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法律法规简报 2020-11-30

Legal Update 2020-11-30

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一、最高法就民法典担保部分解释征求意见

2020.11.10



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SPC Seeks Comments on Interpretations of Guarantee-related Parts of 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〉担保部分的解释（征求意见稿）》（下称《征求意见稿》），现公开征求意见，意见反馈截止日期为 11 月 27 日。

The Supreme People's Court ("SPC") has recently promulgated the *Interpretations Applicable to Guarantee-related Parts of the Civil Code of the People's Republic of China (Draft for Comment)* (the "Draft for Comment") for public comments by 27th November 2020.

《征求意见稿》包含关于一般规定、关于保证合同、关于担保物权、其他具有担保功能的担保、附则五部分内容。其中，《征求意见稿》规定，企业、个体工商户、农业生产经营者将其现有的以及将有的生产设备、原材料、半成品及产品设定浮动抵押后，又以所有权保留或融资租赁的方式购入动产，出卖人或者出租人在该动产交付后十日内办理了该动产保留所有权或者融资租赁公示，其根据《中华人民共和国民法典》第 416 条的规定主张其权利优先于浮动抵押权的，人民法院应予支持。《征求意见稿》还对相对人善意时越权担保有效、债务人破产时担保债务停止计息等事项予以明确。

The *Draft for Comment* consists of the five parts of general provisions, guarantee contracts, collateral rights, other security with the function of guarantee and supplementary provisions. Among others, the *Draft for Comment* stipulates that, where an enterprise, individually owned business or agricultural producer or business operator purchases any movable under an ownership retention or financing lease arrangement after creating a floating charge on its existing or future production equipment, raw materials, semi-finished products or products, a claim made by the seller or lessor of the moveable under Article 416 of the *Civil Code of the People's Republic of China* that its rights are prior to the floating charge rights, shall be supported by the people's court, provided that the seller or lessor has made a disclosure of the ownership retention or financial leasing arrangement for the movable within ten days after delivery of the movable. The *Draft for Comment* also clarifies, among other matters, that a guarantee



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provided by the other party beyond authority but in good faith shall be valid and that the interest accrual on secured debts shall stop when the debtor goes bankrupt.

(Source: <http://www.court.gov.cn/zixun-xiangqing-270021.html>)

二、全国人大常委会决定修改著作权法 明年 6 月 1 日起施行 2020.11.12

NPC Standing Committee to Amend Copyright Law for Implementation as of 1st June 2021

日前，第十三届全国人民代表大会常务委员会第二十三次会议通过《关于修改〈中华人民共和国著作权法〉的决定》（下称《决定》），自 2021 年 6 月 1 日起施行。

The *Decision on Amending the Copyright Law of the People's Republic of China* (the "*Decision*"), which has been adopted at the 23rd Session of the Standing Committee of the 13th National People's Congress ("NPC") recently, will come into force as of 1st June 2021.

根据《决定》，修改后的著作权法完善了网络空间著作权保护的有关规定，并大幅提高了侵权法定赔偿额上限和明确惩罚性赔偿原则。具体体现在，对于故意侵权，情节严重的，可以适用赔偿数额一倍以上五倍以下的惩罚性赔偿。权利人的实际损失、侵权人的违法所得、权利使用费难以计算的，由法院根据侵权行为的情节，判决给予五百元以上五百万元以下的赔偿。

In accordance with the *Decision*, the amended *Copyright Law* has improved the provisions on the protection of cyberspace copyright, greatly raised the upper limit of statutory compensation amount for infringement and defined principles of punitive compensation. Particularly, if the circumstance of intentional infringement is serious, a punitive compensation of not less than one time but not more than five times of compensation amount may be claimed. If it is difficult to calculate actual losses of right holder, illegal gains of creditor or royalties, the court will make an award on a



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compensation of not less than CNY500 and not more than CNY5 million as per infringement circumstances.

《决定》明确，修改后的著作权法对“作品”的定义作出了调整，将现行法律中“电影作品和以类似摄制电影的方法创作的作品”的表述修改为“视听作品”。修改后的著作权法还加强了监管部门的执法手段等。

As is clearly specified in the *Decision*, the amended *Copyright Law* adjusts the definition of "work", and amends "a cinematographic work or a work created by a process analogous to cinematography" under the prevailing law into "an audiovisual work". The amended *Copyright Law* also intensifies law enforcement means of regulatory departments and so on.

(Source: _

<http://www.npc.gov.cn/npc/c30834/202011/272b72cdb759458d94c9b875350b1ab5.shtml>)

三、市场监管总局发布《经营者集中审查暂行规定》

2020.10.28

SAMR Issues Interim Provisions on Review of Concentrations of Undertakings

日前，国家市场监督管理总局发布《经营者集中审查暂行规定》（下称《规定》），自 2020 年 12 月 1 日起施行。

The State Administration for Market Regulation ("SAMR") has recently issued the *Interim Provisions on the Review of Concentrations of Undertakings* (the "*Provisions*") for implementation as of 1st December 2020.

《规定》包含经营者集中申报、经营者集中审查、限制性条件的监督和实施、对违法实施经营者集中的调查、法律责任等七章。其中，《规定》明确，市场监管总局应当自立案之日起三十日内，对申报的经营者集中进行初步审查，作出是



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否实施进一步审查的决定，并书面通知经营者。同时，审查经营者集中，应当考虑“参与集中的经营者在相关市场的市场份额及其对市场的控制力”等六项因素。

The *Provisions* contain seven chapters, covering declaration of concentrations of undertakings, review of concentrations of undertakings, supervision and implementation of restrictive conditions, investigation into illegally implemented concentrations of undertakings, legal liability, etc. In particular, the *Provisions* clarify that the SAMR should, within 30 days from the date of filing the case, conduct a preliminary review of the declared concentration of undertakings, make a decision on whether to conduct a further review, and notify the undertakings in writing. Meanwhile, six factors including "the market shares of undertakings participating in the concentration in the relevant market and their control over the market" should be taken into consideration in the review of a concentration of undertakings.

《规定》还提出，对于具有或者可能具有排除、限制竞争效果的经营者集中，参与集中的经营者提出的附加限制性条件承诺方案能够有效减少集中对竞争产生的不利影响的，市场监管总局可以作出附加限制性条件批准决定。

The *Provisions* also propose that, for a concentration of undertakings which has or is likely to have the effect of eliminating or restricting competition, if a commitment scheme for additional restrictive conditions put forward by the undertakings participating in the concentration can effectively reduce the adverse impact of the concentration on competition, the SAMR may make a decision to approve the concentration by imposing additional restrictive conditions.

(Source: http://gkml.samr.gov.cn/nsjg/fgs/202010/t20201027_322664.html)

四、《出口管制法》获通过 今年 12 月 1 日起施行

2020.10.17

Export Control Law Adopted, to Take Effect on 1st December 2020

近日，第十三届全国人民代表大会常务委员会第二十二次会议通过《中华人民共和国出口管制法》（下称《出口管制法》），自 2020 年 12 月 1 日起施行。



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The *Export Control Law of the People's Republic of China* (the "*Export Control Law*") has recently been adopted at the 22nd session of the Standing Committee of the 13th National People's Congress ("NPC") and shall take effect on 1st December 2020.

《出口管制法》包括总则，管制政策、管制清单和管制措施，监督管理，法律责任，附则五章。其中，关于出口管制范围，《出口管制法》一是确保管制物项全覆盖，并明确管制物项包括物项相关的技术资料等数据；二是确保管制主体和行为全覆盖，从我国境内向境外转移管制物项，以及中国公民、法人和非法人组织向外国组织和个人提供管制物项，均受本法约束。

The *Export Control Law* consists of five chapters, namely, general provisions, control policies, control lists and control measures, supervision and administration, legal liability, and supplementary provisions. In particular, with regard to the scope of export control, the *Export Control Law* covers two parts: the first is to ensure full coverage of controlled items and clarify that the controlled items include such data as the technical data relevant to controlled items; the second is to ensure full coverage of subjects subject to the export control and behaviors thereof, and ensure that controlled items transferred to foreign countries from China and controlled items provided by Chinese citizens, legal persons and unincorporated organizations to foreign organizations and individuals are governed by the *Export Control Law*.

关于对等采取措施，《出口管制法》提出，任何国家或者地区滥用出口管制措施危害我国国家安全和利益的，我国可以根据实际情况对该国家或者地区对等采取措施。《出口管制法》还对出口管制清单、临时管制和全面管制，出口经营资格和出口许可制度，最终用户和最终用途管理等方面作了详细规定。

Regarding reciprocal measures, the *Export Control Law* proposes that where any country or region abuses export control measures to endanger China's national security and interests, China may take reciprocal measures against that country or region based on actual conditions. The *Export Control Law* also sets out detailed provisions on such aspects as export control lists, temporary controls and comprehensive controls, export business qualifications and export licensing systems, and management of final users and end-use application.



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(Source: <http://www.npc.gov.cn/npc/c30834/202010/cf4e0455f6424a38b5aacf8001712c43.shtml>)

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