

**Circular of Printing and Distributing the Implementation Measures of the Ministry of Construction on Qualification Administration in the Administrative Provisions on Enterprises Management of Construction Enterprises with Foreign Investment**

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Construction departments at provincial or autonomous regional level, construction commissions of municipalities directly under the Central Government, construction administration bureaus of Shandong and Kiangs, construction departments of relative sections under the State Council, Construction Bureau of the Production and Construction Corps of Xingjian, Engineering Bureau of Barracks Department of General Logistics:

The Circular of Printing and Distributing the Implementation Measures of the Ministry of Construction on Qualification Administration in the Administrative Provisions on Enterprise Management of Construction Enterprises with Foreign Investment is hereby printed and distributed to you for implementation. For any problem found during the course of implementation, please inform the Construction Market Management Department of our Ministry immediately.

The Ministry of Construction of the People's Republic of China

April 8, 2003

These Measure are formulated for the purpose of implementing the Administrative Provisions on Enterprise Management of Construction Enterprises with Foreign Investment (Decree No.113 of the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation) (hereafter referred to as the "Provisions").

I. Targets that the Construction Enterprise with Foreign Investment Qualification Certificates are granted to The Construction Enterprises with Foreign Investment Qualification Certificates shall be granted to the following construction enterprises with foreign investment that have gained legal entity qualifications:

1. Construction enterprise which whole capital is invested by foreign investor(s);
2. Construction enterprise established jointly by Chinese investor(s) and foreign investor(s) through a way of joint-venture or cooperation.
3. Newly-established construction enterprise, in the name of an enterprise with foreign investment, or share-purchased construction enterprise by an enterprise with foreign investment founded legally in China.

Construction Enterprises with Foreign Investment Qualification Certificates shall not be granted to the foreign corporations or branches established in China by foreign corporations or other economic organizations.

II. Scope of construction activities of construction enterprises with foreign investment

The construction activities mentioned in Article 3 of the Provisions refer to the activities performed in the territory of China according to the provisions in Construction Law of the

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People's Republic of China and Regulations of Construction Project Quality Management, including civil engineering, construction, pipe/line infrastructure building, and new construction, expansion and rebuilding of fitment projects.

### III. Verification of the qualifications of construction enterprises with foreign investment

Applications of construction enterprises with foreign investment for the construction enterprise qualifications shall be accordance with the Provisions on Enterprise Management of Construction Enterprises with Foreign Investment (Decree No.113 of the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation), Regulations on Administration of Construction Enterprise Qualifications (Decree No.87 of the Ministry of Construction), Opinions of Implementing the Regulations on Administration of Construction Enterprise Qualifications (JianBanJian [2001] No.24), Criteria of Grading of Construction Enterprise Qualifications (JianJian [2001] No.82) and other provisional and standardization documents concerning qualification administration of construction enterprises.

1. The qualification grade of a new construction enterprise with foreign investment shall be verified at the lowest grade, with an interim period of one year.

2. A new construction enterprise with foreign investment invested by a foreign enterprise that has contracted project(s) in China may apply directly for a qualification of Grade B or above, provided that it meets following requirements in addition to other requirements necessary for the construction enterprise qualification:

(1) It has gained a foreign enterprise qualification certificate or an approval certificate for contracting projects, which is issued by Ministry of Construction, or provincial competent administration on construction or by a competent administration of special economic zone or costal opening city prior to September 30, 2003, according to the Interim Measures for Qualification Administration on Foreign Enterprise Contracting Construction Projects in China (Decree No.32 of The Ministry of Construction).

(2) For the applications for the construction enterprise with foreign investment qualifications, the performances of contracted projects in China by the applicant foreign corporations shall meet with the standards for contracting projects which are required for applying for the construction enterprise with foreign investment qualifications. For the application for a qualification of Chinese-foreign equity joint venture construction enterprise or Chinese-foreign cooperative construction enterprise, the performance of the projects contracted in China by the foreign corporations as well as the total performance of contracted projects by the Chinese parties shall meet with the standards for contracting projects that are required for applying for the construction enterprise qualifications.

3. For the domestic construction enterprises with foreign shares invested by foreign corporations, which natures therefore become Chinese-foreign equity joint venture construction enterprises or Chinese-foreign cooperative construction enterprises, the qualifications shall be re-graded according to the standards actually reached.

4. For the domestic construction enterprises purchased by foreign enterprises, which nature therefore become construction enterprises with foreign investment, the qualifications shall be

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graded according to the standards actually reached.

5. A Chinese-foreign equity joint venture construction enterprise or a Chinese-foreign cooperative construction enterprise established prior to the enforcement of the Provisions, which registered capital had not met with the requirements in the former Provisions on Founding Construction Enterprise with Foreign Investment promulgated jointly by the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation may, after the enforcement of the Provisions, apply for an appropriate grade of qualification of construction enterprise.

#### IV. Requirements for the foreign service-providers in construction enterprises with foreign investment

If a construction enterprise with foreign investment employs a foreign service-provider as technical or economic manager, labor contract signed legally shall be presented when applying for the qualification.

1. If a construction enterprise with foreign investment employs a foreign service-provider as its operation manager, such foreign service-provider shall possess the working experience in construction management which is required in the standards for construction enterprise qualification and shall provide corresponding proofs.

2. If a construction enterprise with foreign investment employs a foreign service-provider as technical or economic manager, such foreign service-provider shall possess a professional title equivalent to the required standards for construction enterprise qualification.

3. A foreign service-provider with a college degree or above and with over 10-year working experience in this field, who is employed by a construction enterprise with foreign investment as technical or economic manager, may be reported as a staff with a senior professional title when applying for the qualification. One with an associate degree or above and with over 5-year working experience in this field may be reported as one with a middle professional title.

4. A foreign service-provider employed by a construction enterprise with foreign investment as the project manager, who meets with the following requirements and can provide corresponding proofs, may be approved to be with the corresponding qualification for the project manager by the qualification administration authority when the enterprise is applying for the qualification.

(1) A foreign service-provider declared as Grade A project manager shall have been the principal construction manager for one construction project that meets with the requirements for Grade A construction enterprise or two construction projects that meet with the requirements for Grade B construction enterprise.

(2) A foreign service-provider declared as Grade B project manager shall have been the principal construction manager for two construction projects including at least one project that meets with the requirements for Grade B construction enterprise.

(3) A foreign service-provider declared as Grade C project manager shall have been the principal construction manager for two construction projects including at least one project that meets with the requirements for Grade C construction enterprise. The headcounts of the foreign service-providers approved as the project managers of the enterprise according this

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Article shall not exceed one-of-the-third of the headcounts for project managers specified in the standards for qualification of construction enterprise.

5. The accumulated residing time within the territory of China of each foreign service-provider employed by the construction enterprise with foreign investment as technical or economic manager shall be no less than 3 months each year.

V. Verification of the performances of construction enterprises with foreign investment in contracting construction projects

After the enforcement of the Provisions, if the foreign party of a construction enterprise with foreign investment contracts a project jointly with a Chinese construction enterprise or subcontracts a project to a Chinese construction enterprise, the performance of such project may be regarded as the performance of this construction enterprise with foreign investment for applying for the construction enterprise qualification or for annual audit.

VI. Scope of contracting projects of construction enterprise with foreign investment

"Jointly contracting by Chinese-foreign construction enterprises" mentioned in Item 4, Article 15 in the Provisions means that construction enterprise with foreign investment may contract projects jointly with domestic construction enterprises, Chinese-foreign equity joint venture construction enterprises or Chinese-foreign cooperative construction enterprises.

VII. Acceptance time for the applications for qualifications of construction enterprises with foreign investment

The period from December 1, 2002 to October 1, 2003 is the transition period for implementing both Decree No.32 of the Ministry of Construction and the Provisions at the same time. Within this transition period, the qualification administration authorities are ready to accept the applications for construction enterprise with foreign investment qualifications at any time. After October 1, 2003, the applications for construction enterprise with foreign investment qualifications will be accepted by the schedule arranged by the qualification administration authorities.

VIII. Relation between the Provisions and former Decree No.32 of the Ministry of Construction

Prior to October 1, 2003, according to Article 26 of the Provisions, construction enterprises with foreign investment may continue contracting projects in accordance with the former Decree No.32 of the Ministry of Construction, i.e. Interim Measures for Qualification Management on Foreign Corporations Contracting Construction Projects in China.

1. Foreign enterprises that have gained qualification certificates for contracting construction projects may continue contracting construction projects in accordance with the requirements in the Interim Measures for Qualification Management on Foreign Corporations Contracting Construction Projects in China, including continuing uncompleted construction projects, continuing to apply for expanding contracted areas and continuing to apply for term extension

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of the qualification certificate.

2. Foreign enterprises that have not gained qualification certificates for contracting construction projects may continue to apply for foreign enterprise qualification certificates in accordance with the requirements in the Interim Measures for Qualification Management on Foreign Corporations Contracting Construction Projects in China.

3. After October 1, 2003, the qualification administration authorities will not accept the applications from foreign corporations for contracting construction projects within the territory of China, and will not deal with the applications for extending qualification terms or for expanding contracted areas. Foreign corporations may continue to complete the projects contracted before this date which contract terms or actual performance terms exceed this date.

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