

CHINA PERMITS CONSTRUCTION WHOLLY FOREIGN OWNED ENTERPRISES (WFOES)

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Since 1994, foreign construction companies have been able to undertake contracted construction projects in the PRC on a project-by-project basis by virtue of a qualification certificate granted by the Ministry of Construction or its local counterparts.

However, from 1 October 2003, foreign construction companies will no longer be able to undertake contracted projects on this basis, according to the recently released Administrative Regulations on Foreign Investment in Construction Enterprises, effective 1 December 2002. All foreign construction companies that wish to undertake construction work in the PRC must set up PRC subsidiaries (either joint ventures or wholly foreign-owned enterprises (WFOEs)). In practice, a current qualification certificate holder should be permitted to carry on and complete ongoing projects which are expected to complete after the October 2003 deadline.

The Administrative Regulations represent a step forward in implementing China's commitments for its accession to the World Trade Organisation (WTO) signed in December 2001. Under China's WTO commitments, WFOEs are allowed within three years of China's WTO accession. In practice, we understand that the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the Ministry of Construction may, at their discretion, permit construction WFOEs from now on, and that applications for WFOEs will be accepted by the Ministry of Construction.

The Regulations also clarify certain issues, such as the level of permitted foreign majority ownership in construction joint ventures. The contribution of foreign investors is capped at 75% of the registered capital of a Sino-foreign equity construction JV.

There is no doubt that the Administrative Regulations offer

potential for foreign construction companies to participate in China's infrastructure development leading up to the 2008 Olympic Games. However, restrictions on foreign construction firms regarding minimum capital, management and personnel and restrictions of the scope of construction projects are still in force. It remains to be seen whether this will limit participation by some foreign construction firms.

Scope of Projects for Construction WFOEs

Under the Administrative Regulations, a construction WFOE can undertake the following types of construction projects:

- projects wholly financed by foreign investment and/or grants;
- projects financed by loans of international financial institutions and awarded through international tendering according to the terms of loans;
- Sino-foreign jointly constructed projects with foreign investment equal to or more than 50% or Sino-foreign jointly constructed projects with foreign investment less than 50% where the project is of a type that is technically difficult to be implemented by Chinese construction enterprises alone; and
- Chinese-invested construction projects which are difficult to be implemented by Chinese construction enterprises alone can be jointly undertaken by Chinese and foreign construction enterprises with the approval of provincial government.

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