Architecture design opportunities in China seem endless. The increased building in preparation for the Beijing Olympics has called on international designers to support China's efforts to put an international and yet Chinese face to the world for the 2008 Games. In Shanghai, the skyline changes almost daily with dramatic building exteriors complimenting the city's efforts to have ever taller buildings. This same dramatic architectural opportunity also has reached second-tier and third-tier cities such as Hangzhou and Ningbo. It is no wonder that foreign firms have sought ways to participate in this exciting market. However, since the advent of Decree 114, many design firms have struggled with finding the best mode of market entry.

Essentially, foreign design firms can either: (1) collaborate with a Chinese architecture institute; or (2) set up an architecture enterprise in China ("Architecture FIE") in the form of an equity joint venture, a cooperative joint venture, a wholly foreign-owned enterprise or part equity acquisition of an existing Chinese architecture institute. The last option creates an FIE that looks like an equity joint venture but has the benefit of immediate access to the Chinese firm's licenses, customers and employees.

Each of the above options is not without its drawbacks. Collaboration with a local Chinese architecture institute limits the activities of the foreign firm to conceptual design while the establishment of an Architecture FIE may require numerous regulatory approvals and a high threshold to qualify for certain design activities. An increasing number of architecture firms have begun to adopt an alternative business form by establishing wholly foreign-owned consulting enterprises in China ("Consulting WFOE") in order to provide design consulting for construction projects in China.

This article provides an overview of some of the key issues that foreign firms must consider when planning to carry out design activities in China. The following strategies are reviewed.

- **Long-term:** Establish an Architecture FIE or acquire a portion of the equity of an existing Chinese architecture institute.
- **Short-term:** Collaborate with Chinese architecture institutes.
- **Near-term alternative:** Establish a Consulting WFOE.

1. **Establish an Architecture FIE or Acquire Equity in an Existing Chinese Architecture Institute**

The Chinese government has enacted the following regulations regarding Architecture FIEs:


- Implementing Rule of the Regulation on Management of Foreign-Invested Construction Engineering Design Enterprise ("Decree 18") issued by MOC and MOFCOM on January 5, 2007, effective since that date.
- Administrative Regulation on Construction Engineering Design Enterprise Qualification ("Decree 93") issued by MOC on June 29, 2001, effective since that date.


According to these regulations, establishment of an Architecture FIE to undertake design activities will be subject to strict and complicated approvals. The procedures for obtaining approvals, authorities involved, timeline for obtaining the approvals and document obtained are outlined below:

 Approval from the Commission of Foreign Trade and Economic ("COFTEC")

COFTEC will ask for a pre-approval opinion from the provincial-level MOC before it approves establishment of the Architecture FIE.

Agency: COFTEC is the provincial-level counterpart of MOFCOM.

Timeline: 20 working days in COFTEC and 20 working days in the provincial-level MOC, according to the PRC Administrative Licensing Law.

However, in practice, no application has been approved within that time period. The anticipated time would likely exceed 40 working days.

Document Obtained: Approval certificate.

 Registration with the local Administration for Industry and Commerce ("AIC")

Agency: Administration for Industry and Commerce.

Timeline: 5 to 10 working days.

Document Obtained: Business license.

 Acquiring Qualification Certificate from Provincial-Level MOC

Agency: Provincial level MOC.

Timeline: 20 working days, according to the PRC Administrative Licensing Law. At this time, no applications have been approved in that time period. The processing time likely will take longer than 20 working days.


 Other registrations

Agency: Local Public Security Bureau, Tax Bureau, etc.

Timeline: Generally obtained within one month of obtaining the business license.
The basic requirements for setting up an Architecture FIE and acquiring the relevant qualification certificates to undertake design activities are:

- **Experience requirements for the investors:** Both the foreign investor and the Chinese investor (in the case of an equity joint venture or cooperative joint venture) must engage in construction engineering design in their respective home countries and provide two or more engineering design achievements that were completed outside China, with at least one of them having been accomplished in their home country.

- **Employee requirements for Architecture FIE:** At least one-quarter of the certified practitioners of the wholly foreign-owned Architecture FIE must have obtained the qualifications of a Chinese certified architect or certified engineer, as provided in the Project Design Qualification Standard. In addition, foreign technical employees with relevant professional design experience must make up at least one-quarter of the total technicians, as provided in the Project Design Qualification Standard.

- **Qualification requirement for Architecture FIEs:** The Architecture FIE is prohibited from undertaking design activities in China before obtaining a qualification certificate from the provincial level MOC. Its design activities should comply with and should not extend beyond the scope of its qualification certificate.

Design qualifications in China are divided into the following three categories, according to the Project Design Qualification Standard:

- **Comprehensive Engineering Design (CED):** An Architecture FIE with this qualification may undertake design activities for all industries and projects in China.

- **Industry Engineering Design (IED):** This qualification applies to 21 industries, including petrochemical industry, construction industry and road transportation industry. The Architecture FIE should apply for the qualification certificate for its target industry.

- **Special Engineering Design (SED):** This qualification is for special projects, such as curtain walls. The Architecture FIE should obtain the precise qualification for the project before beginning work.

The IED and SED design qualifications are further subdivided into Grade A, Grade B and Grade C categories based on the scale and complexity of the project. It is important to note that under Decree 93, an Architecture FIE can only apply for a Grade B or Grade C IED or SED qualification during its first two years of operation.

**Minimum registered capital requirement for Architecture FIEs:** Depending on the type of design activity, a minimum level of registered capital is required to undertake the project. For example, a CED qualification requires a registered capital investment of RMB 60 million (about $8 million) and a Grade B IED qualification requires a registered capital investment of RMB 2 million (about $265,000).

Establishing an Architecture FIE can be cumbersome because of the stringent capital requirements, employee hiring, and the complex and time-consuming qualification process. Foreign architecture
firms can merge with or acquire an existing local Chinese architecture firm and convert it to an Architecture FIE.

2. **Collaborate with Chinese Architecture Institutes**

The Provisional Regulations on the Administration of Foreign Enterprises Engaging in Construction Engineering Design Related Activities ("Decree 78") was issued by MOC on May 10, 2004, effective on June 10, 2004. Decree 78 allows foreign architecture firms to undertake offshore conceptual or schematic engineering design work. This has included construction engineering preliminary design (basic design) and shop drawing design (detailed design) in recent projects under collaboration with locally qualified Chinese engineering design institutes ("Chinese Collaborator").

Under this approach, the foreign architecture firm is not required to establish a separate entity in China or to acquire qualifications in China for its conceptual design work for construction projects in China. However, the local Chinese Collaborator must possess a qualification certificate issued by the relevant Chinese construction authorities that will allow it to carry out the requisite design activities for the project.

There is no regulation that clearly distinguishes between conceptual engineering design and design work that goes beyond the conceptual design stage. In contracting, foreign architecture firms should use the language of Decree 78 in describing their activities to facilitate the collection of fees.

As an architecture firm's activities are limited to "conceptual design," we recommend that foreign architecture firms consider such collaboration only as a short-term strategy for doing business in China.

3. **Consulting WFOE**

Many foreign architecture firms create wholly foreign-owned consulting enterprises ("Consulting WFOE") that provide consulting services on design and project management activities in China under the PRC Law on Foreign-Funded Enterprise ("PRC WFOE Law").

The Catalogue for Guidance of Foreign Investment Industries does not prohibit a Consulting WFOE from providing consulting services relating to construction design and project management in China. Under this strategy, no qualification certificate or collaboration is needed to engage in "consulting activities relating to the design and project management work." Note, however, that the enterprise is precluded from engaging in direct design or project management work.

The line between what is and is not permissible in design- and project management-related consulting activities may become ambiguous in practice. However, one thing is clear: Only an entity with the appropriate qualification certificate may enter into a design or project management agreement. The Consulting WFOE can review third-party drawings and provide conceptual drawings. Also, the Consulting WFOE could enter into contracts under its own name, but such contracts could not explicitly cover design or project management. The Consulting WFOE is able to hire employees directly. However, the foreign architecture firm still will be limited in its ability to directly bid and obtain design work on projects in China.

**Summary**
The market entry strategy depends on the company's short- and long-term views on its potential to grow in the Chinese construction market. These approaches are not exclusive of one another, and the company may wish to consider implementing, in tandem, a short- and a long-term business plan. Even with the proper vehicle for entry, competition with Chinese firms is steep. Once a company gets over these initial regulatory hurdles, the company still will encounter the realities of a competitive market.

Foreign firms still will bear higher overhead costs because of expatriate management within and outside of China. Getting the permits, approvals and the projects takes a lot more time and effort than architecture firms are accustomed to expending in others markets. As a company moves forward in the China market, the biggest task may be managing expectations.