



JONES DAY
COMMENTARY

CHINA'S MINISTRY OF CONSTRUCTION ISSUES NEW QUALIFICATION REGULATIONS FOR CONSTRUCTION, DESIGN, AND SUPERVISION ENTERPRISES

On June 26, 2007, the Ministry of Construction of the People's Republic of China (the "MOC") issued three important regulations regarding the management of qualifications for construction, survey, design, and supervision enterprises. The three regulations are:

- *Regulations Governing the Management of Qualifications for Construction Supervision Enterprises* ("Decree 158"), which will become effective on August 1, 2007.
- *Regulations Governing the Management of Qualifications for Construction Enterprises* ("Decree 159"), which will become effective on September 1, 2007.
- *Regulations Governing the Management of Qualifications for Construction Survey and Design Enterprises* ("Decree 160"), which will become effective on September 1, 2007.

The three regulations replace long-standing regulations and aim to bring consistency into the qualification standards among all three categories. In the sections that follow, we summarize the effect of the three regulations in relation to supervision, construction, and design¹ activities in China.

1. Note that for the purpose of this *Commentary*, we have concentrated on design, construction, and supervision and have not dealt with the survey regulations.

DECREE 158: SUPERVISION QUALIFICATION

Categories of Qualifications. Under the current *Regulations Governing the Management of Qualifications for Construction Supervision Enterprises* (Decree 102), which became effective on August 29, 2001, there are three categories of qualifications: Grade A, B, and C. Decree 158 has revised the construction supervision qualifications to include comprehensive and specialty qualifications. The table below summarizes the requirements of Decree 158:

| Qualification Grade | Qualification Standards | Work Scope |
|---------------------|--|--|
| Comprehensive | <ol style="list-style-type: none"> 1. Registered Capital: RMB 6 million. 2. Staffing Requirement: (1) at least 60 registered supervision engineers; (2) at least 5 registered cost engineers; (3) at least 15 registered personnel, including Class 1 architect, Class 1 constructor (jian zao shi), Class 1 registered structural engineer, or other registered engineers majoring in survey and design; (4) the chief technical representative must be a registered supervision engineer and have more than 15 years' experience in construction or have engineering-related senior professional title. 3. The applicant must have 5 or more Grade A Specialty Qualifications. 4. Track Record: There are no track record requirements for Comprehensive Grade. Decree 158 only requires that there have been no substantial quality accidents during the previous year. | <ol style="list-style-type: none"> 1. Construction supervision for projects of all sizes. 2. Relevant services such as project management and technical consultancy. |

| Qualification Grade | Qualification Standards | | Work Scope |
|--|--|---|---|
| Specialty (14 specialties) Qualification | Grade A | <p>1. Registered Capital: RMB 3 million.</p> <p>2. Staffing Requirement: (1) at least 25 registered personnel, including registered supervision engineers, registered cost engineers (at least 2), Class 1 architect, Class 1 constructor (jian zao shi), Class 1 registered structural engineers, or other registered engineers majoring in survey and design. The number of registered supervision engineers must meet specific requirements that vary with different specialties (refer to Appendix-1 of Decree 158). For example, if a company applies for Grade A Specialty Qualification for Building Construction Works, it must employ at least 15 registered supervision engineers. (2) The chief technical representative must be a registered supervision engineer and have more than 15 years' experience in construction or have engineering-related senior professional title.</p> <p>3. Track Record: The applicant (applicants with Grade A engineering design qualification or general contracting qualification are exempted from providing a track record) must have independently undertaken more than three Class 2 (the classification of project scales are attached as Appendix-2 to Decree 158) projects in the applied for specialty within the previous two years.</p> | <p>1. Construction supervision for projects of all sizes in relevant specialty.</p> <p>2. Relevant services such as project management and technical consultancy for projects of the applied for specialty.</p> |
| | Grade B | <p>1. Registered Capital: RMB 1 million.</p> <p>2. Staffing Requirement: (1) at least 15 registered personnel, including registered supervision engineers, registered price engineers (at least 1), Class 1 architect, Class 1 constructor (jian zao shi), registered structural engineers, or other registered engineers majoring in survey and design. Similar to the standards for Grade A Specialty Qualification, the number of registered supervision engineers must meet specific requirements that vary with different specialties. For example, if a company applies for Grade B Specialty Qualification for Building Construction Works, it must employ at least 10 registered supervision engineers. (2) The chief technical representative must be a registered supervision engineer and have more than 10 years' experience in construction.</p> <p>3. Track Record: There are no track record requirements for Grade B Specialty Qualification; Decree 158 only requires that there have been no substantial quality accidents during the previous year.</p> | <p>1. Construction supervision for Class 2 (refer to Appendix-2 of Decree 158 for classifications of project scales) projects or below in relevant specialty.</p> <p>2. Relevant services such as project management and technical consultancy for projects of the applied for specialty.</p> |
| | Grade C of Specialty Qualification (only for building construction; irrigation, water, and electricity; highway, infrastructure, and public utilities) | <p>1. Registered Capital: RMB 500,000.</p> <p>2. Staffing Requirement: (1) The applicant must employ a certain number of registered supervision engineers, which varies with different specialties. For example, if a company applies for Grade C Specialty Qualification for Building Construction Works, it must employ at least 5 registered supervision engineers. (2) The chief technical representative must be a registered supervision engineer and have more than 8 years' experience in construction.</p> <p>4. Track Record: No track record requirements.</p> | <p>1. Construction supervision for Class 3 (refer to Appendix-2 of Decree 158 for classifications of project scales) projects or below in relevant specialty.</p> <p>2. Relevant services such as project management and technical consultancy for projects of the applied for specialty.</p> |

| Qualification Grade | Qualification Standards | Work Scope |
|---|--|--|
| Construction Supervision Firm Qualification | <ol style="list-style-type: none"> 1. Business License for Partnership. 2. Written cooperation agreement. 3. At least three partners who are registered supervision engineers with more than five years' experience in construction supervision. 4. Fixed working place. 5. Track Record: No track record requirements. | <ol style="list-style-type: none"> 1. Construction supervision for Class 3 (refer to Appendix-2 of Decree 158 for classifications of project scales) projects or below. 2. Relevant services such as project management and technical consultancy. |

Project Management. In China, there are no specific qualifications for project management. According to MOC Circular 200, all enterprises undertaking project management in China must hold one or more qualification certificates for survey, design, construction, supervision, cost advisory, or tendering agency. Decree 158 reiterates that enterprises with supervision qualifications may provide project management services to construction projects within their relevant specialties. However, it is uncertain if the project management works will be subject to the same scope of work as construction supervision works.

DECREE 159: CONSTRUCTION QUALIFICATION

Categories of Qualifications. According to Article 5 of Decree 159, there are three categories of construction qualifications: (1) General Contractor Qualification, (2) Specialty Contractor Qualification, and (3) Labor Subcontractor Qualification. This is the same as the current position under the *Regulations on Construction Enterprises Qualification* (Decree 87).

Qualification Standards. Neither Decree 159 nor Decree 87 contains detailed qualification standards. Accordingly, applicant companies will need to refer to the *Qualification Standards for Construction Enterprises* (Document 82) issued by the MOC, which became effective in July 2001, and which stipulates both the sub-grades for each qualification and the

detailed requirements regarding capital, personnel, track records, etc. for each grade. In addition, the qualification standards for the General Contractor Special Grade have been superseded by the updated *Qualification Standards for Special Grade of General Contractors* issued by the MOC on March 13, 2007. It should be noted that all of these qualification standards are applicable to both domestic and foreign-invested construction companies.

Subcontracting. According to Article 5 of Decree 87, general contractors may subcontract the non-main parts or the labor works of their contracted projects to subcontractors with appropriate specialty contractor qualifications or labor subcontractor qualifications. In other words, general contractors must not subcontract the main parts of their contracted projects, which is consistent with the Construction Law. However, under Decree 159, general contractors “may legally subcontract specialty works or labor works to specialty contractors or labor subcontractors with appropriate qualifications.” Accordingly, it would seem that general contractors may subcontract even the main parts of their contracted projects, provided that they are subcontracted to specialty contractors or labor subcontractors with appropriate qualifications.

Approval Authority. According to Decree 159, the MOC has delegated more approval authority to construction administrations at provincial and municipal levels.

| | | Decree 87 (Current) | Decree 159 (New) |
|--|--|---------------------|---|
| MOC | Special Grade and Grade 1 of General Contractors | | 1. Special Grade and Grade 1 of General Contractors 2. Grade 2 and Grade 3 General Contractors directly under the supervision of the State-owned Assets Supervision and Administration Commission (“SASAC Enterprises”) or any first-tier subordinated enterprises of SASAC Enterprises |
| | Grade 1 Specialty Contractors | | 1. Grade 1 Specialty Contractors majoring in irrigation, transportation, and information industries 2. Grade 1 and Grade 2 Specialty Contractors majoring in railway and civil aviation 3. Specialty Contractors (without sub-grades) majoring in highway transportation and urban railway transportation |
| Provincial-level construction commissions (or bureaus) | Grade 2 General Contractors or below | | Grade 2 General Contractors (excluding Grade 2 General Contractors of SASAC Enterprises and their first-tier subordinated enterprises of SASAC Enterprises) |
| | Grade 2 Specialty Contractors or below | | 1. Grade 1 Specialty Contractors except those majoring in railway, transportation, irrigation, civil aviation, and information industries 2. Grade 2 Specialty Contractors except those majoring in civil aviation and railway 3. Specialty Contractors (without sub-grades) except those majoring in highway transportation and urban railway transportation |
| | Labor Subcontractors | | |
| Municipal-level ² construction commissions (or bureaus) | | | Grade 3 General Contractors (excluding Grade 3 General Contractors of SASAC Enterprises and their first-tier subordinated enterprises of SASAC Enterprises) |
| | | | Grade 3 Specialty Contractors |
| | | | Labor Subcontractors |
| | | | Applications for qualifications regarding installation and repair of gas-fired equipment |

2. The four municipalities directly under the State Council, namely Beijing, Shanghai, Tianjin, and Chongqing, are at provincial level, although they are called “municipal,” and the districts in these four cities are therefore at municipal level.

Initial Application and Recognition of General Contracting Records. Similar to the requirements under Decree 87, initial applications must start from the lowest grades, and there is no requirement for track records when making initial applications. However, the one-year temporary period has been removed. According to Article 19 of Decree 159, a design enterprise with appropriate general contracting track records may not need to start from the lowest grade provided that such design enterprise applies for construction qualifications for a similar industry. In addition, the construction qualification grade applied for by such design enterprise shall not be higher than its current design qualification grade. It is unclear whether the approval authorities will recognize any offshore general contracting track records of design enterprises.

DECREE 160: DESIGN QUALIFICATION

The current regulations governing design qualifications are the *Administrative Regulations on the Qualifications for Construction Engineering Survey and Design Enterprises* (Decree 93), which came into effect on July 25, 2001.³

Categories of Qualifications. The following table compares the differences between the requirements under Decree 93 and Decree 160.

In effect, Decree 160 introduces a new category for professional design qualifications.

| Decree 93 | Decree 160 |
|------------------------------------|------------------------------------|
| Comprehensive Design Qualification | Comprehensive Design Qualification |
| Industrial Design Qualification | Industrial Design Qualification |
| | Professional Design Qualification |
| Specialty Design Qualification | Specialty Design Qualification |

3. The design qualifications under Decree 160 are consistent with the Qualification Standards for Engineering Design issued by the MOC, which became effective on March 29, 2007. Accordingly, in practice, the new qualification categories as well as the relevant qualification standards are in fact effective before September 1, 2007, despite the fact that Decree 160 does not take effect until September 1, 2007.

Initial Application and Recognition of General Contracting Records. According to Decree 160, initial applications for design qualifications cannot be made at a level higher than Grade B. However, as with Decree 159, construction companies with appropriate general contracting track records may use their construction qualifications to start from Grade A. However, such initial applications for design qualifications must not be higher than the construction companies' existing construction qualifications.

Non-National Treatment. Decree 160 expressly stipulates that there is no track record requirement for newly established design companies. However, under Decree 114 and its Implementations Regulations, in order to establish foreign-invested design enterprises, foreign investors are required to provide at least two overseas design track records for their initial applications for design qualifications. This seems inconsistent with the MOC's avowed "level playing field."

CONCLUSION

This is not the first time that the MOC has attempted to consolidate and revise the qualification regulations for survey, design, construction, and supervision enterprises. In a previous *Commentary* dated September 2005 ("China's Ministry of Construction Issues Consolidated Qualification Regulations for Consultation"), we reported on the MOC's draft Regulation on Construction Enterprises Qualification issued on August 9, 2005, which was an attempt by the MOC to integrate Decrees 87, 93, and 102 into one consolidated qualification regulation. This draft regulation was never issued, and so it seems

that the MOC has now given up on its consolidation plans and rather has simply replaced Decree 87 with Decree 159, Decree 93 with Decree 160, and Decree 102 with Decree 158.

All in all, there is nothing of great significance in Decrees 158, 159, and 160, other than the lack of national treatment with respect to track records for design qualifications, which is against the Chinese government's national treatment commitment to the World Trade Organization. Nevertheless, these regulations do show that the MOC is continuing to refine and tweak the qualification requirements for survey, design, construction, and supervision enterprises, which at the very least means they are open to further revisions that would bring the qualification regime more into line with international practice. To this end, it would be encouraging if such developments could take place sooner rather than later.

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