Provisions on the Administration of Foreign-Invested Construction Enterprises

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Construction Law of the People's Republic of China, the Law of the People's Republic of China on Foreign-Invested Enterprises, the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, and other relevant laws and administrative regulations for the purpose of further expanding opening-up and regulating the administration of foreign-invested construction enterprises.

Article 2 — These Provisions 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 supervision and administration of foreign-invested construction enterprises' project contracting and related business activities within China.

Article 3 — For the purposes of these Provisions, "foreign-invested construction enterprise" means a construction enterprise established within the territory of China through foreign investment in accordance with Chinese laws and regulations. Foreign investors establishing foreign-invested construction enterprises

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within the territory of China and engaging in construction activities shall obtain the approval of the foreign trade and economic cooperation administrative department in accordance with the law, and shall obtain the construction enterprise qualification certificate from the construction administrative department in accordance with the law.

Article 4 — Foreign-invested construction enterprises shall comply with Chinese laws, regulations, and rules when engaging in construction activities within the territory of China. The lawful rights and interests of foreign-invested construction enterprises shall be protected by Chinese law.

Article 5 — The construction administrative department under the State Council and the construction administrative departments of local people's governments at or above the county level shall be responsible for the supervision and administration of foreign-invested construction enterprises. The foreign trade and economic cooperation administrative department under the State Council and the foreign trade and economic cooperation administrative departments of local people's governments at or above the county level shall be responsible for the approval administration of the establishment of foreign-invested construction enterprises.

Chapter II — Qualifications and Application Procedures

Article 6 — Foreign-invested construction enterprises shall meet the following conditions: (1) the registered capital shall comply with the relevant provisions; (2) the foreign investors shall have a good business reputation in their home country or region; (3) professional and technical personnel with corresponding qualifications shall be employed; and (4) other conditions prescribed by laws, regulations, and rules.

Article 7 — The qualification grades and standards for foreign-invested construction enterprises shall be implemented in accordance with the qualification management provisions of the construction administrative department under the State Council.

Article 8 — When applying for establishment of a foreign-invested construction enterprise, the applicant shall submit the following documents to the foreign trade and economic cooperation administrative department: (1) an application for establishment; (2) the articles of association; (3) the approval document or business license (photocopy) of the foreign investor issued by the competent authority of its home country or region; (4) the creditworthiness certificate of the foreign investor; (5) legal proof of the office premises; (6) qualification certificates and resumes of professional and technical personnel; and (7) other documents required by the examination and approval authority.

Article 9 — Upon receipt of the complete application documents, the foreign trade and economic cooperation administrative department shall complete the examination and decide whether to approve within the prescribed time limit. The foreign-invested construction enterprise shall, upon obtaining the approval certificate for foreign-invested enterprise, go through enterprise registration formalities with the administrative department for industry and commerce in accordance with the law.

Article 10 — After a foreign-invested construction enterprise is established, it shall apply for the construction enterprise qualification from the construction administrative department. The construction administrative department shall examine and decide on the qualification grade in accordance with the law. A foreign-invested construction enterprise shall obtain the qualification certificate before engaging in construction activities.

Article 11 — Where a foreign-invested construction enterprise applies for qualification upgrade, adding qualification items, or other matters, it shall be handled in accordance with the qualification management provisions of the construction administrative department under the State Council.

Article 12 — Where a foreign-invested construction enterprise undergoes changes in registered items such as its name, address, registered capital, or business scope, it shall go through the change registration

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formalities with the administrative department for industry and commerce and file the same with the construction administrative department for the record.

Article 13 — Foreign enterprises contracting construction projects within China shall meet the conditions prescribed by laws, regulations, and rules, and obtain the qualification certificate for project contracting in accordance with the law.

Chapter III — Operation and Administration

Article 14 — Foreign-invested construction enterprises shall engage in construction activities in accordance with their qualification grade and permitted business scope. Foreign-invested construction enterprises shall not undertake construction tasks beyond their qualification grade or business scope.

Article 15 — Foreign-invested construction enterprises shall comply with relevant Chinese laws, regulations, and rules on construction market management, project quality management, and work safety management when undertaking construction projects within China. They shall establish a sound quality assurance system and safety production management system.

Article 16 — Foreign-invested construction enterprises shall comply with relevant State provisions on project quality, work safety, environmental protection, and labor protection. They shall purchase work-related injury insurance for employees and provide labor protection articles.

Article 17 — Foreign-invested construction enterprises shall accept the supervision and inspection of the construction administrative departments and other relevant administrative departments. They shall truthfully provide relevant materials and information and shall not refuse or obstruct such inspections.

Article 18 — Foreign-invested construction enterprises shall prepare financial accounting reports in accordance with Chinese accounting standards and regulations. They shall truthfully reflect their financial position and operating results.

Article 19 — Foreign-invested construction enterprises shall pay taxes in accordance with the law and comply with relevant State provisions on foreign exchange control, statistics, and other matters.

Article 20 — When a foreign-invested construction enterprise employs Chinese employees, it shall conclude labor contracts in accordance with the law. When employing foreign employees, it shall go through approval and permit formalities in accordance with relevant State provisions.

Chapter IV — Legal Liability

Article 21 — Where a foreign-invested construction enterprise engages in construction activities without obtaining the qualification certificate, or undertakes construction tasks beyond its qualification grade or business scope, the construction administrative department shall impose punishment in accordance with the Construction Law and the Regulations on the Administration of Construction Enterprise Qualifications.

Article 22 — Where a foreign-invested construction enterprise violates laws, regulations, or rules on project quality management, work safety management, or environmental protection, the relevant administrative departments shall impose punishment in accordance with the relevant provisions.

Article 23 — Where a foreign-invested construction enterprise provides false materials or obtains qualification certification through fraudulent means, the construction administrative department shall revoke its qualification certificate and impose a fine in accordance with the law.

Article 24 — Where a foreign-invested construction enterprise violates the provisions of these Provisions, the foreign trade and economic cooperation administrative department may, based on the circumstances, give a warning, order rectification, or impose other administrative sanctions in accordance with the law.

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Article 25 — Where the personnel of examination and approval authorities or construction administrative departments abuse their powers, neglect their duties, or engage in favoritism, they shall be subject to administrative sanctions in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter V — Supplementary Provisions

Article 26 — The establishment and administration of foreign-invested construction enterprises in the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region shall be handled in accordance with relevant provisions concerning foreign investments.

Article 27 — Foreign-invested construction enterprises established with investment from Hong Kong, Macao, and Taiwan investors shall be governed by these Provisions with reference thereto, unless otherwise provided by laws, regulations, or rules.

Article 28 — The construction administrative department under the State Council and the foreign trade and economic cooperation administrative department under the State Council shall be responsible for the interpretation of these Provisions.

Article 29 — These Provisions shall come into force on December 1, 2002.

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