

Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises

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

The Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China

Decree No. 114

Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises approved respectively at the 63rd Executive Meeting of the Ministry of Construction on 9 September 2002 and at the 10th Ministerial Meeting of the Ministry of Foreign Trade and Economic Cooperation on 17 September 2002 are now issued and shall come into force on 1 December 2002.

Minister of the Ministry of Construction: Wang Guangtao

Minister of the Ministry of Foreign Trade and Economic Cooperation: Shi Guangsheng

27 September 2002

Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises

Article 1 These Regulations hereof are formulated in order to further the opening up to the outside and standardize the administration of foreign-invested construction and engineering design enterprises in accordance with such laws and regulations as the Construction Law of the People's Republic of China, the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Regulations on Administration of Construction Engineering Quality and the Regulations on Administration of Reconnoitering and Designing of Construction Projects.

Article 2 These Regulations shall apply to the establishment of foreign-invested construction and engineering design enterprises within the territory of the People's Republic of China, the application for construction and engineering design enterprise qualifications and the administration and supervision of the foreign-invested construction and engineering design enterprises.

The term 'foreign-invested construction and engineering design enterprise' mentioned in these Regulations refers to a wholly foreign-owned construction and engineering design enterprise, or a Sino-foreign equity construction and engineering design joint venture or a Sino-foreign cooperatively construction and engineering design enterprise established within the territory of the People's Republic of China in accordance with Chinese laws and regulations.

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China Business Engine

Tel +86 21 52289730

Fax +86 21 5228-9730

Website

China site: www.cbize.com

Globe site: www.cbize.net

Article 3 A foreign investor, which intends to establish a foreign-invested construction and engineering design enterprise within the territory of the People's Republic of China and carry out construction and engineering design business shall, in accordance with laws, obtain the foreign-invested enterprise approval certificate from the relevant foreign trade and economic cooperation administration department and register with the State Administration of Industry and Commerce or its authorised administration of industry and commerce at local levels, and also obtain the qualification certificate of construction and engineering design enterprise from the relevant construction administration department.

Article 4 Foreign-invested construction and engineering design enterprises shall abide by the laws, regulations and rules of the People's Republic of China when carrying out construction and engineering design activities within the territory of the People's Republic of China.

The lawful operation of foreign-invested construction and engineering design enterprises and their legal rights and interests within the territory of the People's Republic of China shall be protected by Chinese laws, regulations and rules.

Article 5 The foreign trade and economic cooperation administration department of the State Council shall be responsible for the administration of establishing foreign-invested construction and engineering design enterprises. The construction administration department of the State Council shall be responsible for the administration of the qualifications of foreign-invested construction and engineering design enterprises.

The foreign trade and economic cooperation administration departments of the people's government of provinces, autonomous regions or directly administered municipalities shall be responsible for the administration of establishment of foreign-invested construction and engineering design enterprises within their authorized jurisdiction ; the construction administration departments of the people's government of provinces, autonomous regions or directly administered municipalities shall, in accordance with these regulations, be responsible for the administration of the qualifications of the foreign-invested construction and engineering design enterprises within their administrative region.

Article 6 The application for and the examination and approval of the establishment of a foreign-invested construction and engineering design enterprise and the qualifications shall be managed by a grading and categorization system.

Where an applicant is to apply for Grade A qualifications for construction and engineering design or other Grade A or Grade B qualifications for construction and engineering design, the establishment of the foreign-invested construction and engineering design enterprise shall be examined and approved by the foreign trade and economic cooperation administration department of the State Council and its qualifications shall be examined and approved by the construction

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administration department of the State Council. Where an applicant is to apply for Grade B qualifications for construction and engineering design or other Grade C or lower qualifications for construction and engineering design, the establishment of the foreign-invested construction and engineering design enterprise shall be examined and approved by the foreign trade and economic cooperation administration department of the people's government of the province, the autonomous region or the directly administered municipality and its qualifications shall be examined and approved by the construction administration department of the people's government of the province, the autonomous region or the directly administered municipality.

Article 7 The procedures for the establishment of a foreign-invested construction and engineering design enterprise and the application for construction and engineering design qualifications or other Grade A or B engineering design qualifications shall be:

- (1) The applicant shall submit an application to the foreign trade and economic cooperation administration department of the people's government of the province, the autonomous region or the directly administered municipality where the proposed foreign-invested construction and engineering design enterprise is to be established.
- (2) The foreign trade and economic cooperation administration department of the people's government of the province, or the autonomous region or the directly administered municipality shall complete the preliminary examination within 30 days of receiving the application, and shall, if it grants the preliminary approval, submit the application to the foreign trade and economic cooperation administration department of the State Council for further approval.
- (3) Within 10 days of receiving the application for further approval, the foreign trade and economic cooperation administration department of the State Council shall forward the application to the construction administrative department of the State Council for review and comments. The construction administration department of the State Council shall provide its opinion in writing within 30 days of receiving the request. Within 30 days of receiving the response, the foreign trade and economic cooperation administration department of the State Council shall decide whether or not to approve the application and express such a decision in written form. If the application is approved, a foreign-invested enterprise certificate shall be granted; if the application is not approved, reasons for the disapproval shall be given in written form.
- (4) Within 30 days of receiving the approval certificate, the applicant shall carry out enterprise registration with the relevant registration department.
- (5) After obtaining business license for the legal entity, if the foreign-invested construction and engineering design enterprise is to apply for the construction and engineering design enterprise qualifications, the application shall be carried out in accordance with the Regulations on Administration of Construction and Engineering Design Enterprise Qualifications.

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Article 8 The procedures for the establishment of a construction and engineering design enterprise and the application for Grade B qualifications and Grade C or lower qualifications for engineering design shall be administered by the construction administration department and the foreign trade and economic cooperation administration department of the people's government of the province, or the autonomous region or the directly administered municipality based on local conditions with reference to Article 7 of these Regulations and Regulations on Administration of Construction and Engineering Design Enterprise Qualifications.

Examination and approval of the qualifications of foreign-invested construction and engineering design enterprises by the construction administration departments of the People's government of provinces, autonomous regions or directly administered municipalities shall be put on file with the construction administration department of the State Council within 30 days after the approval is given.

Article 9 The application by a foreign-invested construction and engineering design enterprise to upgrade its qualifications or to add additional engineering qualifications shall be made to the relevant construction administration department in accordance with relevant regulations.

Article 10 An applicant which intends to establish a foreign-invested construction and engineering design enterprise shall submit the following documents to the relevant foreign trade and economic cooperation administration department:

- (1) Application forms to establish a foreign-invested construction and engineering design enterprise signed by the investor's legal representative;
- (2) The feasibility study report prepared or accepted by the investor;
- (3) The contract for establishment of foreign-invested construction and engineering design enterprise and the articles of association signed by the investor's legal representative (only the the articles of association are required for the establishment of a wholly foreign-owned construction and engineering design enterprise);
- (4) The notification of pre-verification of the name of the enterprise;
- (5) Documentary evidence of legal entity registration of the investor to carry out construction and engineering design in its home country or region and its bank credential letter;
- (6) Appointment letters and documentary evidence of the investor's designated chairman and members of the board of directors, managers and technical managers etc.; and
- (7) Balance sheets and profit and loss accounts of the investor over the past three years audited by a certified accountant or an accounting firm.

Article 11 The applicant applying for foreign-invested construction and engineering design enterprise qualifications shall submit the following documents to the relevant construction administration department:

- (1) Application forms for the qualifications for a foreign-invested construction and engineering

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design enterprise;

- (2) The approval certificate for the establishment of the foreign-invested construction and engineering design enterprise;
- (3) The business license for the legal entity;
- (4) Documentary evidence of legal entity registration of the investor to carry out construction and engineering design in its home country or region and its bank credential letter;
- (5) Professional qualification certificate issued by his home country or region and the individual or enterprise construction and engineering design track record and documentary evidence of its reputation issued by the relevant governmental department or professional institution, association or notary public; and
- (6) Other documents as required by Regulations on Administration of Construction and Engineering Design Enterprise Qualifications.

Article 12 All materials required to be submitted by an applicant under these Regulations shall be in Chinese. If the original documentary evidence is in a foreign language, a Chinese translation shall be provided.

Article 13 The foreign investor or the foreign service provider of a foreign-invested construction and engineering design enterprise shall be an enterprise engaged in construction and engineering design or a certified architect or a certified engineer in his or her home country.

Article 14 The total capital contribution of the Chinese party to a Sin-foreign equity construction and engineering design joint venture or a Sino-foreign cooperatively construction and engineering design joint venture shall not be less than 25% of the registered capital.

Article 15 The criteria of grading of qualifications of foreign-invested construction and engineering design enterprises shall be in accordance with the requirements of grading of qualifications of construction and engineering design enterprise issued by the construction administration department of the State Council.

Where a wholly foreign-owned construction and engineering design enterprise applies for the construction and engineering design enterprise qualifications, its foreign service providers who have been qualified as certified architects or certified engineers in China shall not be less than 1/4 of the total certified professionals required under the qualification grading criteria, and the foreign service providers who have the relevant design experience shall not be less than 1/4 of the total key technical personnel required under the qualification grading criteria.

Where a Sin-foreign equity construction and engineering design joint venture or a Sino-foreign cooperatively managed construction and engineering design enterprise applies for the construction and engineering design enterprise qualifications, its foreign service providers who have been qualified as certified architects or certified engineers in China shall not be less than 1/8 of the total

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registered professionals required under the qualification grading criteria, and its foreign service providers who have the relevant design experience shall not be less than 1/8 of the total key technical staff required under the qualification grading criteria.

Article 16 Each of the architects and engineers certified in China and the key technical personnel of the foreign service provider in a foreign-invested construction and engineering design enterprise shall reside within the territory of the People's Republic of China for no less than a cumulative period of 6 months each year.

Article 17 Where a foreign-invested construction and engineering design enterprise carrying out construction and engineering design activities within the territory of the People's Republic of China violates the Construction Law of the People's Republic of China, Regulations on Administration of Construction Engineering Quality, Regulations on Administration of Prospecting and Designing of Construction Projects and Regulations on Administration of Construction Engineering Prospecting Design Enterprise Qualifications and other relevant laws, regulations and rules, it shall be penalized in accordance with relevant provisions.

Article 18 Investors from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan shall establish construction and engineering design enterprises and carry out businesses in other provinces, autonomous regions or directly administered municipalities in accordance with these Regulations, unless it is otherwise provided by laws, regulations and the State Council.

Article 19 The timing for accepting and processing the application for establishment of foreign-invested construction and engineering design enterprises shall be determined by the construction administration department of the State Council and the foreign trade and economic cooperation administration department of the State Council.

Article 20 The construction administration department of the State Council and the foreign trade and economic cooperation administration department of the State Council shall be responsible for interpreting these Regulations in accordance with their functions.

Article 21 These Regulations shall go into force on 1 December 2002. Regulations on Administration of Establishment of Sino-Foreign Project Design Joint Venture (File No. 180, 1992) shall be repealed at the same time.

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