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法律法规简报 2023-11-30

Legal Update 2023-11-30

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SAFE Seeks Comments on Guidelines for Foreign Exchange Business under the Capital Account

一、海关总署就修订《中华人民共和国海关法》征求意见 2023.11.13

GAC Seeks Comments on Revising the Customs Law of the People's Republic of China

近日, 海关总署发出《中华人民共和国海关法(修订草案征求意见稿)》(下称《征求意见稿》), 面向社会征求意见, 意见反馈截至 12 月 10 日。

Recently, the General Administration of Customs (GAC) has released the Customs Law



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of the People's Republic of China (Draft Revision for Comment) (the "Draft"), which is currently open for public comments until December 10, 2023.

《征求意见稿》共包括两部分，一是国家现有产业目录中的鼓励类产业，二是海南自由贸易港新增鼓励类产业。其适用于在海南自由贸易港生产经营的企业，其中外商投资企业按照《鼓励外商投资产业目录（2022 年版）》执行。根据《征求意见稿》，海南自由贸易港新增鼓励类产业涵盖新能源专用汽车制造、通用设备（新能源生产专用车辆）制造、拥有自主知识产权的医疗仪器设备及器械研发与生产、药品上市许可持有人和医疗器械注册人备案人生产经营等 171 类。

The Draft incorporates a series of revisions as follows: (1) clearly defining the guiding ideology and implementing the directives of the CPC Central Committee; (2) emphasizing the harmonization of laws to uphold the uniform socialist legal system; (3) introducing the concept of risk management throughout the entire customs supervision process; (4) putting into practice the achievements of institutional reform to embody the new functions of customs; (5) implementing the outcomes of customs business reform to promote trade facilitation; (6) intensifying both in-process and post-event supervision and enhancing the whole chain management mechanism for enterprises; (7) enhancing regulatory collaboration and building a framework for collaborative governance; (8) ensuring that power aligns with responsibilities and integrating customs law enforcement measures with law enforcement supervision; (9) addressing system weakness and improving the legal basis in key areas; (10) fine-tuning regulations for goods supervision to tackle regulatory challenges in practice; (11) improving the legal liability system to ensure proportionate penalties; (12) adjusting legal terminologies to ensure the universality and comprehensiveness of concepts; and (13) demonstrating foresight and preserving flexibility for future reform and development.

(Source: <http://www.customs.gov.cn/customs/302452/302329/zjz/5485994/index.html>)

二、证监会就《衍生品交易监督管理办法》二次征求意见

2023.11.20

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



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近日, 中国证券监督管理委员会修改形成《衍生品交易监督管理办法(二次征求意见稿)》(下称《征求意见稿》), 现向社会征求意见, 意见反馈截止于 12 月 17 日。The China Securities Regulatory Commission (CSRC) has recently revised and formed the Administrative Measures for the Supervision of Derivatives Trading (Second Draft for Review) to solicit public opinions by December 17, 2023.

《征求意见稿》旨在解决以下问题: 一是落实《中华人民共和国期货和衍生品法》要求, 加强衍生品市场行政监管。二是完善监管规则, 严厉打击以衍生品为“通道”规避证券期货市场监管的行为。三是加强跨市场和跨境监测监控, 严防风险。根据《征求意见稿》, 相关内容包括禁止通过衍生品交易规避持仓限额制度、信披制度、减持限售制度, 禁止通过衍生品交易实施短线交易、内幕交易、市场操纵, 禁止衍生品经营机构与上市公司大股东、实控人、董监高以及减持限售主体开展以该上市公司股票为标的物的衍生品交易等。As an international treaty that is mostly applied under the framework of the Hague Conference on Private International Law and has the most member countries, the *Convention* aims to simplify the procedures for cross-border use of public documents. Starting from November 7, 2023, public documents issued by China to be used in other member countries will only need to be apostilled before being sent to other member countries for use, and consular legalization will not be required. While public documents issued by member countries of the *Convention* can be used in China directly after getting the Apostille from the competent authorities, and there is no need to seek consular legalization.

(Source: https://www.fmprc.gov.cn/wjbxw_new/202310/t20231023_11165858.shtml)

三、商务部公布《大宗产品进出口报告统计调查制度》

2023.11.07

MOFCOM Unveils the Statistical Survey System for Reporting Imports and Exports of Bulk Products

日前, 商务部发布《大宗产品进出口报告统计调查制度》(下称《调查制度》), 并同步下发通知, 对相关工作作出部署。《调查制度》自 2023 年 10 月 31 日起执行, 执行期至 2025 年 10 月 31 日。



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Recently, the Ministry of Commerce (MOFCOM) has released the Statistical Survey System for Reporting Imports and Exports of Bulk Products (the "Survey System") and simultaneously issued a circular to provide guidance on related work. The Survey System shall become effective on October 31, 2023, and will remain in effect until October 31, 2025.

通知规定, 在大豆等 14 种产品继续实行现行进口报告制度的基础上, 将实施进口许可证管理的原油、铁矿石、铜精矿、钾肥纳入《实行进口报告的能源资源产品目录》, 将实施出口许可证管理的稀土纳入《实行出口报告的能源资源产品目录》。进口、出口上述产品的对外贸易经营者应履行有关进出口信息报告义务。《调查制度》统计内容包括货物进出口装运、到达数量及到达时间等, 主要实行实时报送, 并采用全面调查的方法。

The circular states that, in addition to 14 types of products (including soybeans) subject to the existing import reporting system, the products subject to the import license management, such as crude oil, iron ore, copper concentrate, and potash fertilizer, will be included in the Catalog of Energy and Resource Products Subject to Import Reporting. Additionally, rare earth, subject to the export license management, will be included in the Catalog of Energy and Resource Products Subject to Export Reporting. Foreign trade operators engaged in the import and export of the abovementioned products are required to fulfill the obligation to report relevant import and export information. The Survey System covers statistical data such as the shipment and arrival quantities of goods in import and export, as well as their arrival times, etc., and the data is primarily collected through real-time reporting and a comprehensive survey methodology.

(Source: <http://wms.mofcom.gov.cn/article/ztxx/nyhg/202311/20231103451593.shtml>)

四、国家外汇局就新版《资本项目外汇业务指引》征求意见 **2023.11.17**

SAFE Seeks Comments on Guidelines for Foreign Exchange Business under the Capital Account



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近日，国家外汇管理局修订形成《资本项目外汇业务指引（2023 年版）（征求意见稿）》（下称《征求意见稿》），现向公众征求意见，意见反馈截止于 11 月 26 日。

The State Administration of Foreign Exchange (SAFE) has revised and formed the Guidelines for Foreign Exchange Business under the Capital Account (2023 Edition) (Draft for Comment) (the "Draft") to solicit public opinions by November 26, 2023.

《征求意见稿》主要修订包括：一是精简篇章，进一步便利资本项目外汇业务办理；二是有效衔接，与最新法规、机构改革等要求保持一致；三是细化要求，增强资本项目业务的操作性和清晰度；四是优化管理，持续提升资本项目外汇业务便利度。《征求意见稿》优化了跨境证券投资业务管理，如精简 QDII 额度申请审核材料，简化办理境外机构投资者（QFII/RQFII）资金汇出手续相关要求，放宽境内股东减持登记、外籍员工参与境内上市公司股权激励变更和注销登记时限要求。

The Draft mainly proposes the following revisions: (1) streamlining chapters and articles to further facilitate the handling of foreign exchange under the capital account; (2) stressing effective coordination to align with the latest laws, regulations, and the requirements for institutional reform; (3) refining requirements to raise the operability and clarity for capital account business; and (4) optimizing management to keep providing greater convenience for the foreign exchange business under the capital account. The Draft optimizes the management of cross-border securities investment business by streamlining the application and examination materials for QDII quota, simplifying the requirements for the handling of fund remittance procedures for foreign institutional investors (QFII/RQFII), and relaxing the timeframe requirements for the registration of shareholders' reduction in domestic shareholdings, and the registration of changes in the shareholding incentives for foreign employees to participate in domestic listed companies, as well as the write-off registration.

(Source: <https://www.safe.gov.cn/safe/2023/1116/23484.html>)



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