

**Order of the General Civil Aviation Administration of China, the Ministry of  
Commerce of the People's Republic of China and the National Development and  
Reform Commission of the People's Republic of China**

No. 139

**Supplement to the Provisions on Foreign Investment in Civil Aviation**

**Order No. 139 of the General Civil Aviation Administration of China**

Supplement to the Provisions on Foreign Investment in Civil Aviation, which was reviewed and adopted by the Executive Meeting of the General Civil Aviation Administration of China on December 16, 2004 and approved by the Ministry of Commerce and the National Development and Reform Commission, is hereby promulgated and shall enter into force as of February 24, 2005.

Yang Yuanyuan

Administrator of the General Civil Aviation Administration of China

Bo Xilai

Minister of Commerce

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Director of the National Development and Reform Commission

January 24, 2005

## **Supplement to the Provisions on Foreign Investment in Civil Aviation**

With a view to promoting the development of economic ties between the Mainland and Hong Kong and Macao and encouraging service providers 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 Civil Aviation (Order No. 110 of the General 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 Supplement to the Mainland and Hong Kong Closer Economic Partnership Arrangement and Supplement to the Mainland and Macao Closer Economic Partnership Arrangement:

I. Hong Kong and Macao service providers shall be allowed to provide entrusted management services for small and medium airports in the form of contractual joint ventures, equity joint ventures or solely-funded enterprises. The term of validity of contracts shall not exceed 20 years.

II. Hong Kong and Macao service providers shall be allowed to provide airport management training and consultancy services in the form of contractual joint ventures, equity joint ventures or solely-funded enterprises.

III. Hong Kong and Macao service providers shall be allowed to provide, in the form of equity joint ventures or solely-funded enterprises, seven types of air transport ground services, namely agency services, load control and communication and departure control system services, unit load device management services, passenger and luggage services, cargo and mail services, apron services and aircraft services.

IV. Hong Kong and Macao service providers as mentioned in the present Supplement shall satisfy the definition of “service provider” and the relevant requirements as

provided for in the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Mainland and Macao Closer Economic Partnership Arrangement, respectively.

Hong Kong and Macao service providers that provide air transport ground services shall have obtained a professional license in Hong Kong or Macao for engaging in air transport ground services and have engaged in substantive commercial operations for five years or more.

If a service provider from Macao that provides airport management services is an affiliated enterprise of an airline company, it shall also be subject to the relevant laws, regulations and rules of the Mainland.

V. With regard to other matters concerning the investment in civil aviation by Hong Kong and Macao service providers in the Mainland, the Provisions on Foreign Investment in Civil Aviation shall still apply.

VI. The General Civil Aviation Administration of China, the Ministry of Commerce of the People's Republic of China and the National Development and Reform Commission shall be responsible for the interpretation of the present Supplement according to their respective functions.

VII. The present Supplement shall enter into force as of February 24, 2005.

## **Note on the Supplement to the Provisions on Foreign Investment in Civil Aviation**

The Provisions on Foreign Investment in Civil Aviation (Order No. 110 of the General 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 General Civil Aviation Administration of China, the Ministry of Commerce (formerly the Ministry of Foreign Trade and Economic Cooperation) and the National Development and Reform Commission (formerly the State Development Planning Commission), and have come into force as of August 1, 2002. The Provisions on Foreign Investment in Civil Aviation clearly specify the scope, forms and ratio of investment that foreign companies, enterprises and other economic organizations or individuals can make in the civil aviation industry as well as the competent authorities responsible for the management of investment, and stipulate that investment in the Mainland civil aviation industry by companies, enterprises and other economic organizations or individuals from Hong Kong and Macao shall be handled with reference to the Provisions. For the purpose of carrying out the important instructions of the CPC Central Committee and the State Council on further supporting the economic development of Hong Kong and Macao and promoting common prosperity and development of the Mainland and Hong Kong and Macao special administrative regions, the Mainland, under the mechanism of WTO, separately signed the Closer Economic Partnership Arrangement (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. This May, the Mainland kicked off negotiations on expanding the Mainland and Hong Kong and Macao special economic partnership arrangements, and, upon the approval of the State Council, signed the Supplement to the Mainland and Hong Kong Closer Economic Partnership Arrangement and the Supplement to the Mainland and Macao Closer Economic Partnership Arrangement (hereinafter referred to as the Supplements to CEPA) with the governments of Hong Kong and Macao

SARs respectively on October 27, 2004 and October 29, 2004. In these two supplements, CAAC made a commitment to opening the markets of entrusted management of small and medium airports, airport management consultancy services and airport ground services. Thus, it is necessary to amend the Provisions on Foreign Investment in Civil Aviation.

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

Order No. 110 stipulates that the scope of foreign investment in the civil aviation industry includes civilian airports, public air transport enterprises, general aviation enterprises and projects related to air transport, whereas according to the Supplements to CEPA, Hong Kong and Macao service providers can also make investment in airport entrusted management and airport management consultation and training.

II. The investment ratio for Hong Kong and Macao service providers has been increased.

In Order No. 110, the foreign investment ratio is restricted to equity or contractual joint ventures, whereas according to the Supplements to CEPA, Hong Kong and Macao service providers can invest in the form of solely-funded enterprises in the three newly added areas, i.e. entrusted management of small and medium airports, airport management consultation and airport ground services.

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

According to the Supplements to CEPA, the scope of investment in ground services by Hong Kong and Macao service providers in the form of solely-funded enterprises is restricted to seven types of services, i.e. agency services, load control and communication and departure control system services, unit load device management services, passenger and luggage services, cargo and mail services, apron services and aircraft services. These seven types of services are defined using the IATA

classification of ground services, with the exception of such categories as fuelling, aircraft repair and maintenance, flight operation and crew management, catering and security screening.

#### IV. Requirements for Hong Kong and Macao service providers

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 Hong Kong and Macao service providers, namely, a Hong Kong or Macao natural-person service provider shall be a permanent resident of Hong Kong or Macao Special Administrative Region, and a Hong Kong or Macao legal-person service provider shall be one that has registered according to the relevant regulations of Hong Kong or Macao and has engaged in substantive commercial operations in Hong Kong or Macao. In addition, the CEPA has prescribed specific standards for the determination of a Hong Kong or Macao service provider.

Apart from the above general requirements for Hong Kong and Macao service providers that wish to invest in civil aviation, we have set down special prescriptions on Hong Kong and Macao service providers that wish to provide ground services to prevent any foreign aviation company from entering the ground service sector by making use of our promises, namely, a Hong Kong or Macao service provider of air transport ground services shall have obtained a professional license of Hong Kong or Macao for engaging in air transport ground services and have engaged in substantive commercial operations for five years or more.

In order to prevent any airline company from controlling an airport and adhere to the principle that airline companies and airports shall be established as separate entities, a requirement is set out on Macao service providers that wish to provide airport management services, i.e. if a service provider from Macao is an affiliated enterprise of an airline company, it shall also be subject to the relevant laws, regulations and rules of the Mainland.

## V. Amending method

After the conclusion of CEPA in 2003, all ministries and commissions take the CEPA as the upper level law and amend relevant regulations in the form of supplements. After the conclusion of the Supplements to CEPA, the Ministry of Commerce still required the adoption of such a way for amending relevant regulations.

## VI. Other matters that need to be explained

The Supplements to CEPA also permit Hong Kong and Macao service providers to provide entrusted management services for small and medium airports and airport management consultancy services in the form of cross-border delivery and consumption abroad. As no investment is involved, these two methods cannot be incorporated into the Supplement to the Provisions on Foreign Investment in Civil Aviation and can only be addressed in other provisions in the future.

This is a translation of the Chinese Provisions.  
In case of divergence of interpretation, the Chinese version shall prevail.