

Regulations of the PRC on the Administration of Foreign Labor Service Cooperation

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Chapter I — General Provisions

Article 1 — These Regulations are formulated for the purposes of regulating foreign labor service cooperation, safeguarding the lawful rights and interests of labor service personnel, and promoting the sound development of foreign labor service cooperation.

Article 2 — For the purposes of these Regulations, "foreign labor service cooperation" means the business activities of organizing labor service personnel to go abroad to provide labor services for foreign enterprises or institutions. Foreign enterprises or institutions or individuals outside the territory of China shall not recruit labor service personnel to go abroad to work within the territory of China.

Article 3 — The State encourages and supports foreign labor service cooperation in accordance with the law, and enhances the level of foreign labor service cooperation. The State Council shall establish and improve a coordination mechanism for foreign labor service cooperation and shall study and resolve major issues in foreign labor service cooperation.

Article 4 — The competent commerce department under the State Council shall be responsible for the supervision and administration of foreign labor service cooperation throughout the country. The competent commerce departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for the supervision and administration of foreign labor service cooperation within their respective administrative regions. The relevant departments of the State Council and the relevant departments of the local people's governments at or above the county level shall, within the scope of their respective duties, be responsible for the relevant work relating to foreign labor service cooperation. Chinese embassies and consulates abroad shall provide consular protection and assistance to labor service personnel abroad in accordance with the law.

Chapter II — Foreign Labor Service Cooperation Enterprises

Article 5 — Enterprises applying to engage in foreign labor service cooperation shall meet the following conditions: (1) meet the requirements of the legal person provisions; (2) have the paid-in registered capital of not less than RMB 6 million yuan; (3) have three or more managerial personnel who are familiar with the business of foreign labor service cooperation; (4) have a sound business management system and an emergency response plan for emergencies; and (5) other conditions prescribed by the competent commerce department under the State Council.

Article 6 — Enterprises applying to engage in foreign labor service cooperation shall submit an application to the competent commerce department of the people's government of the province, autonomous region, or municipality directly under the Central Government where the enterprise is located. The competent commerce department shall complete the examination within 20 working days from the date of receipt of the application and make a decision on whether to approve or not. Where the application is approved, a Certificate of Qualification for Foreign Labor Service Cooperation shall be issued. Where the application is not approved, the reasons shall be stated in writing.

Article 7 — Without obtaining the Certificate of Qualification for Foreign Labor Service Cooperation in accordance with the law, no enterprise may engage in foreign labor service cooperation. Foreign labor service cooperation enterprises shall not allow any other entity or individual to engage in foreign labor service cooperation in their name, and shall not assign, lease, or lend the Certificate of Qualification for Foreign Labor Service Cooperation.

Article 8 — Foreign labor service cooperation enterprises shall not organize labor service personnel to go abroad to engage in activities that are inconsistent with the purposes of foreign labor service cooperation. Foreign labor service cooperation enterprises shall not collect service fees in violation of the provisions of the State, and shall not obtain illegal benefits by any means.

Article 9 — Foreign labor service cooperation enterprises shall, in accordance with the provisions of the State, deposit a risk disposal reserve fund, which shall be used for the expenses incurred in the disposal of emergencies relating to foreign labor service cooperation. The specific measures for the deposit and use of the risk disposal reserve fund shall be prescribed by the competent commerce department under the State Council in conjunction with the finance department under the State Council. The risk disposal reserve fund shall be managed by the competent commerce department responsible for approval and shall be subject to the supervision of the finance department and the audit authority at the same level.

Article 10 — Foreign labor service cooperation enterprises shall purchase personal accident insurance for labor service personnel and shall not require labor service personnel to pay the premiums themselves.

Article 11 — Foreign labor service cooperation enterprises shall arrange for labor service personnel to receive training on the laws and regulations of the destination country, customs and practices, foreign language skills, vocational skills, safety precautions, and other relevant knowledge. No training fee shall be charged to labor service personnel for the training they are required to receive. Foreign labor service cooperation enterprises shall purchase personal accident insurance for labor service personnel during the training period.

Chapter III — Foreign Labor Service Cooperation Contracts

Article 12 — Foreign labor service cooperation enterprises shall conclude written service contracts with foreign employers. The service contract shall specify the following matters: (1) the names, addresses, and legal representatives of the foreign labor service cooperation enterprise and the foreign employer; (2) the content, location, and duration of the work of the labor service personnel; (3) the labor remuneration and the method of payment; (4) the working hours, rest and leave, and labor protection of the labor service personnel; (5) the living conditions and treatment of the labor service personnel; (6) the insurance, medical treatment, and compensation for the labor service personnel; (7) the handling of emergencies; and (8) the liability for breach of contract and dispute resolution.

Article 13 — Foreign labor service cooperation enterprises shall conclude written service contracts with labor service personnel. The service contract shall specify the following matters: (1) the basic information of the labor service personnel; (2) the name and basic information of the foreign employer; (3) the country and region of dispatch, the content, and the duration of the work; (4) the labor remuneration and the method of payment; (5) the working hours, rest and leave, and labor protection; (6) the living conditions and treatment; (7) the training received by the labor service personnel; (8) the purchase of personal accident insurance and medical insurance; (9) the service fees and the method of payment; (10) the handling of emergencies; and (11) the liability for breach of contract and dispute resolution.

Article 14 — Foreign labor service cooperation enterprises shall explain the content of the service contract to the labor service personnel, and shall truthfully inform the labor service personnel of the basic information of the foreign employer, the situation in the destination country, and other relevant information, and shall not conceal relevant information or provide false information.

Article 15 — Foreign labor service cooperation enterprises shall submit a copy or a copy of the service contract to the labor service personnel. The service contract shall specify the rights and obligations of the labor service personnel.

Chapter IV — Rights and Obligations of Labor Service Personnel

Article 16 — Labor service personnel shall have the right to know the content of the service contract, the basic information of the foreign employer, the situation in the destination country, the service fees charged, and other relevant information. Foreign labor service cooperation enterprises shall truthfully inform the labor service personnel of the information specified in the preceding paragraph.

Article 17 — Labor service personnel shall enter into a service contract with the foreign labor service cooperation enterprise in accordance with the law and shall perform the service contract. Labor service personnel shall abide by the laws and regulations of the destination country, respect the local customs and practices, and shall not engage in activities that harm national security or the national interest.

Article 18 — Labor service personnel shall have the right to request foreign labor service cooperation enterprises to assist in safeguarding their lawful rights and interests. Where foreign labor service cooperation enterprises infringe upon the lawful rights and interests of labor service personnel, labor service personnel may file a complaint with the competent commerce department.

Article 19 — Where labor service personnel encounter emergencies or other problems abroad, they shall promptly report to the foreign labor service cooperation enterprise and the Chinese embassy or consulate in the relevant country. Foreign labor service cooperation enterprises shall promptly handle the problems reported by labor service personnel.

Chapter V — Government Services and Administration

Article 20 — The competent commerce department under the State Council shall, in conjunction with the relevant departments, establish a foreign labor service cooperation information platform to provide information on foreign labor service cooperation to labor service personnel and foreign labor service cooperation enterprises. The competent commerce department shall summarize and analyze statistical data on foreign labor service cooperation and publish information on foreign labor service cooperation to the public in a timely manner.

Article 21 — The competent commerce department under the State Council shall, in conjunction with the diplomatic department, the public security department, the human resources and social security department, and other relevant departments, establish an early warning and emergency response mechanism for foreign labor service cooperation, formulate emergency plans for major emergencies in foreign labor service cooperation, and properly handle emergencies in foreign labor service cooperation.

Article 22 — The competent commerce departments shall, in conjunction with the relevant departments, strengthen the supervision and inspection of foreign labor service cooperation enterprises, and investigate and deal with illegal acts in accordance with the law. Foreign labor service cooperation enterprises shall accept the supervision and inspection of the competent commerce departments.

Article 23 — The Chinese embassies and consulates abroad shall, in accordance with the law, safeguard the lawful rights and interests of labor service personnel abroad, and provide consular protection and assistance. The competent commerce departments shall, in conjunction with the diplomatic department, strengthen the guidance and training of Chinese embassies and consulates abroad on foreign labor service cooperation.

Chapter VI — Legal Liability

Article 24 — Where an enterprise engages in foreign labor service cooperation without obtaining the Certificate of Qualification for Foreign Labor Service Cooperation in accordance with the law, the competent commerce department shall ban the enterprise and impose a fine of not less than RMB 500,000 yuan but not more than RMB 1 million yuan. Where illegal gains are obtained, the illegal gains shall be confiscated. Where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 25 — Where a foreign labor service cooperation enterprise allows another entity or individual to engage in foreign labor service cooperation in its name, or assigns, leases, or lends the Certificate of Qualification for Foreign Labor Service Cooperation, the competent commerce department shall order it to make corrections and impose a fine of not less than RMB 100,000 yuan but not more than RMB 200,000 yuan. Where the circumstances are serious, the competent commerce department shall revoke the Certificate of Qualification for Foreign Labor Service Cooperation. Where illegal gains are obtained, the illegal gains shall be confiscated.

Article 26 — Where a foreign labor service cooperation enterprise commits any of the following acts, the competent commerce department shall order it to make corrections and impose a fine of not less than RMB 50,000 yuan but not more than RMB 100,000 yuan. Where the circumstances are serious and serious consequences are caused, the Certificate of Qualification for Foreign Labor Service Cooperation shall be revoked: (1) organizing labor service personnel to go abroad to engage in activities inconsistent with the purposes of foreign labor service cooperation; (2) failing to arrange for labor service personnel to receive training in accordance with the provisions, or charging training fees to labor service personnel; (3) failing to

purchase personal accident insurance for labor service personnel in accordance with the provisions; (4) concealing relevant information or providing false information; or (5) failing to deposit the risk disposal reserve fund in accordance with the provisions.

Article 27 — Where a foreign labor service cooperation enterprise collects service fees in violation of the provisions of the State, the price administrative department shall impose penalties in accordance with the law. Where the circumstances are serious, the competent commerce department shall revoke the Certificate of Qualification for Foreign Labor Service Cooperation.

Article 28 — Where functionaries of the competent commerce departments and other relevant departments commit any of the following acts in the supervision and administration of foreign labor service cooperation, they shall be subject to sanctions in accordance with the law. Where a crime is constituted, criminal liability shall be pursued in accordance with the law: (1) taking advantage of their positions to accept or demand property from others or seek other illegal benefits; (2) abusing their power or neglecting their duties; or (3) other acts of engaging in malpractice for personal gain or failing to perform their statutory duties.

Chapter VII — Supplementary Provisions

Article 29 — The State shall encourage and support foreign labor service cooperation enterprises in opening up the international market and enhancing their competitiveness. The relevant departments of the State Council shall provide support and convenience within the scope of their respective duties.

Article 30 — The specific measures for the administration of foreign engineering project contracting involving the dispatch of labor service personnel abroad shall be separately formulated by the State Council.

Article 31 — These Regulations shall come into force on August 1, 2012.

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