

**Order of the Civil Aviation
Administration of China, the Ministry of
Commerce and the National Development
and Reform Commission**

No. 139

The Supplementary Provisions to the Provisions on Foreign Investment in the Civil Aviation Industry were deliberated and adopted at the executive meeting of the Civil Aviation Administration of China on December 16, 2004 and were examined and approved by the Ministry of Commerce and the National Development and Reform Commission, and they are hereby promulgated and shall go into effect as of February 24, 2005.

Yang Yuanyuan, the Director-General of the Civil Aviation Administration of
China

Bo Xilai, the Minister of the Ministry of Commerce

Ma Kai, the Director General of the National Development and Reform
Commission

January 24, 2005

**Supplementary Provisions to the
Provisions on Foreign Investment in the
Civil Aviation Industry**

With a view to promoting the establishment of closer economic partnership between Hong Kong, Macao and the Mainland of China and encouraging the service suppliers from Hong Kong and Macao to provide airport management services and airport ground services to the Mainland, the following supplementary provisions to the Provisions on Foreign Investment in the Civil Aviation Industry (Order No. 110 of the Civil Aviation Administration of China, the Ministry of Foreign Trade and Economic Cooperation and the State Development Planning Commission) are hereby formulated according to the Supplementary Agreement to the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Supplementary Agreement to the Mainland and Macao Closer Economic Partnership Arrangement:

I. Hong Kong or Macao service suppliers shall be allowed to provide entrusted management of medium and small airports in the form of contractual joint venture, equity joint venture or solely-funded enterprise, and the valid term of such contracts shall be not more than 20 years.

II. Hong Kong or Macao service suppliers shall be allowed to provide airport management training and consultation services in the form of contractual joint venture, equity joint venture or solely-funded enterprise.

III. Hong Kong or Macao service suppliers shall be allowed to provide, in the form of equity joint venture or solely-funded enterprise, seven air transport ground services: agency service, assembling and disassembling control service, communication and departure control system service, management services of containerization facilities, passenger and luggage service, commodity and airmail service, apron service and airplane service.

IV. Hong Kong or Macao service suppliers as mentioned in the present Provisions shall comply with the definitions of "service supplier" and the relevant requirements as provided for in the Mainland and Hong Kong Closer Economic

Partnership Arrangement or the Mainland and Macao Closer Economic Partnership Arrangement, respectively.

Hong Kong or Macao service suppliers of air transport ground services shall have obtained a professional license of Hong Kong or Macao to engage in air transport ground services and have engaged in substantial businesses for five or more years.

In case a Macao service supplier of airport management services is an associated enterprise of an airline company, it shall comply with the relevant regulations and rules of the Mainland.

V. Other matters on the investment in civil aviation industry by Hong Kong and Macao service suppliers in the Mainland shall be implemented in accordance with the Provisions on Foreign Investment in the Civil Aviation Industry.

VI. The power to interpret the present Supplementary Provisions shall remain with the Civil Aviation Administration of China, the Ministry of Commerce of the People's Republic of China and the National Development and Reform Commission upon the strength of their respective functions.

VII. The present Supplementary Provisions shall go into effect as of February 24, 2005.

Explanations for the Supplementary Provisions to the Provisions on Foreign Investment in the Civil Aviation Industry

The Provisions on Foreign Investment in the Civil Aviation Industry (Order No. 110 of the Civil Aviation Administration of China, the Ministry of Foreign Trade and Economic Cooperation and the State Development Planning Commission) were promulgated on June 21, 2002 jointly by the Civil Aviation Administration of China, the Ministry of Commerce (the former Ministry of Foreign Trade and Economic Cooperation) and the National Development and Reform Commission (the former State Development Planning Commission), and have come into force as of August 1, 2002. The Provisions on Foreign Investment in the Civil Aviation Industry clearly prescribe the investment scope, forms, proportion and the management power limit for foreign companies, enterprises and other economic organizations or individuals to invest in the civil aviation industry, and simultaneously stipulate that the investment in the Mainland civil aviation industry by Hong Kong and Macao companies, enterprises and other economic organizations or individuals shall comply with the present Provisions. For the purpose of carrying out the important instructions of the Center and the State Council on further supporting the economic development of Hong Kong and Macao and promoting the co-prosperity and development of the Mainland and Hong Kong and Macao SAR, the Mainland has, under the mechanism of WTO, separately signed the CEPA with Hong Kong and Macao Special Administrative Regions in 2003, which has come into force as of January 1, 2004, and most industries in the Mainland have been opened wider to Hong Kong. From this May, the negotiation on expanding the Mainland and Hong Kong and Macao special economic partnership arrangement has been started up. And the Mainland has, upon the approval of the State Council, signed the Supplementary Agreement to the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Supplementary Agreement to the Mainland and Macao Closer Economic Partnership Arrangement (hereinafter referred to as the Supplementary Agreement to CEPA) with the government of Hong Kong and Macao SAR respectively on October 27, 2004 and October 29, 2004. In the aforesaid two supplementary protocols, our Administration has promised to open up such items as

the entrusted management of medium and small airports, airport management consultation and airport ground services. Thus, it is necessary to amend the Provisions on Foreign Investment in the Civil Aviation Industry

I. The scope of investment in the Mainland civil aviation industry by Hong Kong and Macao service suppliers has been expanded.

The Order No. 110 stipulates that the scope of foreign investment in the civil aviation industry includes the civil airdromes, public air transport enterprises, all-purpose aviation enterprises and items concerning the air transport. While, pursuant to the Supplementary Protocols to CEPA, the investment in the airport entrusted management and airport management consultation and training has been added for Hong Kong and Macao service suppliers.

II. The investment proportion for Hong Kong and Macao service suppliers has been expanded.

In Order No. 110 the foreign investment proportion is restricted to equity and contractual joint ventures. While, pursuant to the supplementary agreement to CEPA, three service sectors, that is the entrusted management of medium and small airports, airport management consultation and airport ground services, have been added for Hong Kong and Macao service suppliers to invest in the form of solely-funded enterprise.

III. The scope of investment in ground services by Hong Kong and Macao service suppliers in the form of solely-funded enterprise has been restricted.

According to the supplementary agreement to CEPA, the scope of investment in ground services by Hong Kong and Macao service suppliers in the form of solely-funded enterprise is restricted to such seven items as agency service, service of assembling and disassembling control, communication and departure control system service, management service of containerization facilities, passenger and luggage service, commodities and airmail service, apron service and airplane service. These seven items are set down in light of the classification of ground services by IATA and after the exclusion of fuel filling, aircraft maintenance, operation of scheduled flights and aircrew management, food assorting, security checking and etc.

IV. Requirements for Hong Kong and Macao service suppliers In order to prevent any multinational company from entering the Mainland under the name of a Hong Kong or Macao company and enjoying the preferential treatments as provided for in the CEPA, the CEPA has given clear definitions to the Hong Kong and Macao service suppliers, namely, a Hong Kong or Macao natural-person service supplier shall be a permanent resident of the Hong Kong or Macao Special Administrative Region, and a Hong Kong or Macao legal-person service supplier shall be one that has registered according to the relevant regulations of Hong Kong or Macao and has engaged in substantial businesses in Hong Kong or Macao. In addition, the CEPA has prescribed specific standards for the determination of a Hong Kong or Macao service supplier.

Apart from the above general requirements for Hong Kong or Macao service suppliers to invest in the civil aviation industry, we have set down special prescriptions for investment in ground services to prevent any foreign aviation company from entering the ground service sections by making use of our promises, namely, a Hong Kong or Macao service supplier of air transport ground services shall have obtained a professional license of Hong Kong or Macao to engage in air transport ground services and have engaged in substantial businesses for five or more years.

In order to prevent any airline company from controlling an airport, the principle of separating airline companies from airports shall be abided by. And a Macao service supplier that provides airport management services, if it is an

associated enterprise of an airline company, shall comply with the relevant regulations and rules of the Mainland.

V. Amending Method

After the conclusion of CEPA in 2003, all ministries and commissions shall take the CEPA as the upper level law and amend relevant regulations in the form of supplementary ones. After the conclusion of the current supplementary agreement to CEPA, the Ministry of Commerce shall still amend relevant regulations in such a form.

VI. Other matters needed to be explained.

The supplementary agreement to CEPA still permits a Hong Kong or Macao service supplier to provide the entrusted management of medium and small airports and airport management consultation in the form of cross-border supply and consumption abroad. Because of their non-relevancy to the investment, these two methods cannot be incorporated into the supplementary provisions to the Provisions on Foreign Investment in the Civil Aviation Industry and can only be embodied in other provisions in the future.

