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法律法规简报 2020-07-29

Legal Update 2020-07-29

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Judicial Services and Guarantees Provided to Accelerate Improvement in Socialist Market Economic System

一、两部门正式公布《市场准入负面清单（2020年版）》

2020.06.23

Negative List for Market Access (2020 Edition) Formally Released

国家发展和改革委员会、商务部发布《市场准入负面清单（2020年版）》（下称《负面清单》），自2020年7月23日起施行。



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The National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly issued the Special Administrative Measures on Access to Foreign Investment (2020 edition) (“the Negative List”), which will take effect on 23rd July 2020.

与 2019 年版相比, 2020 年版外商投资准入负面清单进一步缩减, 从 40 条减至 33 条, 旨在加快服务业重点领域的开放水平。在金融领域, 取消证券公司、证券投资基金管理公司、期货公司、寿险公司外资股比限制。基础设施领域, 取消 50 万人口以上城市供排水管网的建设、经营须由中方控股的规定。

The number of sectors that are off-limits for foreign investors will be cut to 33 in the 2020 version of the Negative List from 40 in the 2019 version. The new 2020 Negative List aims to accelerate the process of further opening key areas in service industries. In the financial sector, the caps on foreign ownership of securities companies, securities investment fund management companies, futures companies, and life insurance companies are now lifted. In the infrastructure sector, it is no longer required that the construction and operation of urban water supply and drainage pipeline networks in a city with a population of 500,000 or more must be controlled by the Chinese party.

负面清单进一步开放了制造业和农业领域的准入。制造业领域, 放开商用车制造外资股比限制, 取消禁止外商投资放射性矿产冶炼、加工和核燃料生产的规定。农业领域, 将小麦新品种选育和种子生产须由中方控股放宽为中方股比不低于 34%。

The Negative List has further relaxed foreign investment’s access to the manufacturing and agriculture sectors. In the field of manufacturing, the restrictions on the share ratio of foreign investment in commercial vehicle manufacturing are liberalized; and the prohibitive measures on foreign investment in the smelting and processing of radioactive minerals as well as the production of nuclear fuel are eliminated. In the agricultural field, the selection and breeding of new wheat varieties and the production of the seeds are no longer required to be controlled by the Chinese party. However, the Chinese party should hold a share ratio of not less than 34 percent.



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(Source: http://www.gov.cn/xinwen/2020-06/24/content_5521525.htm)

二、《数据安全法（草案）》首次公开征求意见

2020.07.06

Draft of Data Security Law Released for First-round Public Consultation

近日，第十三届全国人民代表大会常务委员会第二十次会议对《中华人民共和国数据安全法（草案）》（下称《草案》）进行了首次审议，并对外公布全文，面向社会征询意见，征询截止于 8 月 16 日。

The full texts of the *Law of the People's Republic of China on Data Security (Draft)* (the “Draft”) deliberated for the first time at the 20th session of the Standing Committee of the 13th National People's Congress (“NPC”), have recently been released for public comments by 16th August 2020.

《草案》共七章五十一条，主要内容包括：一是适用范围；二是支持、促进数据安全与发展的措施；三是数据安全制度；四是数据安全保护义务；五是政务数据安全与开放；六是数据安全工作职责。其中，为有效应对境内外数据安全风险，《草案》作出包括“建立数据分级分类管理制度，确定重要数据保护目录，对列入目录的数据进行重点保护”、“确立数据安全审查制度和出口管制制度”等在内的五方面规定。此外，《草案》还明确了法律责任等事项。

The 51-article *Draft*, divided into seven chapters, provides for: 1. scope of application; 2. measures aimed at supporting and promoting data security and development; 3. data security regimes; 4. obligations in ensuring data security; 5. safety and openness of government data; and 6. responsibilities for data security. Among others, with a view to effectively dealing with data security risks both at home and abroad, the *Draft* introduces requirements in five aspects, including “establishing a system of data management based on different grades and classifications, and creating the important data protection catalog to give priority to protection of data specified in the catalog” and “establishing a data security review regime and an export control regime”. In addition, the *Draft* provides clarifications on legal liability, among other matters.



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(Source:

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff80808172b5fee801731385d3e429dd>

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三、最高法出台加强类案检索指导意见

2020.07.27

SPC Guides the Strengthened Retrieval of Similar Cases

日前，最高人民法院发布《关于统一法律适用加强类案检索的指导意见（试行）》（下称《意见》），自 2020 年 7 月 31 日起试行。

Recently, the Supreme People's Court (“SPC”) has issued the *Guiding Opinions on Unifying the Application of Laws through the Strengthened Retrieval of Similar Cases (for Trial Implementation)* (the “*Opinions*”), for implementation on a trial basis from 31st July 2020.

《意见》共十四条，对类案检索的适用范围、检索主体及平台、检索范围和方法、类案识别和比对、检索报告或说明、结果运用、法官回应、法律分歧解决等作出规定。其中，《意见》明确，类案检索范围一般包括“最高法发布的指导性案例”等四类。除指导性案例以外，优先检索近三年的案例或者案件；已经在前一顺位中检索到类案的，可以不再进行检索。

The *Opinions* are developed in fourteen articles on the scope of application of the retrieval of similar cases, the retrieval subject and platform, the scope and method of retrieval, identification and comparison of similar cases, retrieval report or description, application of results, response of judges, resolution of legal disagreement, etc. Among others, the *Opinions* make it clear that four categories of similar cases including “guiding cases issued by the SPC” are generally retrieved for reference. In addition to guiding cases, priority is given to cases in the past three years and if a similar case is or similar cases are found already in the previous order of precedence, it is unnecessary to retrieve more cases.



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同时,《意见》要求,公诉机关、案件当事人及其辩护人、诉讼代理人等提交指导性案例作为控(诉)辩理由的,法院应当在裁判文书说理中回应是否参照并说明理由;提交其他类案作为控(诉)辩理由的,法院可以通过释明等方式予以回应。

At the same time, the *Opinions* require that, where the public prosecution organ, the parties concerned and their defenders or litigation agents submit guiding cases as grounds for prosecution (or defense), the court shall respond whether or not to refer to them and explain the reasons in the reasoning of the judgment, or by way of interpretation or other means where other types of similar cases are submitted as grounds for prosecution (or defense).

(Source: http://gkml.samr.gov.cn/nsjg/djzcj/202007/t20200706_319425.html)

四、两部门：为加快完善社会主义市场经济体制提供司法服务和保障 2020.07.22

Judicial Services and Guarantees Provided to Accelerate Improvement in Socialist Market Economic System

日前,最高人民法院、国家发展和改革委员会出台《关于为新时代加快完善社会主义市场经济体制提供司法服务和保障的意见》(下称《意见》)。

The Supreme People's Court (“SPC”) and the National Development and Reform Commission (“NDRC”) have recently issued the *Opinions on Providing Judicial Services and Guarantees for Accelerating the Improvement in the Socialist Market Economic System in the New Era* (the “*Opinions*”).

《意见》从“完善市场主体司法保护机制,增强微观主体活力”等七个方面,提出 31 条举措。其中,关于促进要素市场化配置,《意见》分别从尊重契约、促进金融为实体服务、拓展担保合同范围、规范互联网交易、促进劳动力要素优化配置等五个方面确立具体措施。《意见》明确,促进金融和民间资本服务实体经济,修改完善民间借贷司法解释,大幅度降低民间借贷利率的司法保护上限,坚决否定高利转贷行为、违法放贷行为的效力。



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The *Opinions* put forward 31 measures in seven aspects, including “improving the judicial protection mechanism for market entities and enhancing the vitality of micro entities”. Specifically, with regard to promoting the market-based allocation of factors, the *Opinions* determine specific measures in five aspects: respecting contracts, promoting financial services for entities, expanding the scope of guarantee contracts, standardizing internet transactions, and promoting optimal allocation of labor factors. The *Opinions* clarify that China will promote financial and private capital to serve the real economy, revise and improve judicial interpretations on private lending, significantly lower the upper limit of judicial protection for interest rates of private lending, and resolutely deny the effectiveness of relending at a high interest rate and illegal lending.

《意见》还指出，有效发挥互联网在生产要素配置中的优化集成作用，正确适用互联网交易合同订立的特殊规则，准确界定电子商务平台运营者、平台内经营者、消费者及知识产权权利人的权利义务关系。

The *Opinions* also point out that the internet’s optimization and integration roles in the allocation of production factors should be effectively utilized, and the special rules established by internet transaction contracts should be correctly applied. The rights and obligations of e-commerce platform operators, operators on the platforms, consumers, and intellectual property right holders should be accurately defined.

(Source: <http://www.court.gov.cn/zixun-xiangqing-242911.html>)

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