

Interim Provisions of Construction Project Design of Foreign Enterprises within the Territory of the People's Republic of China: May 2004

Article 1: These Provisions are enacted in accordance with the Construction Law of the People's Republic of China, the Regulation on the Administration of the Survey and Design of Construction Projects, the Regulation on the Quality Administration of Construction Projects, the Measures for Survey and Design Bidding of Construction Projects, other laws, regulations and rules with a view to regulate the management of foreign enterprises undertaking construction project design activities within the territory of the People's Republic of China.

Article 2: The term "foreign enterprises" in these Provisions refers to the enterprises that are registered out of the territory of the People's Republic of China and are engaged in construction project design.

Article 3: Foreign enterprises that offer services of drawing up initial designs of construction projects (basic design), construction drawing design (detailed design) and other relevant designs within the territory of the People's Republic of China in forms of trans-border payment shall abide by the Provisions. The Provisions do not apply to designs before initial designs of construction projects (basic design).

Article 4: Foreign enterprises to assume construction project designs within the territory of the People's Republic of China shall select at least one Chinese designing enterprise with construction project design qualification endorsed by construction administrations (hereinafter referred to as Chinese designing enterprise) for cooperative design between foreign and Chinese enterprises (hereinafter referred to as cooperative design), and undertake designing business within the business scope of the selected Chinese designing enterprise(s).

Article 5: Construction designing contracts of cooperative designing project shall be signed by Chinese designing enterprises or jointly signed by both Chinese and foreign designing enterprises of the cooperative design with construction entities. The contracts shall clearly stipulate the rights and obligations of each party. Construction designing contracts shall be written in Chinese version.

Article 6: Construction entities shall conduct qualification examination for foreign enterprises in advance and only those that meet the qualifications can participate in cooperative design.

Article 7: Whilst examining designing qualification of foreign enterprises, construction units have the right to require foreign enterprises to offer the following valid certification materials that can meet the needs of construction projects. The certification materials shall include Chinese version and the version in official language of the country where the foreign enterprises are located.

(1) Business registration certifications approved and issued by governmental

administrations of the countries where the enterprises are located;

(2) Creditability certifications and enterprise insurance certifications issued by financial institutions of the countries where the enterprises are located;

(3) Certifications for Construction design achievements of the enterprises issued by governmental administrations or relevant trade organizations and notary institution of the countries where the enterprises are located;

(4) Designing permission certifications issued by governmental administrations or relevant trade organizations of the countries where the enterprises are located;

(5) ISO9000 series quality standard certificate issued by international organization;

(6) Resume, identification certificates, education certificates of the highest level and employment registration certifications of all technological participants of the Chinese project;

(7) Letter of intent of cooperative design with Chinese enterprises; and

(8) Other relevant materials.

Article 8: Foreign enterprises shall sign cooperative design agreements to clearly stipulate the rights and obligations of each party in accordance with Chinese relevant laws and regulations with the selected Chinese designing enterprises.

Cooperative design agreements shall cover:

- (1) Enterprise names, registration locations and the names, nationalities, identification registration number, address and contact methods of the legal persons of each party of the cooperative project;
- (2) The names, location and scales of the cooperative project;
- (3) Cooperative scope, time limit and methods and requirements of designing content, depth, quality and progress;
- (4) The division of designing tasks, rights and obligation of each party;
- (5) Fee makeup, distribution and tax payment obligation;
- (6) Responsibilities of agreement violation and dispute settlements;
- (7) Conditions for agreement effective and agreement date and place; and
- (8) Other issues agreed by each party.

Article 9: Construction design contracts (duplicate), cooperative design agreement (duplicate) and materials listed in Article 7 of the Regulations (copies) shall be submitted to construction administrations of provincial level for the archival purpose.

Article 10: Foreign design enterprises shall undertake construction project designs in accordance with compulsory norms of project construction and working rules of

construction design files issued by the Chinese Government. Article 5 of Supervision Rules of Project Construction Compulsory Norms Implementation (Decree No 81 of Ministry of Construction) shall prevail when there are no corresponding compulsory norms.

Article 11: In accordance with Construction Law of the People's Republic of China, Urban Planning Law of the People's Republic of China and other relevant laws, cooperative designing files that must be submitted to relevant departments of Chinese Government shall meet the following requirements:

- (1) The files shall have Chinese version;
 - (2) The files shall conform to relevant rules of construction design;
 - (3) The files shall adopt China's official measurement units;
 - (4) Enterprises names of each party and construction names shall be listed on the cover of initial design (basic design) files, and the first page shall include enterprise names and legal persons, major technologists of each party and the person in charge of the project and their seals;
 - (5) The drawings of construction drawing design (detailed design) files shall include enterprise names of each party of the cooperative design and signatures of project designers. Other affairs shall be performed in accordance with China's relevant drawing rules of construction design files;
- and
- (6) Initial design (basic design) files and construction drawing design (detailed design) can be validated only after being examined, signed and sealed by China's registered architects, registered engineers and persons who have obtained registered employment qualifications and Chinese enterprises' official seals shall be included.

When there is no project design registration employment system in some certain specialties, the documents shall be valid after examination and signing-in these documents by technologists in charge of Chinese side and Chinese enterprises' official seals shall be included.

Article 12: Foreign design enterprises that undertake construction project design within Chinese territory shall be paid in accordance with China's designing fee standards and shall pay tax according to relevant laws to Chinese Government.

When design files offered by foreign enterprises that need examinations and confirmation from Chinese design enterprises in light with China's norms and rules, relevant fees shall be paid through negotiation in accordance with international practices or real workload.

Article 13: Designing organizations from Hong Kong, Macao Special Administrative Region and Taiwan region shall refer to the Provisions.

Article 14: Foreign enterprises in violation with the Provisions shall be imposed a

punishment by Chinese Government in accordance with relevant laws, regulations and rules. Their practices shall be publicized in relevant media and announce to governments and relevant industrial organizations of the countries where the enterprises locate.

Article 15: Foreign enterprises are forbidden to participate in classified projects, disaster relief and rescue project and other projects that Chinese Government have not promised to open to foreign countries.

Article 16: The Provisions shall be implemented 30 days as of the day of promulgation.