



CHINA LEGAL BRIEFING 62

WENGER VIELI BELSER BEIJING OFFICE

February 16 - February 20, 2004

CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENGER VIELI BELSER and distributed to its clients and CHINA LEGAL REPORT SUBSCRIBERS. WVB does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide legal advice.

1. National

Working Procedure of the Standing Committee of the National People's Congress for the Interpretation of Statutes

【**Issued By**】 National People's Congress

【**Subject**】 Legislative Interpretation

【**Adopted On**】 February 17th 2004

【**Source**】 www.npc.gov.cn

This by-law is adopted to lay down the working procedure of the legislative interpretation of statutes, which will occur where the existent statutes want clarification or where newly emerged circumstances call for interpretation.

The institutions which enjoy the privilege to request interpretation include the State Council, Central Military Commission, Supreme People's Court, Supreme People's Prosecutor's Office, Specialized Committees of the National People's Congress, and Standing Committees of People's Congresses at the provincial level. In addition to interpretation upon request, the Standing Committee of the National People's Congress may initiate the procedure by motion from its Chairmanship.

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

The legislative interpretation adopted by the Standing Committee of National People's Congress shall have the same effect as the statutes which are interpreted.

Decision of State Council on Further Improving Production Safety

国务院关于进一步加强安全生产的决定

【Issued By】 State Council

【Subject】 Labor, Production Safety

【Adopted On】 January 9th 2004

【Source】 www.law-lib.com

In addition to stressing the enforcement of the production safety certificate regime (China Legal Briefing No.57), the State Council in this decision expresses its intent to improve the production safety through economic leverage.

First, enterprises will be required to allocate part of their revenue to a production safety fund, which is established to finance activities related to production safety. The mechanism will be initially adopted in mining enterprises and then will be extended to enterprises in other industries exposed to high degree of danger.

Second, the standard of compensation for injuries suffered from production accidents will be greatly improved. The victims will be entitled to compensation decided upon the fault on the part of enterprises in addition to employment injury insurance.

Third, certain enterprises will be obligated to make a deposit for the production safety with relevant authorities, which will be used for rescue operations and other matters arising out of the accident. This scheme will be applicable to enterprises in the industries of mining, road transportation, construction, dangerous chemicals, and firework.

Provisions on Investment Companies Established by Foreign Investors (Amended)

关于外商投资举办投资性公司的规定（修订）

【Issued By】 Ministry of Commerce

【Subject】 Investment Company

【Adopted On】 February 23rd 2004

【Effective From】 March 25th 2004

【Source】 www.mofcom.gov.cn

In June 2003 (China Legal Briefing no.28) the Ministry of Commerce already had changed its piece-meal approach regarding regulations related to investment companies established by foreign investors, by unifying them in a consolidated document. Now, this document has been revised once more.

The threshold for the establishment of investment companies by foreign investors has remained the same but if two conditions occur the requirements are reduced. (1) under the condition that 10 enterprises already have been established in China by the prospective foreign investor for investment companies the others are no longer required to be production enterprises or enterprises engaging in infrastructure construction; or (2) the existence of 3 projects to be invested is sufficient, deleting the requirement that the project plans of these projects should have been approved.

Something untouched upon by its previous versions is that investment companies which satisfy set conditions may apply for being treated as regional headquarters of multinational companies. The investment companies may be accredited as regional headquarters if: (1) the actual contributed registered capital has exceeded USD 1 billion, or the actual contributed registered capital is no less than USD 50 million while in the year preceding the application the overall assets of the invested enterprises are no less than RMB 30 billion with the overall revenue of the said enterprises no less than RMB 1 billion; and (2) the conditions laid down in article 8 of this regulation have been satisfied; and (3) at least two research and development institutions have been established, among which at least one should be legal person. The regional headquarters may engage in some business fields defined by this regulation, which are denied to ordinary investment companies established by foreign investors.

Provisions on the Electronic Application for Patents

关于电子专利申请的规定

【Issued By】 State Intellectual Property Office

【Subject】 Patent Application

【Adopted On】 February 12nd 2004

【Effective From】 March 12nd 2004

【Source】 www.sipo.gov.cn

The applicant who wishes to submit electronic applications for patents including inventions, utility models and designs shall first conclude a user registration agreement with State Intellectual Property Office (SIPO). No separate agreement is needed once the application is submitted via a patent agency institution which has already concluded such an agreement with SIPO. This regulation, however, is not applicable where international application is made before SIPO.

The electronic application and paper application are absolutely separated and non-interchangeable. Therefore, once the applicant opts for electronic application, all the subsequent documentation shall be submitted in electronic form. Otherwise, it shall be qualified as non-submission. The same scenario applies to the paper application.

Provisions on Administration of Sub-Contracts in Respect of Premises and Infrastructure Projects

【Issued By】 Ministry of Construction

【Subject】 Sub-Contracts

【Adopted On】 February 3rd 2004

【Effective From】 April 1st 2004

【Source】 www.cin.gov.cn

This regulation governs sub-contracts in construction of premises and infrastructure projects. Based on the different nature of the work, sub-contracts may be divided into two groups: professional work sub-contracts and service work sub-contracts.

A professional work sub-contract is a contract between the prime contractor and the sub-contractor under which the sub-contractor undertakes to conduct certain parts of professional project work. Similarly, a service work sub-contract is a contract between the prime contractor and the sub-contractor under which the sub-contractor undertakes to conduct certain parts of service work to the project.

The difference of professional work (e.g. tunnel construction) and service work (e.g. painting) needs to be understood in terms of constituting a separate an independent part of the project. Whereas professional work can be qualified as such this is not the case for service work.

Professional work sub-contracts shall be approved by the developer unless the main contracts already permitted sub-contracts. There are no such requirements for service work sub-contracts. As for sub-contractors, individuals are excluded. Furthermore, the developer may not directly designate sub-contractors.

All the sub-contracts shall be filed for record with the administrations of construction above the county level within 7 days of their conclusion. The same procedure shall also be followed if substantial amendments have been made to the sub-contracts.

© Wenger Vieli Belser, Beijing, February 20, 2004

DISCLAIMER

THIS PUBLICATION IS INTENDED TO PROVIDE ACCURATE INFORMATION IN REGARD TO THE SUBJECT MATTER COVERED. READERS ENTERING INTO TRANSACTION ON THE BASIS OF SUCH INFORMATION SHOULD SEEK ADDITIONAL, IN-DEPTH SERVICES OF A COMPETENT PROFESSIONAL ADVISOR. WENGER VIELI BELSER, THE AUTHOR, CONSULTANT OR GENERAL EDITOR OF THIS PUBLICATION EXPRESSLY DISCLAIM ALL AND ANY LIABILITY AND RESPONSIBILITY TO ANY PERSON, WHETHER A FUTURE CLIENT OR MERE READER OF THIS PUBLICATION OR NOT, IN RESPECT OF ANYTHING AND OF THE CONSEQUENCES OF ANYTHING, DONE OR OMITTED TO BE DONE BY ANY SUCH PERSON IN RELIANCE, WHETHER WHOLLY OR PARTIALLY, UPON THE WHOLE OR ANY PART OF THE CONTENTS OF THIS PUBLICATION.