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China

Construction

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This country-specific Q&A provides an overview of construction laws and regulations applicable in China.

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China: Construction

1. Is your jurisdiction a common law or civil law jurisdiction?

China is basically a civil law jurisdiction whereby the rule of law is prescribed mainly by statutory laws including judicial interpretations promulgated by the Supreme Court. On the other side and particularly since a few years ago, to standardise the application of laws and strengthen the consistency of court verdict, the Supreme Court has established the judicial trial principle that within the rightful extent of discretionary power, court rulings shall echo for similar or comparable cases. As such, there is the trend of absorbing case law in the general civil law system, and case precedents with similar facts and within the same court jurisdiction will have increasingly important reference value.

2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

For a construction and engineering project, key statutory obligations include: (i) the project owner shall engage legally qualified contractors to perform design and construction work proportionate to their respective qualifications in terms of the industry sector and grade (Class A/B/C), (ii) administrative review, permits and approvals by competent authorities are required throughout the project life circle, covering critical paths including the land planning, construction engineering planning, construction detail design (blue drawings), start and consummation of construction, and (iii) the law generally forbids arbitrary division of construction work to multiple contractors and multi-layer of subcontracting, instead, project contracting shall follow the statutory limitations in respect of construction scale, project filing, etc.

3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery?

a. health and safety;

During the project feasibility study phase, construction projects that may cause occupational disease hazards or involve storage and/or production of dangerous chemicals, mines, metal smelting, dangerous goods, etc. are required to go through pre-evaluation of occupational disease hazards or safety conditions, while other construction projects shall be equipped with comprehensive analysis report of safety conditions and facilities. Occupational hazards prevention facilities and safety protection facilities shall be designed, built and put into use simultaneously with the main construction work. Before the construction completion acceptance, the project owner is legally obligated to conduct evaluation of the control effect of occupational disease hazards and safety protection facilities acceptance.

b. environmental issues;

As early as the project planning stage, an environmental impact appraisal surrounding the construction project's potential impact on the environment shall be conducted and corresponding administrative approval/filing/registration formalities (depending on the degree of impact) shall be fulfilled. Environmental protection facilities shall be designed, built and put into use simultaneously with the main construction work. Results and details of the environmental protection acceptance organised by the project owner within three-twelve (3-12) months after the construction completion acceptance shall be made publicly available through its company website and governmental information disclosure platform.

c. planning;

Given that China does not implement the private land system, any construction project shall meet the land development conditions (including the land use purpose, plot ratio, building density, total construction area, green land area, etc.) originally set out when the land user obtains the land use right either from the State or collective proprietors. As one of the prerequisites for construction, Land Planning Certificate and Construction Planning Certificate shall be obtained, and any construction works shall be designed and built strictly in line with the respective indicators and specifications, unless the project owner applies for re-approval of planning conditions based on significant changes. Upon completion, the planning authority will verify if the eventually built construction work conforms with the

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approved planning conditions before the final completion acceptance and property ownership registration where applicable.

d. employment; and

The law requires the general contractor or labour subcontractor(s), as the case may be, to conclude an employment contract with each construction worker and implement real-name management of construction worders in respect of their wages, attendance to site work and other employment welfare. To safeguard timely and full payment of workers' wages, the general contractor or labour subcontractor(s) is legally obligated to open an escrow account solely for direct payment of registered workers' wages to their personal accounts under supervision of the bank. When making progressive payment for the construction work, the project owner shall allocate by month the contractually agreed portion thereof into the escrow account. Should there be underpayment of construction workers' wages, the labour subcontractor(s) shall be held directly liable, and the general contractor shall take joint liabilities. To the extent that such underpayment is caused by failure of the project owner to timely allocate the agreed labour costs, the project owner at fault shall first make up the overdue wages with the outstanding construction costs payable to the general contractor.

e. anti-corruption and bribery.

The law expressly prohibits bribery or similar corruption misconduct during the contractor selection or contract awarding process of a construction project. Specifically, the project owner and its employees shall not accept bribes, kickbacks or solicit other benefits, and the contractors or its employees shall not offer bribes, kickbacks or other benefits to the project owner or its employees for the purpose of improperly winning the opportunity to undertake the construction and engineering work. The party in foul of the law will be subject to administrative penalties including fines, confiscation of illegal gains, or criminal liabilities where the violation constitutes a crime, and the contractor committing bribery may be further ordered to business suspension for rectification or downgrade/revocation of the practicing qualifications. Where the contract is awarded through bidding process, violation of anti-corruption statutory requirements will nullify the bidding result.

4. What permits, licences and/or other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

Before starting detail design of construction drawings, Land Planning Certificate and Construction Planning Certificate are required, as elaborated in Question 3(c). After the construction drawings pass the drawing inspection by a licensed drawing audit institution, and the construction works have been duly awarded to a qualified contractor, the project owner may then apply for Construction Permit for start of construction work.

During the construction, parties shall keep full record of project files in respect of quality control, change management, acceptance record sheets of each section of the work, and particularly the as-built drawings, to fulfil the files archive requirements in line with national standards and regulatory guidelines of local construction archives management institution.

Upon completion, a set of completion acceptance procedures shall be handled, covering planning acceptance, quality acceptance, environmental protection acceptance, firefighting acceptance, etc. Each step thereof corresponds to a specific receipt or certification, and eventually, the project owner shall conduct the Completion Acceptance Filing and obtain a filing registration certificate. Within three (3) months after the completion acceptance, by law the project owner shall hand over a complete project files archive to the local management institution.

Non-compliance with any of the foregoing permitting/review/filing requirements will lead to administrative penalties arising from illegal construction, which may involve, subject to the severity of violation, administrative order of suspension/rectification within the limited period, fines, forced demolition of building/structures, or confiscation of relevant illegal gains.

5. Is tort law or a law of extra-contractual obligations recognised in your jurisdiction?

Yes, the Chinese law explicitly recognises legal obligations arising from torts and other non-contractual causes. The PRC Civil Code confirms that creditor's rights may originate from non-contractual causes such as tort, voluntary service, and unjust enrichment, and further stipulates basic rules such as fault liability, no-fault liability, fault presumed responsibility, as well as claim right of the infringed. In addition, the legal application rules for tort liability are also stipulated in foreign-related situations.

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6. Who are the typical parties involved in a construction and engineering project?

Typically, there are five parties involved in a construction and engineering project: (i) a project owner which is referred to as the construction entity under the law and required to obtain all the construction related permits and approvals in its own name, (ii) a surveyor which is legally responsible for verifying and evaluating geographical environmental characteristics and geotechnical engineering conditions of the construction site, (iii) a design institute which develops construction drawings and other detail design documents/specifications on the strength of owner requirements and compulsory design technical standards, (iv) a general contractor which assumes overall responsibility for physical construction work, and (v) a Jianli which legally supervises the whole quality control process during the construction (including testing, inspection and acceptance of construction materials, techniques and key procedures), and signs off the quality acceptance of each section of the completed construction work. As a mandatory procedural requirement, completion acceptance report of a construction and engineering project shall be signed off by such five responsible parties.

7. What are the most popular methods of procurement?

By law and industry practice, the prevailing methods of procurement for a construction project include bidding (public bidding or bidding by invitation) and competitive negotiation, while request for proposal ("RFP") or single-source procurement of certain equipment/facilities contained thereof is also commonly adopted where there involve special requirements on performance or technical specifications that may only be resorted to limited number of suppliers with long-term business relationship. As elaborated in below Question 9, certain types of project procurement are subject to mandatory bidding process, and there are legislations requiring governmental entities' procurement activities to be conducted through defined ways and procedures. Through our observation, bidding, including the public bidding and bidding by invitation, should be the most popular method of procurement.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

The Ministry of Housing and Urban-Rural Development and the State Administration for Market Regulation jointly formulated (and amend from time to time) a series of model contracts for construction projects, covering various subject matters including project survey, design, construction, Jianli, cost consultation, "EPC" (engineering, procurement and construction) contracting model, engineering professional subcontracting and labour subcontracting, etc. These model contracts are the most popular and widely used boilerplate for construction projects in China.

The model contracts consist of three (3) sections, contract agreement, general terms and conditions, and particular terms and conditions. Section I – contract agreement lists out basic information surrounding the project, scope of work, time for completion, payment schedules, etc. Section II – general terms and conditions, as an integration of general provisions of the law and industry dealing customs, provides the principles and benchmark provisions regarding rights and obligations of the parties, while Section III – particular terms and conditions serves as necessary adjustment or supplement to the general terms and conditions based on mutual agreement between the parties. According to the user guide of model contracts and industry practice, parties normally leave the general terms and conditions part unchanged but make tailor-made amendments or insert supplementary agreement in the particular terms and conditions section based on the project situation and mutual negotiation between the parties. In case of conflict between Section II and Section III, the particular terms and conditions shall prevail.

9. Are there any restrictions or legislative regimes affecting procurement?

By law, procurement of surveyor, design, construction or Jianli services or important equipment/materials related to construction for (i) large-scale infrastructure, public utilities and other projects related to social public interests or public safety, (ii) projects that are wholly or partially funded by state-owned capital investment or state financing, and (iii) projects that use loans or aid funds from international organizations or foreign governments are subject to mandatory bidding process and therefore governed by bidding related statutory requirements. Applicable legislations further prescribe the scope and/or contract amount threshold of the foregoing three types of projects subject to mandatory bidding. For government funded construction projects, additional legislations governing governmental entities' procurement activities apply.

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10. Do parties typically engage consultants? What forms are used?

Consultants are typically engaged by a project owner where the owner wishes or needs to rely more on a professional third party to either exercise full-course management of the construction project or supervise/advise a certain aspect thereof, e.g., selection of contractors, architectural/process design, cost control. Depending on the project owner's needs and preference, such consultants could be a EPCM (engineering, procurement and construction management) contractor to act as the owner's representative throughout the project and continuously provide solutions and management services for project decision-making, implementation and operation, or merely support a particular process/part delegated, like a bidding agency, a design/cost advisor, or a quality testing institute. Notably, the full-course consultancy business model is proactively advocated by the government authorities, and relevant trial policies and model contract have been developed and implemented.

11. Is subcontracting permitted?

The law permits subcontracting in construction projects, while subject to the following restrictions: (i) subcontracting or not and the scope of subcontracting shall be contractually agreed or otherwise approved by the project owner, (ii) the contractor may only subcontract non-core or non-critical part of the contracted project (namely, the main structure must be completed by the general contractor on its own) to subcontractor(s) with corresponding qualifications, and (iii) total assignment of contractor's work, dismembering the entire project and assigning each piece to others in the disguise of subcontracting, or the subcontractor re-subcontracting its work are all explicitly prohibited. Subcontracting or assignment that violates the laws will be held invalid and may result in penalties such as confiscation of illegal gains, fines, business suspension for rectification, degrading or even revocation of qualifications. In case of permitted subcontracting, the general contractor shall bear any legal liabilities towards the project owner in respect of the work performed by the subcontractor(s), based on the general contracting contract.

12. How are projects typically financed?

Non-operational construction projects involving public domain, such as social welfare facilities, public infrastructure, municipal engineering, medical and health facilities, etc., usually receive government direct funding within the fiscal budget, while those fixed asset investment and construction projects for business operation purpose that require government support are typically financed by government funds either as project capital injection to form the state-owned property right or, subject to government approval, as investment subsidies granted to the investor(s). For privately invested construction projects, usual ways of financing include the enterprise's self-owned funds, bank loans or shareholder loans, corporate bonds, equity financing, and financial leasing of bulk equipment.

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

If any advance payment is paid by an employer upfront, the employer usually requires an advance payment bond, which normally would be kept valid at least for such a period that the contractor should be able to deliver the equivalent value of work as parties anticipated. The contractor's provision of a performance bond is common where the contracted works require over several months to complete, or the employer heavily replies on the contractor's due performance for supply of critical goods or services. The performance bond should usually maintain effective by and until the employer accepts the delivered works, goods or services. After acceptance of the work, there is also security (retention or substitute quality warranty bond) available for employers during the defects liability period as stipulated by law (see Question 16 for details). To safeguard the employer's position, comparing with parent company guarantees, the foregoing bonds are recommended to be issued as irrevocable on-demand bank guarantees, as the precondition for the contractor's entitlement to corresponding payment.

14. Is there any specific legislation relating to payment in the industry?

Basically, there is no such legislation specifically stipulating payments in the construction industry, instead, relevant law provisions are scattered in multiple laws, regulations and government circulars, including the Civil Code, Construction Law, Judicial Interpretation of the Supreme Court on the Construction Contract Disputes, Administrative Measures on Settlement of Contract Price issued by the Ministry of Finance and Ministry of Housing and Urban-Rural Development, Recommended National

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Standard on Pricing for Bill of Quantities in Construction Projects, etc. On the other side, payment arrangements in the sphere of construction are primarily based on contractual agreements between the parties. Applicable law provisions shall be referred to as the performance basis only when the contract is silent on relevant issues surrounding the payment, or the existing contractual agreement contradicts with the compulsory provisions of law, or in case of disputes arising from one party's failure to duly perform its obligations by law or contract. Such laws and regulations more provide for protection clauses for the non-defaulting party, such as construction payment's priority in compensation, employer's deemed acceptance for failure to timely respond the completion settlement applications within the agreed timeframe.

15. Are pay-when-paid clauses (i.e. clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Given that multiple parties are involved in a construction project and payments are largely interrelated, pay-when-paid clauses are commonly used in practice to ease the burden of intermediate contractors to make advance payment. Generally, such clauses based on contracting parties' mutual consent do not violate mandatory provisions of laws/administrative regulations and therefore are legally valid, with the exception when payment is made to small or medium-sized enterprises satisfying criteria set by the State Council ("SMEs") by larger enterprises. The Supreme Court has released a judicial interpretation in August 2024 to confirm that where a large enterprise, in the construction contract or goods/services procurement contract for a construction project, agrees with a SME that the payment is made on the condition that it receives payment from a third party, the court shall hold such agreement invalid on the ground that it violates general principles to protect SMEs from undue payment delay or unreasonable payment terms as provided under the State Council Regulation on Ensuring Payments to SMEs.

16. Do your contracts contain retention provisions and, if so, how do they operate?

Retention is quite usual for construction project contracts, as this mechanism is sustained by a series of legislations aiming to reinforce the contractor's legal responsibility of quality assurance during the defects liability period ("DLP") of the completed construction work. By law, the project owner may withhold a retention maximum at three percent (3%) of total settlement amount of the contracted works (i.e., the sum of contract price and any amount payable for variations) during the DLP, which is, subject to contractual agreement between the parties, normally one (1) year and maximum two (2) years after the construction work successfully passes the completion acceptance. Alternatively, parties may agree that upon completion acceptance, the project owner makes the final payment against the contractor's provisions of a quality warranty bank guarantee, with the guaranteed amount equalling the retention and effective period covering the agreed DLP.

During the DLP, in case of any defect that does not comply with the mandatory standards for engineering construction, design documents, or the contract requirements and is attributable to the contractor, the contractor shall be legally responsible for repair at its own cost. If the contractor neither repairs nor bears the costs, the project owner may engage a qualified third party for repair and deduct relevant expenses from the retention or claim against the bank guarantee. If such expenses exceed the guaranteed amount, the project owner may further claim compensation from the contractor. After the contractor has carried out the repair and borne the corresponding costs, it shall not be relieved of the indemnification liability for any losses caused to the construction work. Preconditioned upon the contractor's fulfilment of its quality assurance responsibilities, upon expiry of the DLP, the balance of retention (if not used up) or quality warranty bank guarantee shall be duly returned to the contractor, otherwise, the project owner shall assume liabilities for overdue payment as agreed.

17. Do contracts commonly contain liquidated delay damages provisions and are these upheld by the courts?

As time for completion/delivery is of the essence, construction project contracts commonly contain liquidated damages provisions for delay in completion/delivery. By referring to the industry practice, the model contracts released by the Ministry of Housing and Urban-Rural Development and the State Administration for Market Regulation also contain delay liquidated damages provisions in Section III – particular terms and conditions, and contracting parties may agree on the calculation method and possible cap. On one side, the law permits contracting parties to mutually agree on the liquidated damages provisions as liability for breach, therefore the courts generally recognise and uphold the validity of such provisions as true reflection of parties'

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intention. On the other side, as delay liquidated damages by nature constitutes compensation for damages caused by delay, the law also provides that where the agreed liquidated damages amount is significantly higher or lower the actual losses suffered, the affected party may file a petition at competent court or arbitration institution to adjust the liquidated damages amount by ruling, unless there exists malicious breach.

18. Are the parties able to exclude or limit liability?

The parties may mutually agree to contractually exclude or limit liabilities, however, such contractual agreement shall in no case violate the mandatory provisions of laws and administrative regulations. The common practice is to set a cap for liquidated damages of certain breach and limit the liability for loss compensation by either party to direct losses only, excluding indirect or consequential losses such as loss of profits or production. By law, contractual exclusion or limitation of liability in cases of (i) personal injuries caused to the counterparty, and (ii) property damages cause by intention or gross negligence is void. Further, parties shall not agree by contract to exclude, limit or evade statutory liabilities arising from performance of construction contracts, such as the contractor's quality assurance liability (repair, rework, renovation, and loss compensation) during the defects liability period and quality warranty period for each section of the construction work, joint liability of the general contractor and subcontractor(s) for the subcontracted work, etc.

19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

A construction contract may be terminated upon mutual consent of contracting parties or based on causes either already agreed in the contract or those stipulated by law entitling the non-breaching party to unilaterally terminate. Restrictions on termination include, in substance, termination causes shall be within the scope as provided by the contract or the law, and procedure wise, the party entitled to terminate shall exercise the termination right within the contractually agreed period or latest within one (1) year upon such party knows or should have known the existence of termination cause. The parties may terminate for convenience, so long as such termination cause is explicitly agreed in the contract. Termination upon force majeure that has rendered the realisation of contract purpose impossible is also legally viable, as this is one of the causes of the statutory rescission.

20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

Given the privity of contract, in construction projects and derivative transactions including property sale and lease, etc., third party rights are commonly granted through laws and statutes protecting the bona fide third parties or other stakeholders outside relevant contractual legal relationship. Such rights include, without limitation, (i) a renter's general entitlement to continued use of the leased property in case of sale afterwards (with limited exceptions), (ii) a renter's pre-emptive right in case of voluntary property sale by the owner or realisation of mortgage right over the leased property, (iii) a prior purchaser's right to invalidate the commodity housing sale contract subsequently concluded over the same property, and (iv) right of the original owner, successive user or infringed third parties to claim against the construction contractor at fault for compensation of losses caused by quality defects occurred during the reasonable service life of the building. Third parties granted with relevant rights by virtue of law may exercise such rights directly towards the alleged party or file a petition at the competent court, with explicit declaration of intention and within the prescribed or reasonable period.

21. Do contracts typically contain strict provisions governing notification of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

Taking reference of the FIDIC contract conditions, the model contracts released by the Ministry of Housing and Urban-Rural Development and the State Administration for Market Regulation contain such preconditional notification provisions as part of the claim procedures in Section II – general terms and conditions. Specifically, within twenty-eight (28) days after the affected party knows or should have known the occurrence of relevant events giving rise to the claim, either the project owner or the contractor shall serve a notice of intention to claim additional time or payment and provide details surrounding the claim events, failure of which shall result in such party's loss of the right to further claim additional time or payment. As a common industry practice, construction contracts typically incorporate such

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notification provisions into the agreed claim procedures, which constitute the conditions precedent to entitlement of claims.

Although there were case precedents of the Supreme Court maintaining that non-fulfilment of contractually agreed procedural requirements shall not deprive of a party's substantive right, particularly the entitlement to additional compensation, now with benchmarking FIDIC contract conditions as the recommended industry practice, China judicial practice tends to recognise fulfilment of such notices as conditions precedent. In accordance with the Judicial Interpretation of the Supreme Court on the Construction Contract Disputes, parties' agreement that the contractor's failure to apply for extension of time within the agreed period will render non-extension of time for completion shall be respected, unless the project owner otherwise agrees to extend or the contractor raises reasonable defence. Further, recent Supreme Court rulings hold that time limit and relevant requirements for claims are the prerequisites for accurately confirming the facts and also the basis for judging the true intentions of the contracting parties in handling actual issues arising from construction.

22. What insurances are the parties required to hold? And how long for?

By law, each party involved in a construction project shall procure work-related injury insurance for all its employees to fulfil the statutory obligation as the employer. A construction contractor is legally required to purchase personal accident insurance for those workers engaged in dangerous operations at construction site at least covering the period from start of construction to successful completion acceptance, and further, work safety liability insurance to control its risk exposure of legal liabilities arising from construction safety accidents throughout its business operation.

Other insurances that are not legally mandatory but advocated by the government authorities or commonly adopted in the industry include: (i) construction all risks insurance or erection all risks insurance until the completion acceptance and final handover for damages to the work in progress caused by accidental events or natural hazard, which may be procured either by the project owner or the general contractor, (ii) property all risks insurance for the contractor's construction equipment/machines against property damages during the onsite construction, (iii) professional liability insurance procured by professional institutes involved, e.g., surveyor, design institute, project management consultant, to withstand their risk exposure of legal liabilities arising from their performance of work/services.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

Construction and engineering disputes are typically resolved in China through amicable negotiation (when still possible), litigation and arbitration. While litigation is natural means to resolve dispute as stipulated by law, arbitration is the feasible and exclusive way only when parties already agree on arbitration as dispute resolution manner by clearly referring to a specific arbitration institution. Based on statistics of Beijing International Arbitration Court and our industry observation, over the recent years arbitration cases have been taking up a fast-growing ratio given the privacy and final attribute of arbitration mechanism. Other available alternatives for dispute resolution include mediation conducted by mediation committee, competent construction authority or industry association, settlement among the disputing parties on the strength of third-party appraisal and dispute adjudication board ("DAB") recently encouraged and promoted in southern China regions.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

China courts are highly supportive of both domestic and international arbitration from the perspectives of judging validity of arbitration agreements as well as recognition and enforcement of arbitration awards. As elaborated in Question 23, resorting to arbitration is subject to prior arbitration agreement, while in respect of determining validity of arbitration agreements, courts tend to the interpretation principle that favours confirmation of the validity. As to recognition and enforcement of domestic arbitration awards, by law ad in judicial practice, whenever a party fails to perform an effective arbitration award, the counterparty may apply for enforcement of the award at the court with jurisdiction, and the court largely conducts procedural review with limited examination of substantive legitimacy before ruling to enforce the award. For international arbitration awards, as China is a contracting party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), the circumstances under which recognition and enforcement are refused are limited to the very few procedural matters and public policy reservations as stipulated in the Convention, with

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basically no substantive review on any errors in the application of laws or the facts-finding.

In respect of the time span to enforce an award, by law, the court shall complete the review within two (2) months after acceptance of enforcement application, unless further extended by one (1) month in exceptional cases. After the court initiates the enforcement procedures, judicial coercive measures may be taken immediately, and the duration of whole enforcement process would depend on availability and complexity of the property of the party subject to enforcement.

25. Are there any limitation periods for commencing disputes in your jurisdiction?

Except claims to cease infringement, remove obstruction and eliminate danger that are not subject to any limitation period, a three-year limitation of action generally applies for filing a case based on disputes by contract or by tort in construction projects. Where the project involves international sale of goods or import/export of technologies, e.g., cross-border supply of equipment/facilities or know-how, a four-year time bar shall apply. The limitation of action starts from the date when the right holder knows or should have known that his rights were infringed and the identity of obligor, which period may be legally suspended or interrupted (re-calculated) based on causes stipulated by law. However, if more than twenty (20) years have elapsed since the right was infringed, relevant civil rights will not be legally protected unless the court otherwise approves to extend based on request of the applicant. By law, upon expiry of the limitation of action, the court or arbitration institution shall not offer to apply the limitation of action, however, the alleged obligor may defend not to perform.

26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?

Multi-party disputes are relatively common given the inherent nature of multiple parties in interrelated legal relationships for a construction project and China legal regimes on regulating liability scope of the general contractor, subcontractor and de facto construction contractor as applicable. For example, the law provides that where disputes arise over the construction quality, the project owner may file a lawsuit against the general contractor, subcontractor and de facto construction contractor as co-defendants, further, a de facto construction contractor may legally sue against the illegal assignor and subcontractor. During the trial, the court may also include a third-party stakeholder to participate in the lawsuit based on the laws and case facts. In accordance with the trail guidelines issued by multiple provincial high courts, multiple parties involved in intertwined legal relationships has become a prominent characteristic of construction dispute cases.

Liabilities among multiple defendants are generally apportioned based on thorough considerations of mandatory laws, contractual agreement, degree of fault of each party and principle of fairness to balance interests of parties involved. As the law adopts the fundamental logic to make up losses suffered by innocent parties and overall recognises limitation of liability by contract (with statutory exceptions, see Question 18 for details), net contribution clauses are not commonly used.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

After over four (4) decades of market expansion with full speed, the China construction sector is now facing a shrinking market share and significant drop of project margin. Construction contractors in China, in particular smaller and private owned construction companies, constantly see less real estate projects in the market, leading to much more heated competition in getting works but yet lower average project margin as per project. In the meantime, general economic downsize causes liquidity issues for a number of project owners, and contractors face longer payment term.

On the other hand, project owners encounter increasing number of construction quality issues. Due to lower bidding price and sometimes even fixed lump sum contract price below the actual cost, contractors tend to raise more change applications and claims, leading to increasing number of construction disputes and frustration of cost control.

Out of the challenges, we also see certain opportunities. With increased outbound investment of manufacturing facilities to not only the Belt and Road regions but also various locations including Europe, ASEAN, south America, etc., Chinese construction contractors are engaging in historically more infrastructure works offshore, although it remains challenging to evolve the traditional construction contracting in the China market

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to the EPC contracting model in the international market, in terms of both work quality and project management.

Further, although real estate sector has cooled down since 2021, new opportunities arise in the infrastructure and industrial sectors, as the Chinese government launches large scale public funded projects and there are also manufacturing facility construction projects. Contractors may need to adapt themselves from building commercial and residential properties to more diversified and complex industrial facilities.

28. What types of projects are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

Under the current macroeconomic environment in China, the investment pattern in the construction engineering industry is undergoing significant reformation: the structural industry growth has been shifting from once centred commercial real estate to energy manufacturing, industrial buildings/facilities, and infrastructure. In accordance with relevant market surveys and analysis reports released by trade associations, consulting firms and academic institutions, investment in power generating and new energy construction projects is far ahead of other sectors and still growing rapidly. Construction of industrial buildings and facilities comes after, and specific infrastructures including railways, waterways, and aviation also demonstrate a solid growth speed.

29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

Artificial intelligence ("AI") may re-shape the construction and engineering industry in China. With the fast-growing AI technology, AI-generated engineering design and automatic drawing inspection can be reasonably expected in the near future. For construction contractors, we may see more intelligent construction sites with robotic workers, site inspection by drones and AI-generated construction management.

Buildings and workshops in the future will be more ecology and environment friendly. Green building will not only be a plus, but also regulated as mandatory requirements.

30. What do you anticipate to be the impact from ongoing supply chain issues and the escalation of material costs over the coming year?

Construction material supply chain has been the most critical factor of operational risks for China contractors, with impact on cost, time, quality, cash liquidity and profit margin. Geopolitical conflict oriented supply chain crisis may also affect construction industry. For example, the most recent war in Iran seriously affects the supply and pricing of a number of chemical construction materials, leading to supply chain suspension, delivery delay or price inflation.

The increasing geopolitical uncertainty will have an impact on the contracting model. We anticipate to see more cases in the construction sector concerning force majeure, significant change of circumstances, etc. For better budget control purpose most industrial construction project owners prefer lump sum fixed price against bill of quantities, with increasing regional conflicts which seriously affect the supply chain, we anticipate increasing projects introducing price adjustment mechanism in case of unpredictable supply chain crisis.

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