

The establishment of construction enterprise with foreign investment

According to the Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises, foreign enterprises and individuals as well as other economic organizations with related qualifications in construction industry and achievement in construction engineering projects are permitted to establish construction enterprises with qualified Chinese enterprise and economic organizations in the form of Chinese-foreign contractual joint venture or Chinese-Foreign equity joint venture. The investment of Chinese investors shall be no less than 25% of the registered capital.

Foreign invested construction enterprises are only permitted to undertake the following projects within the allowed business scope by the qualification:

1. projects constructed by wholly foreign investment, foreign grants or combination of foreign investment and foreign grants.
2. projects financed by international financial institutions and conferred by international bidding on the basis of the loan clauses.
3. Chinese-foreign cooperative projects with half or more than half of the investment paid by foreign investors; or projects with less than 50% of total investment paid by foreign investors which the Chinese construction enterprises can't accomplish independently because of the limited technology, and which have got the approval of the of the competent administration of construction of province, autonomous region, municipalities.
4. Chinese-invested projects which cannot be accomplished independently by Chinese construction enterprises because of limited technology, and which are allowed to be constructed with the cooperation of foreign enterprises by the competent administrations of construction of province, autonomous region, municipalities.

According to Mainland and Macao and Hong Kong Closer Economic Partnership Arrangement, for Hong Kong and Macao service supplier applying for establishment of construction enterprises, the achievements of projects in Hong Kong and Macao can be accounted in the appraisal of qualification in the approval of establishment of construction enterprises in the mainland. Hong Kong and Macao service providers are permitted to takeover construction enterprises in the mainland

Procedures for examination and approval for establishment of construction enterprises with foreign investment are as follows:

Firstly, the applier should apply to industrial and commercial administrations for the registration of pre-approval of enterprise name and get the pre-approval notification.

Then the applier should submit the following documents to Shanghai Foreign Investment Committee for application for the establishment of construction enterprises with foreign investment:

1. Application form for the establishment of construction enterprise with foreign investment signed by legal representatives;
2. Feasibility study report made by the investors

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3. The contract and articles of association signed by legal representative of the investors (Enterprises with 100% foreign investment only have to submit the articles of association)
4. Approval notification of the name of the company to be established;
5. The registration certificate of construction and bank certificate of credibility (both with translated Chinese version);
6. The letters of appointment, by all the joint ventures, of the chairman of the board, the board members, the CEO, the director of engineering technique;
7. The balance sheet and P & L of the recent 3 years of all the joint ventures audited by certified public accountants or accounting firms;
8. The certificate of the place of registration and the business location
9. The certificate (copy) which shows that the investor has conducted unit contract of foreign construction projects in China
10. The brief information about the projects that the investor has been completed in China (together with the project achievement) and the approval documents of unit project and construction business license(copy)
11. The approval documents and registration certification of the agency originally set in Shanghai
12. Other documents required by approval department

(2). The investors of the construction enterprise to be established should submit the following documents to Construction Administrative department:

1. The certificate of the qualification of the enterprise in construction;
2. Approval Certificate of Foreign-Invested Enterprises
3. The Business License of the enterprise legal person;
4. Bank certificate of credibility of the investor
5. The letters of appointment, by all the joint venturers, of the chairman of the board, the board members, the CEO, the director of engineering technique;
6. The balance sheet and P & L of the recent 3 years of all the joint venturers audited by certified
7. Other documents required by the qualification approval department of construction project design;

All the materials should be written in Chinese. If the certificates are written in foreign languages, translated Chinese version should be submitted.

For foreign-invested enterprises applying for special level or first level of EPC or first level of special contract, Shanghai Foreign Investment Committee should conduct the pre-approval with Shanghai Construction and Management Committee and Shanghai Administration and Industry and Commerce, and then submit the application to the Ministry of Commerce. The Ministry of Commerce shall submit materials to the Ministry of Construction for soliciting of opinions within 10 days upon receiving the materials. The Ministry of Construction shall give reply within 30 days upon receiving the materials. The Ministry of Commerce shall issue written reply concerning the approval within 30 days from getting the reply of the Ministry of Construction and issue the Certificate of Approval for Establishment of Enterprises with Foreign Investment to the enterprises complying with the conditions. The applier should go the formalities of industrial and

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commercial registration and get the business license within 30 days after the issuance of the certificate. After the issuance of business license, the applier shall apply for the qualification of construction industry according to the regulations on the management of construction enterprises.



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