

China - Provisions on the Establishment of Foreign-Funded Construction Enterprises, 1995

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Provisions on the Establishment of Foreign-Funded Construction Enterprises 1
(Promulgated by the Ministry of Construction and the Ministry of Foreign Trade and Economic Cooperation on September 18, 1995)

Article 1 2

These Provisions are hereby formulated with a view to meeting the needs of opening up, strengthening the management of foreign-funded construction enterprises, and safeguarding the order of the construction market. 3

Article 2 4

The term 'foreign-funded construction enterprises' used in these Provisions refers to Sino-foreign joint ventures and cooperative enterprises engaging in newly constructing, expanding or rebuilding civil engineering projects, routes, pipelines and equipment installation projects, and house decoration and fitting projects. Establishment of wholly-owned foreign construction enterprises is not permitted for the time being. 5

Article 3 6

Foreign-funded construction enterprises shall be established according to the 'Law of the People's Republic of China On Sino-foreign Joint Ventures', the 'Law of the People's Republic of China on Sino-Foreign Cooperative enterprises' and the 'Regulation on the Control of the Qualifications of Construction Enterprises' and other related laws, decrees and regulations. 7

Article 4 8

The project proposals and feasibility studies for establishing foreign-funded construction enterprises shall be examined and approved by the administrative departments in charge of construction. The scope for contracting projects by foreign-funded enterprises shall be verified and determined according to the 'Regulations on the Control of the Qualifications of Construction Enterprises' and the 'Standards for the Qualifications of Construction Enterprises' issued by the Ministry of Construction. The contracts and articles of association for establishing foreign-funded construction enterprises shall be examined and approved by the department in charge under the Ministry of Foreign Trade and Economic Cooperation. 9

Article 5

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The examination and approval of the establishment of foreign-funded construction enterprises shall be carried out at different levels. Applications for establishing first-grade foreign-funded construction enterprises shall be examined and determined by the Ministry of Construction and approved by the Ministry of Foreign Trade and Economic Cooperation; applications for establishing second-grade and lower grade foreign-funded construction enterprises shall be examined and determined by the administrative department in charge at the provincial level and approved by the provincial foreign trade and economic cooperation departments.

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If the Chinese partners are enterprises directly affiliated to State Council departments, the applications shall be examined by the Ministry of Construction and approved by the Ministry of Foreign Trade and Economic Cooperation.

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Article 6

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A foreign-funded enterprise shall be established according to the following procedures:

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(1) The Chinese partner shall submit for examination to administrative department in charge the project proposal and feasibility study report and related documents of the proposed foreign-funded construction enterprises. If all the requirements are met, a 'Recommendation for the Examination of Foreign-Funded Construction Enterprises' shall be issued.

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(2) The Chinese partner shall, on the strength of the 'Recommendation for the Examination of foreign-funded construction enterprises', submit the contract and articles of association and related documents for establishing foreign-funded construction enterprise for examination and approval by the department in charge under the Ministry of foreign trade and Economic Cooperation. If all the requirements are met, a 'Certificate of Approval for the Establishment of Foreign-Founded Enterprises' shall be issued.

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(3) The Chinese partner shall go through the legal person registration procedures with the administrative department for industry and commerce upon the strength of the 'Recommendation for the Examination of Foreign-Funded Construction Enterprises', the 'Certificate of Approval for the Establishment of Foreign-Funded Enterprises' and other related documents.

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(4) After obtaining the license of a corporate person, the foreign-funded construction enterprise shall go through the qualification examination and approval procedures with the administrative department in charge of construction.

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Article 7

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Apart from meeting the legal requirements, the establishment of a foreign-funded construction enterprise shall meet the following conditions:

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(1) The Chinese partner to a foreign-funded construction enterprise shall be a construction enterprise with at least the second-grade qualification certificate; the foreign partner shall be a construction enterprise with the status of a legal person that has a high level of technology and management and a good reputation.

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(2) The applicant foreign-funded construction enterprise can import or adopt advanced international technology and equipment for construction and can train Chinese personnel in engineering and management.

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(3) The registered capital shall meet the following requirements:

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The registered capital shall not be lower than US\$ 10 million for first-grade construction engineering enterprises, US\$ 5 million for second-grade construction engineering enterprises and US \$ 1.6 million for third-grade construction engineering enterprises.

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The registered capital shall not be less than US\$2 million for first-grade construction decoration and fitting enterprises; US\$1.5 million for second-grade decoration and fitting enterprises, and US\$600,000 for third-grade decoration and fittings enterprises.

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Article 8

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In applying for a foreign-funded construction enterprise, the Chinese partner shall submit the following documents to administrative department in charge of construction according to the procedures prescribed in Article 5 of these Provisions:

27

(1) Report of application for the establishment of foreign-funded construction enterprises;

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(2) Qualification certificates of the Chinese partner;

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(3) Document of examination by departments in charge of the Chinese partner (except those that do not have senior administrative organs);

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(4) Project proposals for establishing foreign-funded construction enterprises;

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(5) Feasibility study reports jointly compiled by all partners to a joint venture;

32

(6) Certificates of all partners for the registration with administrations for industry and commerce;

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(7) Credit rating certificates of all partners; and

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(8) Other documents.

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Article 9

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In applying for the establishment of foreign-funded construction enterprises, it is required to submit the following documents to the department in charge under the Ministry of Foreign Trade and Economic Cooperation according to the procedures prescribed in Article 5 of these Provisions:

37

(1) The 'Recommendation for the Examination of Foreign-Funded Construction Enterprises';

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(2) Contracts and articles of association of the foreign-funded construction enterprises to be established;

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(3) Project proposals and feasibility study reports;

40

(4) Registration certificates of all partners issued by administrations for industry and commerce;

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(5) Credit rating certificates of all partners;

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(6) Certificates for the approval of names issued by administrations for industry and commerce; and

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(7) The list of the board of directors and the appointments of directors of all sides of the joint venture.

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Article 10

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These Provisions are applicable to the establishment of construction enterprises on the Chinese mainland with funding from Taiwan, Hong Kong and Macao investors.

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Article 11

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These Provisions shall come into force as of the date of promulgation.

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Metadata

SiSU Metadata, document information

Document Manifest @:

<http://www.jus.uio.no/lm/china.establishment.of.foreign.funded.construction.enterprises.provisions.1995/sisu_manifest.html>

Title: China - Provisions on the Establishment of Foreign-Funded Construction Enterprises, 1995

Creator: MOFTEC

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Publisher: SiSU <<http://www.jus.uio.no/sisu>> (this copy)

Date: 1995-09-18

Topics Registered: statute:China;joint ventures:China;foreign investment:China

Version Information

Sourcefile: china.establishment.of.foreign.funded.construction.enterprises.provisions.1995.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(china.establishment.of.foreign.funded.construction.enterprises.provisions.1995.sst)=
e4ac2f239345398d0c927338e0911b7d6a4a3e380efdceb55b5d39bb9645ace9

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 16:12:22 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]