice of the auditing company is subject to approval by the supervisory authority (SR 956.1) or the Federal Council (SR 951.31, SR 955.0).

The auditing company must be supervised according to the Federal Law on the authorisation and control of auditors³ (SR 956.1).

³ See reservation number 54 of this Appendix

Further conditions for approval may apply *inter alia* with respect to requirements for establishing subsidiaries or the number and years of experience of the senior auditors of the company (SR 956.161, SR 951.31).

Qualification: Switzerland reserves the right to adopt any measures restricting market access and national treatment with respect to requirements of supervisory auditing services.”

shall be replaced with the following text:

“Measures Federal Law on financial market supervision (SR 956.1), Article 24

Federal Law on the authorisation and control of auditors (SR 221.302), Articles 2 and 9a

Federal Ordinance on the authorisation and control of auditors (SR 221.302.3), Articles 5 to 14

Federal Law on money laundering in the financial sector (SR 955.0), Article 19a

As qualified by the Description element

Description Financial services suppliers may be obliged to mandate an auditing company to audit compliance with all supervisory provisions (*supervisory audit service*). The choice of the auditing company is subject to approval by the supervisory authority (SR 956.1, SR 955.0).

The auditing company must be supervised according to the Federal Law on the authorisation and control of auditors³ (SR 221.302).

Further conditions for approval may apply *inter alia* with respect to requirements for establishing subsidiaries or the number and years of experience of the senior auditors of the company (SR 956.161).

Qualification: Switzerland reserves the right to adopt any measures restricting market access and national treatment with respect to requirements of supervisory auditing services.”

3. This Decision shall enter into force on the date of its adoption.

³ See reservation number 54 of this Appendix

4. The Secretary-General of the European Free Trade Association shall deposit the text of this Decision with the Depositary.
