



## CHINA LEGAL BRIEFING 15

WENGER VIELI BELSER BEIJING OFFICE

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### **1. National**

#### ***Provisional Rules on Foreign Funded Mergers and Acquisitions***

On 7 March 2003, Provisional Rules on Foreign Funded Mergers and Acquisitions was co-promulgated by the then MOTETC (currently Ministry of Commerce) and other three authorities. Under this rule, foreign-funded mergers and acquisitions may be conducted by means of equity or asset. The deal is subject to government approval and registration of alteration is to be made. As a rule, foreign capital may not account for less than 25% of total registered capital of the new foreign invested enterprises as a result of the deal. Otherwise, the deal shall undergo the approval & registration procedure set for new establishment of foreign funded enterprises and special earmark will be made on the certificates of approval & registration. ([www.moftec.gov.cn](http://www.moftec.gov.cn))

#### ***Inheritance Tax Put Off***

On 11 March 2003, vice minister of finance Liao Xiaojun made it clear at a symposium of 10th Chinese Political Consultative Conference that the disadvantage outweighed advantage of collecting inheritance tax and hence at present China would not levy inheritance tax. According to him, several considerations lead to this decision. First, imposing inheritance tax may discourage the growth of private business and even encourage outflow of capital. Moreover, there are still many follow-ups not established or less developed

Telephone +86 10 64687331  
Fax +86 10 64603132  
电话: +86 10 64687331  
传真: +86 10 64603132

mail@wenfei.com  
www.wenfei.com

Wenger Vieli Belser  
Room 722  
Golden Land Building  
No. 32 Liang Ma Qiao Road  
Chaoyang District  
Beijing 100016 P.R.C

北京办事处  
北京市朝阳区亮马桥路32号  
高澜大厦7层722  
邮编: 100016

Offices Zurich  
Wenger Vieli Belser  
Dufourstrasse 56 and  
Mühlebachstrasse 38  
CH-8034 Zürich

Office Zug  
Industriestrasse 7  
P.O. Box  
CH-6301 Zug

such as declaration of personal properties and evaluation of assets. Further, it is worried that this action may harm investment environment. ([www.china.org.cn](http://www.china.org.cn))

### ***Foreign Trade May be Priced in RMB***

On 3 March 3, the State Administration of Foreign Exchange issued a circular which took effect on the same day, stating that domestic enterprises may price foreign trade in RMB in the contracts of export & import. The exchange rate of the cost is decided by that of the day when the settlement is made. This rule is said to improve the competitive capacity of domestic enterprises. ([www.safe.gov.cn](http://www.safe.gov.cn))

### ***Provisions on Application of Ordinary Procedure to Guilty-Plea***

As of 14 March, a new rule enacted in accordance with Chinese Criminal Procedure Law on the application of ordinary procedure to guilty-plea took effect, which will apply to the cases on trial level. Under this new rule, court procedure may be simplified in the case of guilty plea out of free will by providing that the defendants may decline confessions, prosecutors and counsels may shorten and even omit examination of defendants. However, this rule shall not apply where the defendants are blind, deaf or mute; or he may be subject to capital penalty; or he is a foreigner; or the co-perpetrators do not make guilt-pleas or do not agree to apply this rule to the case; or the case attracts significant public attention.

### ***CSRC Grants QFII Custodian Licenses to Three Foreign Banks***

The CSRC, Chinese Securities Regulatory Commission, has given go-ahead to three foreign banks to act as custodians for Qualified Foreign Institutional Investors. The lucky dogs include Shanghai Branch of Citibank, HSBC and Standard Chartered Bank. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

## 2. *Local*

### *Mediation Agreement Enforceable in Shanghai for Consumer Protection*

From 11 March 2003, a new mediation procedure began to be open to consumers in Shanghai, from which they may obtain a legally enforceable document without bothering to take the sellers to court room. Under the new arrangement, the settlement signed by the parties under the auspices of a mediator will be officially stamped by the association of customers' protection, which will have legal effect no less than a court judgment. Under the previous arrangement, the agreement of settlement reached cannot be enforced and are hence often disregarded. ([www.isinolaw.com](http://www.isinolaw.com))

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