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法律法规简报 2023-09-30

Legal Update 2023-09-30

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一、全国人大常委会就公司法修订草案三审稿等五件法律草案征求意见 2023.9.4

NPC Standing Committee Seeks Comments on Five Draft Laws Including the Company Law (Third Draft Revision for Review)

近日，第十四届全国人民代表大会常务委员会第五次会议对《中华人民共和国公司法（修订草案）（三次审议稿）》（下称《三审稿》）、《中华人民共和国增值税法（草案）（二次审议稿）》、《中华人民共和国学前教育法（草案）》、《中华人民共和国学位法（草案）》和《中华人民共和国治安管理处罚



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法（修订草案）》等五部法律草案进行了审议，并对外公布全文，面向社会征求意见，征求意见期限为 30 日。

The fifth session of the 14th Standing Committee of the National People's Congress (NPC) has recently deliberated five draft laws, including the *Company Law of the People's Republic of China (Third Draft Revision for Review)* (the "Third Draft"), the *Value-Added Tax Law of the People's Republic of China (Second Draft for Review)*, the *Preschool Education Law of the People's Republic of China (Draft)*, the *Academic Degrees Law of the People's Republic of China (Draft)*, and the *Public Security Administrative Punishments Law of the People's Republic of China (Draft Revision)*, the full texts of which have been released to solicit public opinions for a 30-day term.

《三审稿》拟作如下主要修改：一是完善注册资本认缴登记制度，规定有限责任公司股东认缴的出资额应当自公司成立之日起五年内缴足。二是完善公司民主管理的规定。三是进一步加强股东权利保护。四是强化对控股股东和实际控制人的规范。五是完善公司债券相关规定。六是完善法律责任规定。

The *Third Draft* mainly proposes the following revisions: (1) improving the registered capital subscription registration system, requiring that capital contribution subscribed by shareholders of a limited liability company shall be fully paid within five years upon establishment of the said company; (2) perfecting the democratic management rules for companies; (3) further enhancing the protection of shareholders' rights; (4) tightening the regulation of controlling shareholders or actual controllers; (5) perfecting the rules for corporate bonds; and (6) improving the provisions on legal liability.

(Source:

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081818a1cb709018a49c960946d08>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081818a1cb546018a49c4930940cf>
<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081818a1cb709018a49b221426c86>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081818a22132f018a49a81c4a5b74>
<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081818a22132f018a499710595932>

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二、全国人大常委会通过民事诉讼法修改决定等法律 2023.9.4

NPC Standing Committee Adopts the Decision on Revising the Civil Procedure Law and Other Laws

日前，第十四届全国人民代表大会常务委员会第五次会议表决通过《关于修改〈中华人民共和国民事诉讼法〉的决定》（下称《决定》）、《中华人民共和国行政复议法（2023 年修订）》和《中华人民共和国外国国家豁免法》，均自 2024 年 1 月 1 日起施行。

The fifth session of the 14th Standing Committee of the National People's Congress (NPC) has recently adopted through voting the *Decision of the Standing Committee of the National People's Congress on Revising the Civil Procedure Law of the People's Republic of China* (the “*Decision*”), the *Administrative Reconsideration Law of the People's Republic of China (Revised in 2023)*, and the *Foreign State Immunity Law of the People's Republic of China*, all effective from January 1, 2024.

《决定》重点对“涉外民事诉讼程序的特别规定”一编进行了修改完善。具体为，一是修改管辖的相关规定，扩大我国法院对涉外民事案件的管辖权；二是增加平行诉讼的一般规定、不方便法院原则等相关条款；三是修改涉外送达的相关规定；四是完善涉外民事案件司法协助制度，增设域外调查取证相关规定；五是完善外国法院生效判决、裁定承认与执行的基本规则。《决定》还对其他各编作了相应修改，比如在原第十五章“特别程序”中新增“指定遗产管理人案件”一节等。

The *Decision* mainly revises and perfects the part on “special provisions on civil actions involving foreign parties”, specifically (1) revising relevant rules on jurisdiction and expanding the jurisdiction of China's courts in foreign-related civil cases; (2) adding the general provisions on parallel litigation, the principle of forum non conveniens, along with other rules; (3) modifying relevant rules for foreign service; (4) improving the judicial aid system for the civil cases involving foreign parties, and adding relevant provisions on extraterritorial investigation and evidence collection; and (5) perfecting



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the provisions on effective judgment of foreign courts, and the basic rules for recognition of their effectiveness and execution. The *Decision* also proposes corresponding revisions to other parts, including the addition of a section regarding the cases concerning appointment of estate administrators.

(Source:

<http://www.npc.gov.cn/npc/c30834/202309/1c3f7c62678d4908807faab87aa40dff.shtml>

<http://www.npc.gov.cn/npc/c30834/202309/866bc00eddfb407d8faa9deeb6e811d1.shtml>

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<http://www.npc.gov.cn/npc/c30834/202309/f4b3f3d2ac9e4483ab2362ba03e555bb.shtml>

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三、最高检发布第四十八批指导性案例 加强知产法治保障 2023.9.15

SPP Issues 48th Batch of Guiding Cases to Strengthen Legal Protection of IPRs

日前，最高人民检察院发出《关于印发最高人民检察院第四十八批指导性案例的通知》（下称《通知》）。

The Supreme People's Procuratorate (SPP) has recently issued the *Circular on Issuing the 48th Batch of Guiding Case of the Supreme People's Procuratorate* (the "Circular").

《通知》称，现将广州蒙娜丽莎建材有限公司、广州蒙娜丽莎洁具有限公司与国家知识产权局商标争议行政纠纷诉讼监督案等四件案例（检例第 191-194 号）作为第四十八批指导性案例（知产检察综合保护主题）发布，供参照适用。根据《通知》，本次发布的案例涵盖知识产权刑事、民事、行政检察等多种职能，既有依法惩治侵犯知识产权犯罪的刑事案件，又有监督纠正确有错误的行政裁判结果监督案件，还有针对知识产权虚假诉讼的民事裁判结果监督案件；既有涉及传统卫浴产品领域的商标类案件，也有涉及芯片制造等高新技术领域的计算机软件著作权案件、涉及视听作品传播的新型网络侵权案件。



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The *Circular* specifies that, four cases (Procuratorate Case No. 191 to No. 194), including the administrative dispute litigation supervision case between Guangzhou Mengnalisha Building Material Co., Ltd., Guangzhou Monalisa Sanitary Ware Co., Ltd. and China National Intellectual Property Administration over trademark dispute, are released for reference as the 48th batch of guiding cases, with a theme of comprehensive procuratorial protection of intellectual property rights. According to the *Circular*, these guiding cases cover multiple functions of criminal, civil, and administrative procuratorial work relating to intellectual property rights (IPRs). They include a criminal case involving lawful crackdown on IPR infringement crime; a case involving supervision of administrative judgment to correct existing errors; and a case involving supervision of civil judgment on false IPR litigation. The cases involve not only the traditional areas, such as the trademark dispute related to sanitary products, but also chip manufacturing and other high-tech fields, such as the software copyright dispute, as well as the new-type cyber infringement involving the distribution of audio-visual work.

(Source: https://www.spp.gov.cn/xwfbh/wsfbt/202309/t20230915_628154.shtml#2)

四、市场监管总局印发促进民营经济发展若干举措 2023.9.22

SAMR Introduces Several Measures to Promote the Development of Private Economy

日前，国家市场监督管理总局发布《市场监管部门促进民营经济发展的若干举措》（下称《若干举措》）。

The State Administration for Market Regulation (SAMR) has recently issued the *Several Measures of the Market Regulation Departments for Promoting the Development of Private Economy* (the “Measures”).

《若干举措》聚焦五个方面，包含 22 条具体内容，回应民营经济各类关切：一是持续优化民营经济发展环境；二是加大对民营经济政策支持力度；三是



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强化民营经济发展法治保障；四是着力推动民营经济实现高质量发展；五是持续营造关心促进民营经济发展壮大社会氛围。其中，《若干举措》明确，要持续破除市场准入壁垒，全面落实公平竞争政策制度，强化制止滥用行政权力排除限制竞争的反垄断执法，完善社会信用激励约束机制，健全失信行为纠正后的信用修复机制。同时，完善信用信息归集共享，健全中小微企业和个体工商户信用评级和评价体系。完善支持政策直达快享机制等。

The *Measures* highlight five areas and identify 22 specific initiatives in response to the concerns of private economy: (1) continuously optimizing the environment for the development of the private economy; (2) increasing policy support for the private economy; (3) strengthening legal guarantees for the development of the private economy; (4) urging the private economy to achieve high-quality development; and (5) continuously creating a social atmosphere that cares about and promotes the development and growth of private economy. Among others, the *Measures* call for continuously removing market access barriers, fully adopting a fair competition policy system, strengthening anti-monopoly law enforcement to stop the abuse of administrative power to exclude and restrict competition, improving the incentive and restraint mechanism for social credit, and setting up a sound credit repair mechanism after the correction of dishonesty. Meanwhile, efforts will be made to improve the collection and sharing of credit information, and improve the credit rating and evaluation system for micro, small and medium-sized enterprises and individual businesses; perfect the mechanism for direct and quick access to support policies.

(Source:

https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/xyjgs/art/2023/art_0b6a0534f92d458cbf6e5d60c3cbfda6.html)

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