

**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.

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 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 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 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.

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 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;
- (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.

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.

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 standardise 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 Reconnoitring 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.

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 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.

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 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 submit the following documents to the relevant construction administration department:

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

**Implementing Rules of Ministry of Construction on Qualification
Administration under the Administrative Regulations of Foreign Investment
Construction Enterprises**

These Implementing Rules are formulated in order to implement the *Administrative Regulations of Foreign Investment Construction Enterprises* (coded as Decree 113 of Ministry of Construction and Ministry of Foreign Trade and Economic Cooperation, hereinafter referred to as “the Regulations”).

I. Recipients of Foreign Investment Construction Enterprise Qualification Certificate

Foreign Investment Construction Enterprise Qualification Certificates shall be granted to the following foreign investment construction enterprises with legal person status:

1. Wholly foreign owned construction enterprises;
2. Sino-foreign equity or contractual construction joint ventures;
3. Newly established construction enterprises invested by or construction enterprises restructured by the share purchase by existing foreign investment enterprises on their own name;

Foreign Investment Construction Enterprise Qualification Certificates will not be granted to foreign enterprises or branches of foreign enterprises or other economic entities.

II Scope of Construction Activities allowed for Foreign Investment Construction Enterprises

Construction activities under Article 3 of the Regulations refer to the activities including civil engineering, architectural engineering, line & pipe planting engineering, new construction, expansion or renovation of decoration engineering, etc. pursuant to the pertinent provisions under the *PRC Construction Law* and the *Regulations on Quality Control of Construction Engineering*.

III Determination of Foreign Investment Construction Enterprise Qualification

Verification of Foreign Investment Construction Enterprise Qualification shall be determined pursuant to: the *Administrative Regulations of Foreign Investment Construction Enterprises* (coded as Decree 113 of Ministry of Construction and Ministry of Foreign Trade and Economic Cooperation), the *Administrative Regulations of Construction Enterprises* (coded as Decree 87 of Ministry of Construction), the *Implementing Rules of the Administrative Regulations of Construction Enterprises* (coded as Jian Ban Jian [2001] No.24), the *Grade Classification Standards of Construction Enterprises* (coded as Jian Jian No. 82) as well as provisions and regulatory documents in respect to qualification control on construction enterprises.

1. As to newly established foreign investment construction enterprises, the qualification grade shall be determined from the lowest grade and shall be subject to a tentative period of one year.
2. Newly established foreign investment construction enterprises invested by foreign company who contracts projects in China may apply directly for the qualification of Grade B or a higher grade by satisfying the following terms and conditions (they shall satisfy the relevant conditions set forth by the *Grade Classification Standards of Construction Enterprises*):
3. Domestic construction Enterprises which are restructured into equity joint ventures or contractual joint ventures after share transfer to foreign enterprises, the qualification of the enterprises after such restructuring shall be re-determined according the standards they actually reach.
4. As to wholly foreign owned construction enterprises established by acquisition of domestic construction enterprises, the qualification thereof shall be re-determined according the standards they actually reach.
5. Existing equity construction joint ventures and contractual joint ventures established prior to the implementing of the Regulations, which fail to satisfy the requirements to the registered capital pursuant to the previous documents - the Several Provisions on Establishment of Foreign Investment Construction Enterprises (Jian Jian [1995] No. 533) jointly promulgated by Ministry of

Construction and Ministry of Foreign Trade and Economic Cooperation, may apply for qualification of the corresponding grade.

IV Qualification of Foreign Service Providers within Foreign Investment Construction Enterprises

If foreign investment construction enterprises employ foreign service providers to be the engineering technical personnel and management personnel, they shall present the relevant legal concluded labor contracts when applying for enterprise qualification.

1. In the case that foreign investment construction enterprises employ foreign service providers in the position of enterprise manager, such foreign service providers shall have the project management working experience under the *Grade Classification Standards of Construction Enterprises* and shall provide relevant certification documents.
2. In the case that foreign investment construction enterprises employ foreign service providers to be the engineering technical personnel and management personnel, such foreign service providers shall satisfy the relevant technical title requirements under the *Grade Classification Standards of Construction Enterprises*.
3. In the case that foreign investment construction enterprises employ foreign service providers to be the engineering technical personnel and management personnel, if such foreigner process bachelor degree or above and the working experience in the profession of more than ten years, they may be regarded as personnel with senior title in the application by the enterprises for enterprise qualification; if such foreigner process college degree or above and the working experience in the profession of more than five years, they may be regarded as personnel with secondary title in the application by the enterprises for enterprise qualification;
4. In the case that foreign investment construction enterprises employ foreign service providers in the position of project manager, such foreign service providers shall be confirmed during the application by the enterprises for qualification by the competent qualification administrative authority to be qualified as project manager under the corresponding grade provided that they satisfy the following conditions and provide the relevant certifications:

- (1) As to a foreign service provider to be applied as project manager for Grade A, he shall have the working experience as the main person in charge for one project constructed under the required standards for the Grade A construction enterprise or two projects constructed under the required standards for the Grade B construction enterprise.
 - (2) As to a foreign service provider to be applied as project manager for Grade B, he shall have the working experience as the main person in charge for two projects, one of which shall be constructed under the required standards for the Grade B construction enterprise.
 - (3) As to a foreign service provider to be applied as project manager for Grade C, he shall have the working experience as the main person in charge for two projects, one of which shall be constructed under the required standards for the Grade C construction enterprise.
5. The number of foreign project managers confirmed under this provision shall not exceed one third of the total number of project managers set forth by the *Grade Classification Standards of Construction Enterprises*.

V Determination of Track Record of Foreign Investment Construction Enterprises

After the implementing of the Regulations, as to the case that foreign investors to foreign investment construction enterprises contract the project outside China in the form of joint contract with Chinese construction enterprises or subcontract to Chinese construction enterprises, such project may serve as track record of the relevant foreign investment construction enterprises for the application of construction enterprise qualification or annual inspection of the qualification.

VI Contract Scope of Foreign Investment Construction Enterprise

“Joint contract by domestic and foreign construction enterprises” under Article 15 subsection 4 of the Regulations refers that wholly foreign-owned construction enterprises may take joint contract with domestic construction enterprises, Sino-foreign equity construction joint ventures or Sino-foreign contractual construction joint ventures.

VII Timing for Accepting the Qualification Application Filed by Foreign Investment Construction Enterprises

The period between December 1, 2002 to October 1, 2003 shall be the transition period where Decree 32 of Ministry of Construction and the Regulations are both in effect. During such transition period, the competent qualification administrative authority will accept the qualification application filed by foreign investment construction enterprises at any time.

After October 1, 2003, the qualification application filed by foreign investment construction enterprises shall be uniformly arranged in accordance with the schedule for acceptance of qualification application filed by domestic construction enterprises.

VIII Relation between the Regulations and the Previous Decree 32 of Ministry of Construction

Pursuant to Article 26 of the Regulations, by the date of October 1, 2003, projects in China to be contracted by foreign enterprise shall still be governed by the previous Decree 32 of Ministry of Construction, i.e., the *Provisional Measures on the Qualification Administration of Foreign Enterprise Contracting Projects in China*.

1. Foreign enterprises that have obtained Qualification Certificates for Foreign Enterprise Contracting Projects, may still contract projects in China in accordance with the *Provisional Measures on the Qualification Administration of Foreign Enterprise Contracting Projects in China*, including continue the contracting of unfinished approved construction projects, continue the application of expansion of the contracting area, and continue the extension of Qualification Certificates.
2. Foreign enterprises that have not obtained Qualification Certificates for Foreign Enterprise Contracting Projects, may still apply for Qualification Certificates in accordance with the *Provisional Measures on the Qualification Administration of Foreign Enterprise Contracting Projects in China*.
3. After October 1, 2003, the competent qualification administrative authorities will not accept any application filed by foreign enterprise for qualification to contract projects in China and will not conduct any examination and approval to the extension of Qualification Certificates or expansion of contracting areas.

Project Contracting Contracts executed before such date, where the contract term or the actual performance term will extend after October 1, 2003, such foreign enterprises may continue to complete the projects.