

Regulations on Administration of Foreign-Invested Construction 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. 113

Regulations on Administration of Foreign-Invested Construction 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 go into effect on 1 December 2002.

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Regulations on Administration of Foreign-Invested Construction Enterprises

Chapter 1 General provisions

Article 1 These Regulations hereof are formulated to further the opening up to the outside and standardise the administration of foreign-invested construction enterprises in accordance with such laws and regulations as the Construction Law of the People's Republic of China, the Tendering and Bidding 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 and the Regulations on Administration of Construction and Engineering Quality.

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

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

Article 3 A foreign investor, which intends to establish a foreign-invested construction enterprise within the territory of the People's Republic of China and conduct construction business, shall, in

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accordance with laws, obtain the 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 the qualification certificate from the relevant construction administration department.

Article 4 Foreign-invested construction enterprises which engage in construction business within the territory of the People's Republic of China shall abide by the laws, regulations and rules of the People's Republic of China.

The lawful operation of foreign-invested construction 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 the establishment of foreign-invested construction enterprises. The construction administration department of the State Council shall be responsible for the administration of the qualifications of foreign-invested construction 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 the establishment of foreign-invested construction enterprises within their authorised jurisdiction; the construction administration departments of the people's government of the provinces, or autonomous regions or directly administered municipalities shall, in accordance with these Regulations, be responsible for the administration of qualifications of foreign-invested construction enterprises within their administrative regions.

Chapter 2 Application for and Examination and Approval of Establishment of Foreign-invested Construction Enterprises and their Qualifications

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

Where an applicant is to apply to establish a contractor with Super Grade or Grade A qualifications or to establish a specialised contractor with Grade A qualifications, the establishment of the foreign-invested construction 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 administration department of the State Council; where an applicant is to apply to establish a contractor or a specialised contractor with Grade B or lower qualifications or any of the subcontractor qualifications, the establishment of the foreign-invested construction enterprise shall be examined and approved by

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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.

Where the Chinese investor to a proposed Sino-foreign equity construction joint venture or a Sino-foreign cooperative construction enterprise is an enterprise administered by the central government, the establishment of the joint venture 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 administration department of the State Council.

Article 7 The procedures for the establishment of a foreign-invested construction enterprise as a contractor with Super Grade or Grade A qualifications or a specialised contractor with Grade A qualifications are:

- (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 enterprise is to be established.
- (2) The foreign trade and economic cooperation administration department of the people's government of the province, 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 administration department of the State Council shall forward the application to the construction administration 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 register with the relevant registration department.
- (5) After obtaining the business license for the legal entity, the application by the foreign-invested construction enterprise for qualification approval shall be conducted in accordance with Regulations on Administration of Construction Enterprise Qualifications.

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Article 8 The procedures for the establishment of a foreign-invested construction enterprise as a contractor or a specialised contractor with Grade B or lower qualifications or any of the subcontractor qualifications 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, 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 Enterprise Qualifications.

Examination and approval of qualifications of the foreign-invested construction enterprise by the construction administration department of the people's government of the province, the autonomous region or the directly administered municipality shall be filed 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 enterprise for upgrading its qualifications or adding additional qualifications in addition to major items 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 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 enterprise signed by the investor's legal representative;
- (2) The feasibility study report prepared or accepted by the investors;
- (3) The contract for the establishment of a foreign-invested construction enterprise and the articles of association signed by the investor's legal representative (only the articles of association is required for the establishment of a wholly foreign-owned construction enterprise);
- (4) The notification on pre-verification of the name of the enterprise;
- (5) Documentary evidence of legal entity registration and bank credential letter of the investor;
- (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 enterprise qualifications shall

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submit the following documents to the relevant construction administration department:

- (1) Application forms for the foreign-invested construction enterprise qualifications;
- (2) The approval certificate for the establishment of the foreign-invested construction enterprise;
- (3) The business licence for the legal entity;
- (4) The bank credential letter of the investor;
- (5) Appointment letters and documentary evidence of the investor's designated chairman and members of the board of directors, the enterprise's financial manager, operations managers and technical managers etc.; and
- (6) Balance sheets and profit and loss accounts of the investor over the past three years audited by a certified accountant or an accounting firm.
- (7) Other documents required

Article 12 The total capital contribution of the Chinese party to a Sino-foreign equity construction joint venture or a Sino-foreign cooperative construction enterprise shall not be less than 25% of the registered capital.

Article 13 Qualifications of Sino-foreign equity construction joint ventures and Sino-foreign cooperative construction enterprises established prior to the issuance of these Regulations are required to be re-examined and ratified in accordance with these Regulations and Regulations on Administration of Construction Enterprise Qualifications.

Article 14 All documents 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.

Chapter 3 Scope of Contracting

Article 15 Wholly foreign-owned construction enterprises may only undertake the following types of construction projects within the scope of their qualifications:

- (1) Construction projects funded totally by foreign investments, foreign grants or foreign investments and grants;

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(2) Construction projects financed by international financial organisations and awarded through international tendering process in accordance with the provisions of the loan agreement;

(3) Sino-foreign jointly constructed projects where the foreign investment is equal to or greater than 50%; Sino-foreign jointly constructed projects where the foreign investment is less than 50% but which Chinese construction enterprises cannot undertake independently due to technical difficulties subject to the approval of the construction administration departments of the people's government of provinces, or autonomous regions or directly administered municipalities;

(4) China-invested construction projects which Chinese construction enterprises cannot undertake independently due to technical difficulties. Such projects may be jointly undertaken by Chinese and foreign construction enterprises subject to the approval of the construction administration departments of the people's government of provinces, or autonomous regions or directly administered municipalities.

Article 16 Sino-foreign equity construction joint ventures and Sino-foreign cooperative construction enterprises shall undertake construction projects within the permitted scope of their grades of qualifications.

Chapter 4 Supervision and Administration

Article 17 The criteria of grading of qualifications of foreign-invested construction enterprises shall be in accordance with the criteria of grading of construction enterprise qualifications formulated and issued by the construction administration department of the State Council.

Article 18 Where a foreign-invested construction enterprise undertakes a construction project as the contractor, it shall itself complete the main structure of the project.

Article 19 Where a foreign-invested construction enterprise contracts for construction projects in the form of a consortium with other construction enterprises, the consortium shall contract for projects within the permitted scope of the lower qualification grade.

Article 20 Where a foreign-invested construction enterprise contracts for construction projects beyond the permitted scope of its qualifications in violation of Article 15 of these Regulations, a fine at an amount between 2% to 4% of the construction contract price shall be collected. An order to suspend its business operation and to correct the wrongdoings may also be issued and its qualification certificate may be demoted. In serious situations, the qualification certificate shall be revoked and any proceeds illegally obtained shall be confiscated.

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Article 21 Where a foreign-invested construction enterprise carrying out construction business violates the Construction Law of the People's Republic of China, the Tendering and Bidding Law of the People's Republic of China, Regulations on Administration of Engineering Construction Quality and Regulations on Administration of Construction Enterprise Qualifications and other relevant laws, regulations and rules, it shall be penalised in accordance with relevant provisions.

Chapter 5 Supplemental Provisions

Article 22 For a foreign enterprise which has already obtained a Foreign Enterprise Qualification Certificate for Contracting for Construction Projects prior to these Regulations come into force, it may apply for a construction enterprise qualification of an appropriate grade based on its track record of project contracting within the territory of the People's Republic of China when establishing a foreign-invested construction enterprise.

Where a foreign enterprise which has already established a foreign invested construction enterprise within the territory of the People's Republic of China as stated in Paragraph 1 of this Article is to establish a new foreign-invested construction enterprise, the qualification grade of the new foreign-invested construction enterprise shall be determined in accordance with Regulations on Administration of Construction Enterprise Qualifications.

Article 23 Investors from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan shall establish construction enterprises and carry out construction businesses in other provinces, autonomous regions or directly administered municipalities in accordance with these Regulations, unless it is otherwise provided by laws, regulations or the State Council.

Article 24 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 interpretation of these Regulations in accordance with their respective functions.

Article 25 These Regulations shall come into force on 1 December 2002.

Article 26 The Tentative Measures on Administration of Foreign Enterprise Qualifications for Contracting for Construction Projects Within the Territory of China issued by the Ministry of Construction (Decree No. 32 of the Ministry of Construction) shall be repealed as of 1 October 2003.

Article 27 Provisions on Establishment of Foreign-invested Construction Enterprises (File No. 533, 1995) jointly issued by the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation shall be repealed as of 1 December 2002.

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