



## 中国法更新 - 中华人民共和国民法典 China Law Update – The Civil Code of The People’s Republic of China

2020年5月28日，经第十三届全国人民代表大会第三次会议表决，《中华人民共和国民法典》（“**民法典**”）正式通过，并将于2021年1月1日起正式施行。

On 28 May 2020, the Third Conference of the 13th National People’s Congress voted to pass the Civil Code of the People’s Republic of China (the “**Civil Code**”) which will officially come into force on 1 January 2021.

民法典共分7编、各编依次为总则、物权、合同、人格权、婚姻家庭、继承、侵权责任和附则，总计1260条，可谓包括民事法律关系的各个方面。自民法典于2021年1月1日正式施行后，现行的《中华人民共和国婚姻法》、《中华人民共和国继承法》、《中华人民共和国民法通则》、《中华人民共和国收养法》、《中华人民共和国担保法》（“**担保法**”）、《中华人民共和国合同法》、《中华人民共和国物权法》、《中华人民共和国侵权责任法》、《中华人民共和国民法总则》将同时废止。

The Civil Code is divided into seven chapters, namely general principles, property rights, contracts, personal rights, marriage and family, inheritance, torts and miscellaneous provisions, making up a total of 1,260 articles which cover various aspects of civil legal relations. Upon the implementation of the Civil Code, the Marriage Law of the People’s Republic of China, the Inheritance Law of the People’s Republic of China, the General Principles of the Civil Law of the People’s Republic of China, the Adoption Law of the People’s Republic of China, the Security Law of the People’s Republic of China (the “**Security Law**”), the Contract Law of the People’s Republic of China, the Property Rights Law of the People’s Republic of China, the Tort Law of the People’s Republic of China, and the General Rules of the Civil Law of the People’s Republic of China currently in force will be repealed.



《民法典》的施行无疑将为中国法制系统带来深刻的影响。从外国投资者的角度来说，亦应留意《民法典》下的新法律规定对自己在中国的投资所可能产生的影响，尤其是以中国法为管辖法的相关交易文件下的权利义务。我们在本文中以保证合同相关之规定举例说明：

The implementation of the Civil Code will undoubtedly have a profound impact on the Chinese legal system. Foreign investors should take note of the possible impact the new regulations under the Civil Code may have on their investments in China, in particular their rights and obligations under the relevant transactional documents governed by China law. The provisions regulating guarantee documents would be an example to illustrate this.

《民法典》 Civil Code	《担保法》 Security Law
<p><b>第六百八十六条:</b> <b>Article 686:</b></p> <p>保证的方式包括一般保证和连带责任保证。</p> <p>The forms of guarantee include a general guarantee and a guarantee with joint and several liability.</p> <p>当事人在保证合同中对保证方式没有约定或者约定不明确的，按照一般保证承担保证责任。</p> <p>Where parties have not agreed on the form of guarantee or the agreement is unclear, the liability under the guarantee shall be that of a general guarantee.</p>	<p><b>第十九条:</b> <b>Article 19:</b></p> <p>当事人对保证方式没有约定或者约定不明确的，按照连带责任保证承担保证责任。</p> <p>Where parties have not agreed on the form of guarantee or the agreement is unclear, the liability under the guarantee shall be that of a guarantee with joint and several liability.</p>

如上述表格所示，在《民法典》实施后，如合同方在保证合同中对保证方式没有约定或者约定不明确的，保证人或将仅按照一般保证而非连带保证承担保证责任。这将导致在保证合同缺乏就保证方式明确约定的情况下保证人的义务的减轻，亦要求债权人如在与保证人合意保证责任应为连带责任的情况下，需明确在保证合同中反应出此约定。

As shown in the above table, after the implementation of the Civil Code, if the contracting parties have not agreed on the form of the guarantee under the respective guarantee agreement or if the agreement is unclear, the guarantor may only be liable under the guarantee agreement on the basis of a general guarantee and not a guarantee with joint and several liability. This would result in a reduction of the guarantor’s potential liabilities in the absence of a guarantee agreement with clear terms regarding the form of guarantee. Meanwhile, where the creditor and the guarantor have agreed that the guarantee is to be a guarantee with joint and several liability, such agreement should be clearly reflected in the respective guarantee agreement.

作为中国民事法领域的新基石，《民法典》实施后所带来的影响远不仅限上文中的例子，亦值得所有的有意进入中国市场的外商投资者的留意。

As a new cornerstone in the field of civil law in China, the impact of the implementation of the Civil Code is not limited to the example above but also worthy of attention by all foreign investors who are interested in entering the Chinese market.

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