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## 法律法规简报 2023-03-31

## Legal Update 2023-03-31

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### 一、全国人大修改《中华人民共和国立法法》 2023.03.14

#### NPC Revised Legislation Law of the People's Republic of China

近日，第十四届全国人民代表大会第一次会议通过《关于修改〈中华人民共和国立法法〉的决定》（下称《决定》），自 2023 年 3 月 15 日起施行。



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The first session of the 14th National People's Congress (NPC) has adopted the *Decision on Revising the Legislation Law of the People's Public of China* (the "Decision"), with effect from March 15, 2023.

根据《决定》，此次修改有以下主要内容：一是完善立法指导思想和原则；二是加强宪法实施和监督，明确立法和备案审查工作中的合宪性审查要求；三是完善立法决策与改革决策相衔接相统一的制度机制，完善授权决定制度；四是贯彻和体现全过程人民民主重大理念；五是明确科学立法、民主立法、依法立法的有关要求；六是明确监察法规的法律地位，完善部门规章制定主体；七是完善设区的市的立法权限，明确地方立法中的区域协同立法及其工作机制；八是完善备案审查制度；九是加强立法宣传工作。

According to the *Decision*, the following main revisions are proposed: (1) improving the guiding ideology and principles of legislation; (2) strengthening the implementation of the constitution and the supervision thereof, and clarifying the requirements for constitutional review in the work of legislation, filing and review; (3) improving the system and mechanism for linking and unifying legislative decision-making and reform decision-making, and improving the system for authorized decision; (4) implementing and demonstrating the major concepts of people's democracy in the whole process; (5) clarifying the relevant requirements for scientific legislation, democratic legislation, and law-based legislation; (6) clarifying the legal status of supervisory regulations and clarifying the main entities for formulating departmental regulations; (7) perfecting the rules for the legislative power of the city with districts, and clarifying the regional coordinated legislation and its working mechanism in local legislation; (8) perfecting the filing and review system; and (9) strengthening legislation publicity.

(Source: <http://www.npc.gov.cn/npc/kgfb/202303/b48e68f0568442f6a2ca2800c8d795b2.shtml>)

**二、证监会就《衍生品交易监督管理办法》征求意见 2023.03.20**



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## CSRC Seeks Comments on the Administrative Measures for the Supervision of Derivatives Trading

日前, 中国证券监督管理委员会起草了《衍生品交易监督管理办法(征求意见稿)》(下称《征求意见稿》), 现向社会征求意见, 征求反馈截止时间为 4 月 16 日。

Recently, the China Securities Regulatory Commission (CSRC) has drawn up the *Administrative Measures for the Supervision of Derivatives Trading (Draft for Comment)* (the “Draft”) for public comments by April 16, 2023.

《征求意见稿》包括总则、衍生品交易与结算、禁止的交易行为、交易者、衍生品经营机构、衍生品市场基础设施、监督管理与法律责任等内容。起草的主要思路为：一是功能监管。二是统筹监管。三是严防风险。四是预留空间。《征求意见稿》将证监会监管的衍生品市场各类活动和主体全部纳入规制范围，以功能监管为导向，制定统一的准入条件、行为规范和法律责任。同时，着力提升衍生品市场的透明度，推进交易标准化，鼓励进场交易和集中结算，提高非集中结算衍生品交易的风险防控要求，落实衍生品交易报告制度，严厉打击利用衍生品交易进行违法违规行为或规避监管行为。

The *Draft* consists of general provisions, derivatives trading and settlement, prohibited trading behaviors, traders, operators of derivatives, infrastructure for the derivatives market, supervision and administration, and legal liability. The drafting is based on the following principles: adopting the functional regulation; coordinating regulatory efforts; strictly guarding against risks; and leaving room for relevant systems. The *Draft* states that the regulatory scope covers all activities and entities in the derivatives market under the supervision of the CSRC, and unified access conditions, codes of conduct and legal liability are laid down based on the functional regulation. In the meantime, regulators will make efforts to improve the transparency of the derivatives market, promote trading standardization, encourage exchange-based trading and centralized settlement, increase requirements for risk prevention and control for non-centralized settlement of derivatives transactions, implement a reporting system for derivatives trading, and severely crack down on illegal use of derivatives trading to commit violations or circumvent regulation.



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(Source: <http://www.csrc.gov.cn/csrc/c101981/c7326196/content.shtml>)

### 三、证监会就《期货公司监督管理办法》征求意见 2023.03.27

## CSRC Releases Draft Regulatory Measures for Futures Companies for Public Consultation

近日，中国证券监督管理委员会发布修订后《期货公司监督管理办法（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 4 月 23 日。

The China Securities Regulatory Commission (CSRC) has recently issued the *Regulatory Measures for Futures Companies (Draft for Comment)* (the “Draft”) to seek public comments for a period ending on April 23.

根据《征求意见稿》，本次修订工作重在落实《中华人民共和国期货和衍生品法》，将法律的相关要求落实在规章层面，并结合市场实践和行业发展需要进一步完善办法。其修订的主要内容包括：一是根据法律规定和行业呼声，依法适度拓展期货公司业务范围。二是适度提高业务准入门槛，提升期货公司防范业务风险的能力。三是系统总结监管实践经验，持续强化期货公司日常监管。《征求意见稿》适度提高各项业务的准入门槛，体现“扶优限劣”的监管导向和防范金融风险的监管要求，涉及期货交易咨询业务、期货做市交易业务、衍生品交易业务、资产管理业务以及境内期货经纪。

Given the *Draft*, the revision is focused on applying the relevant requirements of the *Futures and Derivatives Law of the People's Republic of China* at the regulatory level, as well as further improving the existing Measures in light of market practice and industry development needs. The revision mainly relates to the following: (1) moderately expanding the business scope of futures companies in accordance with the law in response to legal requirements and the demand of the industry; (2) moderately increasing the entry thresholds for business activities, aiming to improve the ability of futures companies to prevent business risks; and (3) continuing to enhance routine regulation of futures companies based on a systematic review of regulatory practice and



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experience. The *Draft* moderately raises the entry thresholds for a range of business activities, including futures trading consulting, futures market-making, derivatives trading, asset management and domestic futures brokerage services, reflecting the regulatory orientation of “supporting the good and limiting the bad” and the regulatory requirements for preventing financial risks.

(Source: <http://www.csrc.gov.cn/csrc/c101981/c7397662/content.shtml>)

#### 四、最高法院就民法典侵权责任编解释征求意见 2023.03.29

### SPC Seeks Comments on Interpretation on the Part on Tort Liability in the Civil Code

近日，最高人民法院发布《关于适用〈中华人民共和国民法典〉侵权责任编的解释（一）（征求意见稿）》（下称《征求意见稿》），现公开征求意见，意见反馈截止于 4 月 20 日。

The Supreme People's Court (SPC) has recently released the *Interpretation on the Application of the Part on Tort Liability in the Civil Code of the People's Republic of China (I) (Draft for Comment)* (the “*Draft*”) for public consultation by April 20, 2023.

《征求意见稿》拟明确监护权遭受侵害的财产损失和精神损害赔偿、限制民事行为能力人的非财产责任、未成年子女侵权离异父母如何承担责任、监护人和代为履行监护职责的受托人的责任形态等内容。其中，《征求意见稿》规定，与用人单位形成劳动关系的员工、执行用人单位工作任务的其他人员，因执行工作任务造成他人损害，被侵权人依照民法典第一千一百九十一条第一款规定，请求用人单位承担侵权责任的，人民法院应予支持。

The *Draft* intends to clarify a number of issues, including the compensation for property damages and mental distress when the right of guardianship is damaged, the non-property liability of a person with limited capacity for performing civil juristic acts, the assumption of liability by a minor child who commits tortious act against his or her



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divorced parent, and the form of liability of a guardian or a person executing the duty of guardianship on behalf of guardian. Among others, the *Draft* stipulates that, where an employee forming labor relationship with an employer and other person performing work task for an employer causes damages to others when carrying out his or her work task, and the infringed person requests the employer to assume tort liability in accordance with Paragraph 1 Article 1191 of *Civil Code*, the court shall uphold such request.

(Source: <https://www.court.gov.cn/zixun-xiangqing-394691.html>)

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