

*In view of the Commission's transparency policy, the Commission is publishing the text of the EU-China Investment Agreement following the agreement in principle announced on 30 December 2020.*

*The text is published for information purposes only and may undergo further modifications as a result of the process of legal and technical revision, including of the final structure (such as numbering, sequencing, or titles of articles, or any duplication). However, in view of the growing public interest in the negotiations, the text is published at this stage of the negotiations for information purposes. This text is without prejudice to the final outcome of the agreement between the EU and China.*

*The text will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.*

### **SECTION III: REGULATORY FRAMEWORK**

#### **Sub-section 1 DOMESTIC REGULATION**

##### **Article 1 Scope and Definitions**

1. The following disciplines apply to measures adopted or maintained by a Party relating to licencing requirements and procedures, qualification requirements and procedures<sup>1</sup> that affect:

- a. Establishment of an enterprise;
- b. Operation of a covered enterprise in the territory of one of the Parties.

2. The disciplines in this sub-section shall apply to sectors where a commitment is undertaken pursuant to Article [Market Access] and to the extent of the commitment undertaken. The disciplines shall not apply to the aspects that are not conforming with article [National treatment] set out in a Party's Schedule to Annex (I) [reservations for existing measures] [EU: and Annex XX [reservations specific to business visitors and intra-corporate transferees]] or to measures with respect to sectors, sub-sectors or activities as set out in a Party's Schedule to Annex (II) [reservations for future measures].

3. These disciplines do not apply to applications for and extensions of visas, residence permits and work permits.

4. For the purposes of this Sub-section:

- "Licencing requirements" means substantive requirements, other than qualification requirements, with which a natural person or an enterprise is required to comply in order to obtain, amend or renew the authorisation to carry out the activities as defined in paragraph 1.

---

<sup>1</sup> For greater certainty, the requirements and procedures referred to in this paragraph include those concerning categories of natural persons as defined in Article [6bis] of Sub-section 1 of Section II of this Agreement [Entry and temporary stay of natural persons for business purposes].

- "Licencing procedures" means administrative or procedural rules that a natural person or an enterprise, seeking authorisation to carry out the activities as defined in paragraph 1 including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.

- "Qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining, amending or renewing an authorisation to supply a service.

- "Qualification procedures" means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements.

- "Competent authority" means any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities which takes a decision concerning the authorisation to make an investment.

## **Article 2**

### **Conditions for licencing and qualification**

1. Each Party, with a view to precluding the competent authorities from exercising their power of assessment in an arbitrary manner, shall ensure that measures relating to licencing requirements and procedures, qualification requirements and procedures are based on the following criteria:

- (a) clear;
- (b) objective and transparent;
- (c) pre-established, made public in advance and accessible.

2. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.

3. Where the number of licences available for a given activity is limited in the case of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

4. Subject to Paragraph 3 of Article 2, in establishing the rules for the selection procedure, each Party may take into account legitimate public policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

## **Article 3**

### **Licencing and qualification procedures**

1. Licencing and qualification procedures shall be clear, as simple as feasible, made public in advance and shall not unduly complicate or delay the making of an investment.

2. Any authorisation fees<sup>2</sup> charged by the competent authority from an applicant in connection with the establishment and acquisition of an enterprise, including those charged for the amendment or renewal of such authorisation, should be reasonable and commensurate with the administrative cost of the authorisation procedures in question.
3. Each party shall ensure that the procedures used by, and the decisions of, the competent authority in the licencing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not accountable to any investor for which the licence or authorisation is required.
4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. Each Party shall ensure that its competent authorities ascertain the completeness of applications without undue delay, and that they initiate the processing of the application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.
6. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies within a reasonable period of time.
7. Authenticated copies should be accepted, to the extent that domestic law permits, in place of original documents.
8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. The applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.
9. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay.

## **Sub-section 2 TRANSPARENCY**

### **Article 1 Disclosure of information**

Nothing in this Agreement shall require a Party to provide confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public

---

<sup>2</sup> Authorisation fees do not include payments for natural resources, auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

## **Article 2** **General Transparency Obligations**

1. Each Party shall ensure that its laws, regulations, administrative guidelines, procedures, judicial decisions and administrative rulings of general application with respect to any matter covered by this Treaty are promptly published or otherwise made publicly available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. For the purposes of this Article, judicial decisions and administrative rulings of general application do not include decisions or rulings that apply only to a particular person without establishing a norm of conduct that is relevant beyond the facts of the specific case.

## **Article 3** **Publication**

(1) To the extent practicable in a manner consistent with its respective rules and procedures for adopting laws and regulations, each Party shall:

- (a) publish laws and regulations referred to in Article 2 (1) that it proposes to adopt on an official website or in an official journal that is publicly accessible;
- (b) provide an explanation of the objective of, and rationale for such laws and regulations;
- (c) provide interested persons and the other Party a reasonable opportunity to comment on such proposed laws and regulations; and
- (d) endeavour to take into account the comments received from interested persons with respect to such proposed laws and regulations.

(2) With respect to laws and regulations referred to in Article 2 (1) that are adopted, each Party shall:

- (a) publish them on an official website or in an official journal that is publicly accessible; and
- (b) ensure that there is reasonable time between publication and entry into force of the laws and regulations, except in duly justified cases based on the nature of the envisaged measure, urgency or other similar grounds.

## **Article 4** **Contact Point and Provision of Information**

1. In order to facilitate the effective implementation of this Agreement, upon its entry into force each Party shall designate a contact point. The Parties shall notify their respective contact points within 3 months after the entry into force of this Agreement.
2. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any investor of the other Party regarding any measure referred to in Article 2.1. Enquiries may be addressed through the contact points referred to in the

preceding sub-paragraph. Any response under this sub-paragraph will be provided only for information purposes, unless otherwise foreseen in the Party's laws.

3. On request of the other Party, a Party shall, within a reasonable period of time, provide information and respond to questions pertaining to any measure referred to in Article 2 (1) that the requesting Party considers might affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement.
4. Any request or information under this paragraph shall be provided to the other Party through the relevant contact points.
5. Any information provided under this article shall be without prejudice as to whether the measure is consistent with this Agreement.

### **Article 5 Administrative Proceedings**

With a view to administering in a consistent, impartial, and reasonable manner all measures referred to in Article 2 (1), each Party shall ensure that in its administrative proceedings applying such measures to particular covered enterprises or investors of the other Party in specific cases:

1. to the extent permitted by the nature of the applicable proceeding, covered enterprises or investors of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which it is initiated, and a general description of any issues in controversy;
2. such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, including by, to the extent permitted by the nature of the applicable proceeding, being informed of the preliminary conclusions drawn against them in case of an alleged infringement, being permitted to set out all factual and legal arguments relevant to their defence, and by having the right to a legal representative of their choice during such proceedings; and
3. its procedures are in accordance with domestic law, including with respect to the protection of confidential business information or other information treated as confidential under the Party's laws that is obtained during administrative proceedings.
4. in the application of its rules on competition, including the control of mergers and acquisitions, each Party shall ensure that the prohibitions, penalties and or any other remedies provided for in these rules shall be imposed only following the adoption of a formal decision by the competent competition authority, a non-confidential version of which shall be published. Prior to the adoption of such a decision, the competition authority shall notify, in writing if so provided by domestic law, the addressee of its competition concerns or objections, including the facts and legal basis on which the proposed decision will be based. The address of the decision shall, prior to its adoption, be informed, to the extent provided for in the domestic law, of the evidence on which the decision will be based." Prior to the adoption of the final written decision, the addressee of the decision shall have the right to submit written comments to the competition authority in relation to the competition authority's competition concerns or objections. During such proceedings, the addressee of the decision shall have the right to a legal representative of its choice. The addressees shall have the right to appeal the final decisions of the competition authorities to a competent court of law.

A Party shall not require disclosure of confidential business information in authorisation and administrative proceedings, unless such information is necessary to show conformity with the administrative or regulatory requirements governing those proceedings. A Party shall protect the confidentiality of such information.

## **Article 6** **Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement including review of alleged substantive or procedural errors having occurred through the imposition of a sanction or remedy for violation of the Party's competition laws. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(i) a reasonable opportunity to support or defend their respective positions, in line with the principles set out in article 5(2); and

(ii) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by the offices or authorities with respect to the administrative action at issue.

4. This article shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

## **Article 7** **Standards-Setting**

1. Each Party shall allow enterprises that are covered enterprises of the other Party, to participate in the development of standards by its central government bodies, including related standardisation working groups and technical committees at all levels, on terms no less favourable than those it accords to its own enterprises, including its covered entities. The list of such standardisation working groups and technical committees, as well as their members, shall be made publicly available. This shall include publication of the setting up of standardisation working groups and technical committees.

Each Party shall make available to covered enterprises of the other Party, the requirements for application procedures to the standardisation bodies in a timely and transparent manner, including the conditions for access and requirements for each membership type. On the request, in writing, of covered enterprises of the other Party, relevant standardisation bodies shall inform such an applicant of the status of its application, without undue delay. If the competent authority requires additional information from such an applicant, it shall notify this applicant without undue delay.

2. Each Party shall recommend that local and non-governmental standardizing bodies in its territory allow enterprises that are covered enterprises of the other Party to participate in the development by those bodies of standards and related conformity assessment procedures, on terms no less favourable than those they accord to its own enterprises, including its covered entities.
3. Paragraphs 1 and 2 of this Article do not apply to:
  - (i) sanitary and phytosanitary measures as defined in Annex A of the World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures; or
  - (ii) purchasing specifications prepared by a governmental body for its production or consumption requirements.
4. For the purposes of paragraphs 1 and 2 of this Article, "central government body", "local government body", "non-governmental body", "standards" and "conformity assessment procedures" have the meanings assigned to those terms in Annex 1 of the WTO Agreement on Technical Barriers to Trade. Consistent with Annex 1, the two latter terms do not include standards or conformity assessment procedures for the supply of a service.

### **Article 8** **Transparency of Subsidies**

1. For the purposes of this Article, a subsidy shall be deemed to exist if the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures<sup>3</sup>(ASCM) are fulfilled irrespective of whether it is granted to an enterprise operating in services or non-services sectors.
2. This Article applies to subsidies only if the subsidies are specific in accordance with Article 2 of the ASCM and to the extent they are related to economic activities<sup>4</sup>.
3. This Article does not apply to:
  - (a) subsidies, the cumulative amounts or budgets of which are less than 450 000 Special Drawing Rights per beneficiary for a period of three consecutive years;
  - (b) subsidies granted to compensate the losses caused by natural disasters;
  - (c) subsidies related to fish and fish products and subsidies covered by Annex 1 of the WTO Agreement on Agriculture; and
  - (d) subsidies provided for audio-visual services and for the services set out in Entries 1.21 to 1.26 of China's schedule in Annex I.
4. The application of the rules in this Article must not obstruct the performance, in law or in fact, of a public service mandate, assigned to the enterprises in question in a transparent manner.

---

<sup>3</sup> For greater certainty, the ASCM in this Article refers to the Agreement on Subsidies and Countervailing Measures as in force on the date of signature of this Agreement.

<sup>4</sup> For the purposes of this Article, "economic activities" means activities with respect to offering goods or services in a market.

5. Each Party shall ensure transparency as regards subsidies to the following service sectors listed in [Annex X]. To this end, each Party shall promptly, and no later than on 31 December of the calendar year subsequent to the one in which the subsidy was granted, publish on a publicly accessible website<sup>5</sup> the objective, legal basis, form, amount or amount budgeted for, and recipient of any subsidy subject to this paragraph. The Parties shall begin to fulfil this obligation no later than two years after the entry into force of this Agreement.
6. If a Party considers that a subsidy<sup>6</sup> granted by the other Party has or could have a negative effect on its investment interests under this Agreement, the former Party may express its concern in written form to the other Party, indicating how the subsidy has or could have such negative effect, and request consultations on the matter. The Parties shall enter into consultations with a view to resolving the matter.

During the consultations, the requesting Party may seek additional information about the subsidy, such as the policy objective and/or purpose, the amount and any other information permitting an assessment of the negative effects of the subsidy in question on its investment interests under this Agreement. In order to facilitate the consultations, the requested Party shall provide information on the subsidy in question within no more than 90 days from the date of receipt of the request.
7. If the requesting Party, after the consultations have been held, considers that the subsidy concerned has or could have a significant negative effect on the requesting Party's investment interests under this Agreement, the requested Party shall use its best endeavours to find a solution with the requesting Party. Any solution must be considered feasible and acceptable by both Parties.
8. Nothing in this Article shall affect the rights and obligations of each Party under WTO Agreements, in particular, Article XV GATS, Article VI of GATT 1994, the ASCM Agreement and the WTO Agreement on Agriculture.
9. This Article is without prejudice to the Parties' positions and the possible outcome of future discussions in the WTO on subsidies. Depending on the progress and the possible outcome of those discussions at the WTO level, the Parties may adopt a decision by the relevant committee under this Agreement to update this article, including the definition of subsidy.
10. Paragraph 7 shall not be subject to Section X (State to State Dispute Settlement).

### **Sub-section 3**

## **FINANCIAL SERVICES**

---

<sup>5</sup> For greater certainty, this obligation can be met by publishing on such website the weblinks to the information.

<sup>6</sup> For greater certainty, paragraphs 6 and 7 apply to subsidies granted to an enterprise operating in services or non-services sectors.

## Article 1 Scope and definitions

1. This Sub-section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered enterprise by an investor of the other Party in its territory in order to supply financial services, without prejudice to a Party's right to restrict the supply of a specific financial service pursuant to its commitments undertaken in Annex (I) (for the EU) and Annex I (for China) [reservations for existing measures], Annex (II) [reservations for future measures], and Annex (XX) (Schedule of Specific Market Access Commitments on Services).
2. For the purposes of paragraph (x) (*definition of services/activities supplied in the exercise of governmental authority*) of this Agreement, "services supplied in the exercise of governmental authority" means activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. For the purposes of this Sub-section and of Section II Liberalisation of Investment of this Agreement:
  - (a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
    - A. Insurance and insurance-related services
      1. direct insurance (including co-insurance):
        - (a) life;
        - (b) non-life;
      2. reinsurance and retrocession;
      3. insurance inter-mediation, such as brokerage and agency; and
      4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
    - B. Banking and other financial services (excluding insurance):
      1. acceptance of deposits and other repayable funds from the public;
      2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
      3. financial leasing;
      4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques, bankers drafts and any other new means of payment;
      5. guarantees and commitments;
      6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
        - (a) money market instruments (including cheques, bills, certificates of deposits);
        - (b) foreign exchange;
        - (c) derivative products including, but not limited to, futures and options;
        - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
        - (e) transferable securities;

- (f) other negotiable instruments and financial assets, including bullion;
  - 7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
  - 8. money broking;
  - 9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - 10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - 11. provision and transfer of financial information, and financial data processing and related software;
  - 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) ‘financial service supplier’ means any natural or juridical person of a Party that seeks to provide or provides financial services. The term ‘financial service supplier’ does not include a public entity.
- (c) ‘public entity’ means:
- 1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  - 2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) ‘new financial service’ means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.
- (e) self-regulatory organisation means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

## **Article 2**

### **Prudential carve-out**

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons<sup>7</sup>, including for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is

---

<sup>7</sup> It is understood that the term “prudential reasons” also includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions.

owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

2. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

### **Article 3** **Effective and transparent regulation**

1. Each Party shall make available to interested investors and covered enterprises its requirements for completing applications relating to the supply of financial services through commercial presence. On the request of an applicant in writing, the competent authority shall inform the applicant of the status of its application within a reasonable timeframe. If the competent authority requires additional information from the applicant, it shall notify the applicant without undue delay.
2. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision and for the fight against tax evasion and avoidance in the financial services sector are implemented and applied in its territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision" (BCBS), in particular its "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors (IAIS), in particular its "Insurance Core Principles", the International Organisation of Securities Commission (IOSCO), in particular its "Objectives and Principles of Securities Regulation", the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

### **Article 4** **New financial services**

1. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law.
2. Notwithstanding (Market Access), a Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.
3. Prior to permitting the supply of a new financial service, a Party may impose a non-discriminatory requirement to conduct a pilot project, during which the new financial service

may be supplied by a limited number of suppliers on a trial basis for a limited period of time and in a certain area or region, in order to assess potential prudential risks. At the end of the trial pilot project period, the financial service supplier should be permitted to provide the new financial service throughout the territory of the Party, unless the Party decides that new legislative action is required or the provision of such services is not permitted for prudential reasons.

## **Article 5** **Specific exceptions**

1. Nothing in this Agreement shall be construed to prevent a Party, including its public entities, from conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's national regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement shall be construed to prevent a Party, including its public entities, from conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities except when those activities may be carried out, as provided by the Party's national regulation, by financial service suppliers in competition with public entities or private institutions.

## **Article 6** **Self-regulatory organisations**

When a Party requires membership or participation in, or access to, any self-regulatory body, in order for financial service suppliers of the other Party established in its territory to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles X (National Treatment and Most Favoured Nation Treatment).

## **Article 7** **Clearing and payment systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This article is not intended to confer access to the Party's lender of last resort facilities.