



## CHINA LEGAL BRIEFING 70

WENGER VIELI BELSER BEIJING OFFICE

*April 12 – April 16, 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. WVW does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide legal advice.*

### 1. *National*

【Subject】 Contract

【Source】 [www.law-star.com](http://www.law-star.com)

*It is reported that the drafting of the Law on Digital Signatures has been completed by State Council, which adopted the text on 24 March 2004 and forwarded it on 2 April 2004 to the Standing Committee of National People's Congress for debate.*

The draft addresses four issues: (1) The legal effect of a digital signature: the draft lays down rules to decide under what circumstances the digital signature has the same legal effect as a handwritten signature and/ or seal. (2) Electronic documents: this section deals with three aspects. First, the circumstances under which electronic documents are legally effective; secondly, the circumstances under which electronic documents may be introduced as evidence; thirdly, the criteria for determining the sender, sending time and sending place of electronic documents. (3) Market access to digital certification services. (4) Security safeguards for digital signature.

*Response to the Question "How to Interpret the Fact That the Guarantor Signed the Request for Repayment After the Term of Guarantee has Expired"*

DR. URS GUT  
DR. PETER M. BELSER M.C.L.  
DR. CHRISTOPH SCHMID  
DR. PETER ALTORFER  
DR. MARCO CEREGHETTI  
BIGNIA VIELI LL.M.  
DR. MICHAEL HUBER LL.M.  
PROF. DR. DANIEL GIRSBERGER LL.M.  
FURSPR. DANIEL URECH  
GEORG ZONDLER  
DR. WOLFGANG ZÜRCHER LL.M.  
DR. CHRISTIAN WENGER LL.M.  
DR. ANDREAS HÜNERWADEL LL.M.  
DR. MARTIN HESS  
DR. PAUL THALER  
DR. URS M. WEBER-STECHER LL.M.  
DR. RUDOLF OTTOMANN  
PETER RUGGLE  
ANDRÉ A. GIRGUIS  
DR. FRANK SCHERRER LL.M.  
DR. KRISTINA TENCHIO-KUZMIC  
LORENZ DROESE  
NATHAN KAISER  
ROMAN HEIZ  
DR. SUSANNE METTIER  
DR. MIRJAM RHEIN  
DR. MICHAEL MRÁZ  
REGULA GRUNDER LL.M.  
DR. MATTIA TONELLA  
DR. BEAT WALTI  
DR. THOMAS BURKHALTER M.JUR.  
MICHEL POLA  
BEAT D. SPECK

DR. JEAN-CLAUDE WENGER KONSULENT  
DR. LELIO VIELI KONSULENT  
DR. REMO CEREGHETTI KONSULENT  
DR. JOSEF SCHERRER KONSULENT

MARKUS HUGGER DIPL. BUCHH./CONTR.

Phone +41 (0)1 563 33 33  
Fax +41 (0)1 563 33 66  
[mail@wengerlaw.ch](mailto:mail@wengerlaw.ch)  
[www.wengerlaw.ch](http://www.wengerlaw.ch)

Offices Zürich  
Dufourstrasse 56 und  
Mühlebachstrasse 38  
Postfach 1285  
CH-8008 Zürich

Offices Zug  
Industriestrasse 7  
Postfach  
CH-6301 Zug

Offices China  
Room 722  
Golden Land Building  
No. 32 Liang Ma Qiao Road  
Chaoyang District  
Beijing 100016 P.R.C.

Listed in the Lawyers Register

Member of the Swiss Association of Attorneys at Law

关于人民法院应当如何认定保证人在保证期间届满后又在催款通知书上签字问题的批复

**【Issued By】** Supreme People's Court

**【Subject】** Right *in Rem*

**【Promulgated on】** April 14<sup>th</sup> 2004

**【Effective From】** April 19<sup>th</sup> 2004

**【Source】** [www.law-lib.com](http://www.law-lib.com)

In a response to similar issues respectively raised in cases pending before the High Courts of Yun'nan Province, Sichuan Province and Hebei Province, the Supreme Court rendered the following opinion:

The Guarantee Law of PRC provides that the obligation of guarantee is discharged where the creditor fails to make claims against the guarantor during the term of guarantee. Once the obligation of guarantee so discharged, the people's courts shall not rule that the obligation of guarantee is to be continued on the facts that the creditor requests in written form the guarantor, who signs the request for repayment, to fulfill the obligation of guarantee or repay the debt. However, where the request for repayment satisfies the conditions of formation of the guarantee contract provided for in the Contract Law and the Guarantee Law and is acknowledged by the signature of the guarantor, the people's court shall rule that the guarantor is bound by the obligation of guarantee under a new guarantee contract.

### ***Decision on Revising Anti-Dumping Regulation***

国务院关于修改《中华人民共和国反倾销条例》的决定

**【Issued By】** State Council

**【Promulgated on】** April 15<sup>th</sup> 2004

**【Subject】** Foreign Trade

**【Effective From】** June 1<sup>st</sup> 2004

**【Source】** [www.china.org.cn](http://www.china.org.cn)

In addition to changes responding to the establishment of the Ministry of Commerce, which replaces the Ministry of Foreign Trade and Economic Cooperation and State Commission of Trade and Economics, the decision makes several substantive amendments to the Regulation:

*Preliminary ruling:* the current Regulation requires separate rulings be made respectively on dumping, damage and causation. The revised version requires only one ruling covering the three issues.

*Deposit*: the requirement that deposit from exporters under investigation shall be only in cash is repealed.

*Suspension and termination of investigation*: public interest is added to the existent list of conditions for suspension and termination of investigation.

*Continuation of investigation*: in the existent Regulation, request by exporters is a discretionary circumstance for the continuation of investigation. The revised Regulation makes it a mandatory one.

*Anti-dumping duties*: the revised Regulation provides that the anti-dumping duties shall be imposed in accordance with public interests.

#### ***Decision on Revising the Regulation on Anti-Subsidy***

国务院关于修改《中华人民共和国反补贴条例》的决定

**【Issued By】** State Council

**【Promulgated on】** April 15<sup>th</sup> 2004

**【Subject】** Foreign Trade

**【Effective From】** June 1<sup>st</sup> 2004

**【Source】** [www.china.org.cn](http://www.china.org.cn)

The revision of this regulation is quite similar to that of the Regulation on Anti-Dumping. After revising some phrases to give effect to the establishment of the Ministry of Commerce, the State Council follows exactly the same route in revising the Regulation. Readers may have the idea of how the Regulation on Anti-Subsidy has been revised simply by replacing the words of anti-dumping with anti-subsidy in the preceding section of this piece. However, they are reminded that with reference to continuation of investigation of anti-subsidy, the request, which is a mandatory reason for continuation of investigation, comes from government of exporting states or regions instead of exporters.

#### ***Decision on Revising the Regulation on Safeguard Measures***

国务院关于修改《中华人民共和国反补贴条例》的决定

**【Issued By】** State Council

**【Promulgated on】** April 15<sup>th</sup> 2004

**【Subject】** Foreign Trade

**【Effective From】** June 1<sup>st</sup> 2004

【Source】 [www.china.org.cn](http://www.china.org.cn)

Similarly, after giving effect to the establishment of the Ministry of Commerce, the State Council made 3 substantive changes to this regulation:

*Ruling:* under the existent regulation, preliminary ruling and final ruling shall be rendered separately. The revised regulation removes this requirement by authorizing the Ministry of Commerce to render preliminary ruling or directly render final ruling.

*Public interest:* the revised regulation provides further that imposition of safeguard measures shall be in line with public interests.

*Maximum term of safeguard measures:* the revised regulation increases the maximum term from 8 years to 10 years.

### ***Provisions on the Administration of Foreign Investment in Commercial Fields***

外商投资商业领域管理办法

【Issued By】 Ministry of Commerce

【Promulgated on】 April 16<sup>th</sup> 2004

【Subject】 Internal Trade

【Effective From】 June 1<sup>st</sup> 2004

【Source】 [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

This regulation marks a full-scale opening of the commercial market to foreign investors. It is an overhaul of the 1999 Provisions on Experimental Foreign Investment to Commerce Enterprises (“外商投资商业企业试点办法”). In addition to removing the qualification requirements of investors as well as the minimum requirements of registered capital of the enterprises being established, the new regulation delegates some power of approval to provincial authorities in charge of commerce.

The commercial enterprises refer to enterprises engaged in the following business fields : (1) commissioned agency (sale of products of others through sales agent, broker, auctioneer, etc. on a contractual basis); (2) wholesale; (3) retail; (4) franchise.

The foreign invested commerce enterprises shall meet the conditions as follows:

- (1) The minimum registered capital requirements set by the Company Law are satisfied;
- (2) The rules on registered capital and overall investment for foreign invested enterprises are abided by;
- (3) The business operation term is no more than 30 years. In the case of commerce enterprises established in the central and western areas, the operation term is no more than 40 years.

© Wenger Vieli Belser, Beijing, April 16, 2004

Check the China Legal Briefing archives on: <http://www.wengerlaw.ch/EN/publications/1/index.asp>  
Obtain your personal subscription from: [china@wengerlaw.ch](mailto:china@wengerlaw.ch)

---

## 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.