



JONES DAY COMMENTARY

CHINA'S MINISTRY OF CONSTRUCTION ISSUES ADMINISTRATIVE REGULATION FOR FOREIGN-INVESTED CONSTRUCTION SERVICES ENTERPRISES

A draft regulation entitled "Administrative Regulation for Foreign-Invested Construction Services Enterprises" was issued and published by the Ministry of Construction ("MOC") on September 19, 2005 for consultation until October 15, 2005.

According to the draft regulation, foreign-invested construction services enterprises ("FICSE"), including construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms, may be established in the form of:

- Wholly foreign-owned construction service enterprises ("WFOCSE")
- Sino-foreign equity joint ventures ("EJV")
- Sino-foreign cooperative joint ventures ("CJV").

The draft regulation deals with both the establishment of FICSEs as well as the requirements for the skill qualifications for such enterprises.

REQUIREMENTS ON FOREIGN INVESTORS INVESTING IN A CONSTRUCTION SERVICE COMPANY

Capital Contribution Requirements. The draft regulation provides that the Chinese investor(s) in an EJV or a CJV shall contribute no less than 25 percent of the registered capital. This requirement is in line with the general requirement for capital contributions by Chinese investors in an EJV or CJV and is consistent with Decree 113 and Decree 114.

Qualification Requirements for Foreign Investors. According to the draft regulation, foreign investors (i.e., foreign companies) and foreign service providers (i.e., foreign individuals) of a FICSE shall be an engineering or architectural consulting company or registered technical professionals respectively in the country where the respective investors or service providers are located. Further, such foreign investors or foreign service providers shall possess relevant engineering service track records in their home country.

ESTABLISHMENT OF FICSEs

Authority to Approve Applications for Establishment of FICSEs. The establishment of a Grade A FICSE shall be reviewed and approved by the Administration of Commerce under the State Council. The establishment of a Grade B and below FICSE shall be reviewed and approved by the competent administration of commerce under the relevant provincial government.

Approval Procedures of FICSEs. The draft regulation sets out the procedures for setting up an FICSE. For Grade A FICSEs, the applicant must submit an application to the competent Administration of Commerce under the provincial government at the proposed place of business of the intended FICSE. The provincial Administration of Commerce is required to complete a preliminary review within 20 days from the date of acceptance of the application and then report to the Administration of Commerce under the State Council. Within five days of receipt of the preliminary review materials, the State Council Administration of Commerce must transfer these application materials to the State Council Administration of Construction for consultation. The State Council Administration of Construction must provide its feedback within 10 days of receipt of the request for consultation. The State Council Administration of Commerce must make a written decision as to whether

to approve or disapprove the application within five days of receipt of the written feedback from the State Council Administration of Construction. An approval certificate will be issued to the approved FICSE, and a written statement will be issued to a disapproved FICSE stating the reasons for such disapproval.

For Grade B and below, the review and approval by the administration of commerce under the relevant provincial government will follow the same procedure as the Grade A approval process mentioned above, taking into account local circumstances.

QUALIFICATION OF FICSEs

Qualification Standards. The draft regulation provides that the existing qualification regulations governing construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms will apply to FICSEs, although these may be superseded once the new Regulation on Construction Enterprises Qualification is promulgated by the MOC.

The following table illustrates the qualification standards for construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms.

	Construction Supervision Enterprise	Construction Project Tendering Agency	Construction Cost Consultation Firm
Grade A	<ol style="list-style-type: none"> Principal of the enterprise and technical principal of the enterprise shall have 15 years or more of experience in construction; technical principal shall have Construction Supervision Engineer Certificate. 25 or more engineers with Construction Supervision Engineer Certificate. Registered capital of no less than RMB1 million. 	<ol style="list-style-type: none"> Has acted as an agent for no less than 10 construction projects each with more than RMB30 million bid sum, or has acted as an agent for construction projects with overall bid sum of more than RMB800 million in the last three years. No less than 20 professionals with Construction Engineering Practicing Qualification or medium level or above professional technical qualification, including no less than two professionals with construction costing engineering. Technical principal of the agency with high-level qualification or relevant practicing qualification and 10 years or more of experience in construction management. 	<ol style="list-style-type: none"> Full-time technical principal has high-level professional qualification, 10 years or more of experience in construction costing, and Construction Cost Engineer Certificate. No less than 20 professionals with professional qualifications engaging in professional work of construction costing, including no less than six professionals with high-level qualification, no less than 10 professionals with medium-level qualification, and no less than eight engineers with Construction Cost Engineer Certificate. Registered capital of no less than RMB1 million.

	Construction Supervision Enterprise	Construction Project Tendering Agency	Construction Cost Consultation Firm
	4. Has supervised five or more Grade B building construction projects, or three or more Grade B professional construction projects in the last three years.	4. Registered capital of no less than RMB1 million.	4. Fixed working place, and sound organizational structure, custody system for technical and economic archives, and quality-assurance system. 5. Has completed consultation work for five large or eight medium construction projects or more in the last three years.
Grade B.	<p>1. Principal of the enterprise and the technical principal of the enterprise shall have 10 years or more of experience in construction; technical principal of the enterprise shall have Construction Supervision Engineer Certificate.</p> <p>2. 15 or more engineers with Construction Supervision Engineer Certificate.</p> <p>3. Registered capital of no less than RMB500 million.</p> <p>4. Has supervised five or more Grade C building construction projects, or three or more Grade C professional construction projects in the last three years.</p>	<p>1. Has acted as an agent for no less than 10 construction projects each with more than RMB10 million bid sum, or has acted as an agent for construction projects with overall bid sum of more than RMB300 million in the last three years.</p> <p>2. No less than 10 professionals with Construction Engineering Practicing Qualification or medium-level or above professional technical qualification, including no less than two professionals with construction costing engineering qualification.</p> <p>3. Technical principal of the agency with high-level qualification or relevant practicing qualification and seven years or more of experience in construction management.</p> <p>4. Registered capital of no less than RMB500 million.</p>	<p>1. Full-time technical principal has high-level professional qualification, eight years or more of experience in construction costing, and Construction Cost Engineer Certificate.</p> <p>2. No less than 12 professionals with professional qualifications engaging in professional work of construction costing, including no less than three professionals with high-level qualification, no less than six professionals with medium-level qualification, and no less than four engineers with Construction Cost Engineer Certificate.</p> <p>3. Registered capital of no less than RMB500 million.</p> <p>4. Fixed working place, sound organizational structure, custody system for technical and economic archives, and quality assurance system.</p> <p>5. Has completed consultation work for five or more medium construction projects in the last three years.</p>
Grade C	<p>1. Principal of the enterprise and the technical principal of the enterprise shall have eight years or more of experience in construction; technical principal of the enterprise shall have Construction Supervision Engineer Certificate.</p> <p>2. Five or more engineers with Construction Supervision Engineer Certificate.</p> <p>3. Registered capital of no less than RMB100,000.</p> <p>4. Has supervised two or more building construction projects, or one or more professional construction projects.</p>	1. No Grade C.	1. No Grade C.

QUALIFICATION APPROVAL PROCEDURES

The draft regulation provides a framework for the approval procedures for skills qualification of FICSEs. Following the issuance of the FICSE business license, any application for skills qualification must be processed by the Administration of Construction under the State Council (for Grade A) or the administration of construction under the provincial government (for Grades B and below). A written decision will be made in accordance with the relevant qualification administrative regulations for construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms as appropriate.

Application Materials. In addition to the basic application materials required by the relevant current regulations governing the qualification of construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms, FICSE applicants are required to submit the following materials:

- Qualification Application Form
- FICSE Establishment Approval Certificate
- Business License
- Investor's Certificate of Registration in the country where it is located, its relevant track record, and certificate of credit standing
- Investor's balance sheet and income statement for the past three years, or a shorter period if the investor has been established for less than three years, as audited by a certified public accountant or an accounting firm.

ANNUAL REVIEW OF FICSEs

There is no requirement for an annual review of FICSEs under the draft regulation. According to the relevant regulations governing construction supervision enterprises, construction project tendering agencies, and construction cost consultation firms, such companies are subject to annual reviews by the relevant administrations of construction. However, the MOC issued a notice on August 9, 2005, canceling annual reviews for construction supervision enterprises, and construction project tendering agencies. Accordingly, given the recent direction the MOC is taking, it is probably unlikely that FICSEs would be subject to annual reviews.

CONCLUSION

The draft regulation, on top of the new construction qualification regulations and other initiatives being pursued and published by the MOC, continue to show the significant extent to which the MOC is attempting to regulate and monitor the establishment and qualifications of different types of construction enterprises in China. Although such excessive regulation does not encourage an efficiently operating market system, it is nevertheless heartening that the MOC is being consistent and transparent in its regulatory zeal.

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