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# 法律法规简报

## Legal Update

### 2024-08



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**1. 上交所发布公司债券发行承销规则适用指引第 1 号** **2024.7.29**  
**SSE Releases Guidelines No. 1 for the Application of Rules for the Issuance and Underwriting of Corporate Bond**

为了进一步规范公司债券发行备案业务，结合业务发展情况和工作实践，上海证券交易所修订发布《上海证券交易所公司债券发行承销规则适用指引第 1 号——发行备案（2024 年修订）》（下称《指引》）。

In order to further standardize the business of corporate bond issuance filing, combined with the business development and working practice, the Shanghai Stock Exchange (SSE) has revised and issued the *Shanghai Stock Exchange Corporate Bond Issuance and Underwriting Rules Application Guideline No. 1 - Issuance Filing (Revised in 2024)* (the “Guidelines”).

《指引》共五章三十一条，包括总则、发行备案流程、发行方案调整、资产支持证券发行备案的特别规定和附则五部分内容。根据《指引》，公司在债券发行前，发行人和主承销商应当按照规定对应履行程序并提交相关备案文件。在公司债券的重要因素发生变化，可能对发行条件、上市挂牌条件产生实质影响时，发行人和主承销商应当在期后事项说明中说明具体情况、原因及进展、相关中介机构补充核查意见（如有）等。

The *Guidelines* consist of five chapters and 31 articles, including five parts: general provisions, issuance filing process, adjustment of issuance program, special provisions for filing of issuance of asset-backed securities and supplementary provisions. According to the *Guidelines*, before the issuance of corporate bonds, the issuer and the lead underwriter are required to fulfill corresponding procedures and submit relevant filing documents according to regulations. In the event of changes in critical factors of corporate bonds that may materially affect the conditions of issuance and listing, the issuer and the lead underwriter shall explain the specific circumstances, reasons and progress, and additional verification opinions (if any) of the relevant intermediaries in the statement of matters subsequent to the period.

(Source:

[https://www.sse.com.cn/lawandrules/sselawsrules/bond/issue/c/c\\_20240726\\_10760196.shtml](https://www.sse.com.cn/lawandrules/sselawsrules/bond/issue/c/c_20240726_10760196.shtml))

**2. 海关总署公布《中华人民共和国海关风险管理办法》** **2024.7.30**  
**GAC Releases Risk Management Measures of the Customs of the People's Republic of China**



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海关总署近日发出《中华人民共和国海关风险管理办法》（下称《办法》），自 2024 年 12 月 1 日起施行。

The General Administration of Customs (GAC) has recently issued the *Risk Management Measures of the Customs of the People's Republic of China* (the “Measures”), effective from December 1, 2024.

《办法》共 21 条，适用于海关为防范进出境交通运输工具、运输设备、人员、货物、物品的禁限管制、口岸公共卫生安全、国门生物安全、食品安全、商品质量安全、税收安全、侵犯知识产权风险以及其他进出境安全风险，开展风险信息收集、风险评估和风险处置等风险管理活动。

The *Measures*, consisting of 21 articles, shall apply to risk management activities, such as risk information collection, risk assessment and risk disposal, carried out by the Customs for the purpose of preventing prohibited and restricted control of inbound and outbound means of transportation, transport equipment, personnel, goods and articles, public health safety at the ports, biosecurity at the national gates, food safety, commodity quality safety, tax safety, risk of infringement of intellectual property rights, and other risks to inbound and outbound security.

(Source:

<http://www.customs.gov.cn/customs/302249/302266/302267/6012539/index.html>)

### 3. 海关总署就修订《海关进出口货物征税管理办法》征求意见 2024.8.2 **GAC Seeks Comments on Revision to Administrative Measures of the Customs for the Levying of Duties on Imported and Exported Goods**

日前，海关总署起草了《中华人民共和国海关进出口货物征税管理办法（修订草案征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈截止于 9 月 2 日。

The General Administration of Customs (GAC) recently drafted the *Administrative Measures of the Customs of the People's Republic of China for the Levying of Duties on Imported and Exported Goods (Draft Revision for Comment)* (the “Draft”) to solicit public opinions by September 2, 2024.

《征求意见稿》主要修订内容包括：一是深化综合治税工作机制；二是全面实施“自报自缴”制度；三是明确特许权使用费申报纳税义务；四是调整税率汇率适用日期；五是缴税通知和纳税凭证相分离；六是增加纳税人税额申报要求；七是增加汇总缴税的缴款期限规定；八是完善滞纳金退还规定；九是增



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加保税内销货物征税规定; 十是增加海关税额确认规定; 十一是实施税收风险分类处置; 十二是增加税收强制有关规定; 十三是删除进出口货物减免税规定。The main revisions of the *Draft* involve: (1) deepening the comprehensive tax governance mechanism; (2) fully adopting the "self-report and self-pay" system; (3) clarifying the tax declaration obligation for royalties; (4) adjusting the applicable date for tax rates and exchange rates; (5) separating tax payment notification from tax payment certificate; (6) increasing taxpayer's tax declaration requirements; (7) adding provisions on the payment deadline of consolidated tax payment; (8) improving the regulations on the refund of late payment surcharge; (9) adding regulations on the levying of tax on bonded domestic sale goods; (10) adding regulations on customs tax confirmation; (11) implement classified handling of tax risks; (12) adding relevant provisions on tax enforcement; and (13) deleting the provisions on tax reduction and exemption for imported and exported goods.

(Source:

<http://www.customs.gov.cn/customs/302249/302266/302267/6012539/index.html>)

#### 4. 两高出台办理洗钱刑事案件适用法律若干问题解释 2024.8.19 **SPC and SPP Issue the Interpretation on Several Issues Concerning the Application of Law in the Handling of Money Laundering Criminal Cases**

最高人民法院、最高人民检察院联合日前下发《关于办理洗钱刑事案件适用法律若干问题的解释》(下称《解释》), 自 8 月 20 日起施行。

The Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) have recently jointly issued the *Interpretation on Several Issues Concerning the Application of Law in the Handling of Money Laundering Criminal Cases* (the "*Interpretation*"), which will take effect on August 20, 2024.

《解释》主要内容包括: 一是明确“自洗钱”、“他洗钱”犯罪的认定标准, 以及“他洗钱”犯罪主观认识的审查认定标准。二是明确洗钱罪“情节严重”的认定标准。三是明确“以其他方法掩饰、隐瞒犯罪所得及其收益的来源和性质”的七种具体情形。四是明确洗钱罪与掩饰、隐瞒犯罪所得、犯罪所得收益罪的竞合处罚原则。五是明确罚金数额标准。六是明确从宽处罚的标准。

The *Interpretation* mainly include: (1) clarifying the criteria for identification of "self-money laundering" and "third-party money laundering", as well as the criteria for assessing the subjective awareness in "third-party money laundering" crimes; (2) clarifying the criteria for determination of the "serious circumstances" in money laundering crimes; (3) outlining seven specific circumstances that constitute



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“concealing or disguising the sources and nature of criminal proceeds and income through other means”; (4) clarifying the principle for concurrent punishment of the crimes of money laundering and concealing or disguising criminal proceeds and income; (5) setting the standards for the amount of fines; and (6) specifying the standards for granting lenient punishment.

(Source: <https://www.court.gov.cn/fabu/xiangqing/440681.html>  
<https://mp.weixin.qq.com/s/IN-caQCInPqlpJrENwJyUg>)

**5. 上海市政府发布《上海市推进国际金融中心建设条例》 2024.8.23**  
**Shanghai Municipal Government Issues Regulations on Promoting the Construction of Shanghai as an International Financial Center**

新修订的《上海市推进国际金融中心建设条例》通过，自 2024 年 10 月 1 日起施行。《条例》是在贯彻落实习近平总书记关于金融工作重要论述和上海国际金融中心建设重要指示要求的重要举措，是助力增强上海国际金融中心竞争力和影响力的一次重要立法成果。

The newly revised *Regulations on Promoting the Construction of Shanghai International Financial Center* (“*Regulations*”) was passed and will come into effect from October 1, 2024. The *Regulations* are important initiatives to implement the requirements of President Xi Jinping’s important exposition on financial work and important instructions on the building of Shanghai international financial center, and are important legislative achievements to help enhance the competitiveness and influence of Shanghai international financial center.

《条例》共八章六十五条，作为上海加快建设国际金融中心的框架性法规，包含完善金融体系建设、扩大金融高水平对外开放、提高金融服务实体经济质效、强化金融监管协同、优化金融营商环境建设等规定，为全面提升上海国际金融中心建设、金融强国建设提供有力法治保障。《条例》通过发挥法治对上海金融改革发展稳定的引领、规范和保障作用，将推动金融中心建设实现新突破、新提升。

*Regulations*, as the framework legislation for Shanghai to accelerate the construction of an international financial center, with a total of eight chapters and 65 articles, focus on perfecting the construction of the financial system, expanding the opening up of the financial sector to the outside world at a high level, improving the quality and efficiency of the financial services to the real economy, reinforcing the synergy of the financial supervision and optimizing the construction of the financial business environment, etc., and provide a strong legal guarantee for the building of Shanghai



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international financial center building and better serving the construction of a strong financial country. By giving full play to the role of the rule of law in leading, regulating and safeguarding the financial reform, development and stability of Shanghai, the *Regulations* will promote the building of the financial center to achieve new breakthroughs and new enhancements.

(Source:

<https://jrj.sh.gov.cn/YWTBZCCX166/20090802/0031-104663.html>)

6. 最高人民法院发布《关于大型企业与中小企业约定以第三方支付款项为付款前提条款效力问题的批复》 2024.8.27

**SPC releases Reply of the Supreme People's Court on the Effectiveness of the Clause on the Agreement between Large Enterprises and Small and Medium Enterprises to Make Payment by a Third Party as a Prerequisite for Payment**

近日，最高人民法院审判委员会通过《最高人民法院关于大型企业与中小企业约定以第三方支付款项为付款前提条款效力问题的批复》（以下简称《批复》），自 2024 年 8 月 27 日起施行。

Recently, the Trial Committee of the Supreme People's Court adopted the *Reply of the Supreme People's Court on the Effectiveness of the Clause on the Agreement between Large Enterprises and Small and Medium Enterprises to Make Payment by a Third Party as a Prerequisite for Payment* (the "Reply"), which will take effect on August 27, 2024.

《批复》的施行能够进一步解决企业账款拖欠问题，保障中小企业公平参与市场竞争，依法维护企业合法权益，提振经营主体信心。《批复》共计 2 条，分别就大型企业与中小企业约定以第三方支付款项为付款前提条款效力、认定合同约定条款无效后结合行业规范、交易习惯等合理确定大型企业付款期限及相应的违约责任进行了规定，即“双方对欠付款项利息计付标准有约定的，按约定处理；约定违法或者没有约定的，按照全国银行间同业拆借中心公布的一年期贷款市场报价利率计息。大型企业以合同价款已包含对逾期付款补偿为由要求减轻违约责任，经审查抗辩理由成立的，人民法院可予支持”。《批复》体现了保障中小企业公平参与市场竞争，维护中小企业合法权益的鲜明态度，对防范化解金融风险、促进矛盾纠纷实质性化解具有重要意义。

The implementation of the *Reply* can further solve the problem of enterprises' delinquent payments, guarantee the fair participation of small and medium enterprises (SMEs) in market competition, safeguard the legitimate rights and interests of enterprises in accordance with the law, and boost the confidence of business entities.



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The *Reply*, consisting of 2 articles, respectively stipulates the legal application of the validity of the terms of the agreement between large enterprises and SMEs to make payment by a third party as a prerequisite for payment, and reasonably determines the period of payment and the corresponding liability for breach of contract with industry norms and trading habits after the invalidation of the terms of the contract agreement, that is “*Where both parties have agreed on the standard for the calculation and payment of interest on unpaid sums, the matter shall be dealt with in accordance with the agreement; where the agreement is unlawful or there is no agreement, the interest shall be calculated in accordance with the one-year LPR published by the National Interbank Funding Center. The people’s court may support the request of a large enterprise to reduce its liability for breach of contract on the grounds that the contract price already includes compensation for late payment, if the defense is established after examination.*” The *Reply* embodies the distinct attitude of safeguarding the fair participation of SMEs in the market competition, and has great significance in preventing and resolving financial risks and promoting the substantive resolution of conflicts and disputes.

(Source: <https://mp.weixin.qq.com/s/bBmsdVcuTh9GtrZOjIJAWA>)

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