



Shanghai CILS® Law Firm
上海信石®律师事务所

Room 2615, Enterprise Square
No. 228 Meiyuan Road, Shanghai 200070
People's Republic of China

中国上海市梅园路 228 号
企业广场 2615 室, 邮编: 200070

Tel: +86 21 80127725
Fax: +86 21 80127724
www.cilslaw.com

法律法规简报 2020-12-30

Legal Update 2020-12-30

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2020.12.10

NDRC and MOFCOM Issue Negative List for Market Access (2020 Version)



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近日，国家发展和改革委员会、商务部联合发布《市场准入负面清单（2020年版）》（下称《负面清单》），自即日起印发实施。

Recently, the National Development and Reform Commission ("NDRC") and the Ministry of Commerce ("MOFCOM") have jointly issued the Negative List for Market Access (2020 Version) (the "Negative List"), with immediate effect.

《负面清单》直接放开“森林资源资产评估项目核准”等措施，删除“证券公司董事、监事、高级管理人员任职资格核准”等措施，清单事项缩减至 123 项，比 2019 年版清单再减 8 项。根据《负面清单》的说明，其包含禁止和许可两类事项。

The Negative List directly liberalizes measures such as "approval for evaluation projects of forest resource assets", deletes "approval for job qualifications of directors, supervisors and senior executives of securities companies" and other measures, and reduces the list items to 123 ones, eight less than the list of 2019 Version. According to the statement of the Negative List, it contains two categories, namely prohibited and approved matters.

对禁止准入事项，市场主体不得进入，行政机关不予审批、核准，不得办理有关手续；对许可准入事项，包括有关资格的要求和程序、技术标准和许可要求等，由市场主体提出申请，行政机关依法依规作出是否予以准入的决定，或由市场主体依照政府规定的准入条件和准入方式合规进入；对市场准入负面清单以外的行业、领域、业务等，各类市场主体皆可依法平等进入。

For prohibited access matters, market players shall not be engaged in them, and administrative organs shall not examine or approve them, or handle the relevant formalities. For approved access matters, including relevant qualification requirements and procedures, technical standards and approval requirements, market players shall file applications and administrative organs shall make a decision on access as per laws and regulations, or market players may be engaged in them in accordance with the access conditions and methods prescribed by the government. All kinds of market players may access industries, fields, business and so on outside the List in a legal and equal way.



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(Source: https://www.ndrc.gov.cn/xxgk/zcfb/gxwj/202012/t20201216_1252897.html)

二、最高法发布审理食品安全民事纠纷案件司法解释

2020.12.8

SPC Issues Judicial Interpretations on Hearing of Cases Involving Civil Disputes over Food Safety

日前，最高人民法院公布《关于审理食品安全民事纠纷案件适用法律若干问题的解释（一）》（下称《解释》），自 2021 年 1 月 1 日起施行。

Recently, the Supreme People's Court ("SPC") has issued the *Interpretations on Several Issues concerning the Application of Law in Hearing Cases Involving Civil Disputes over Food Safety (I)* (the "*Interpretations*") for implementation as of 1st January 2021.

《解释》共十四条，主要对食品安全民事责任主体认定、赔偿责任承担以及诉讼程序等方面作出规定。其中，《解释》强调，电子商务平台经营者未依法对平台内食品经营者进行实名登记、审查许可证，或者未依法履行报告、停止提供网络交易平台服务等义务，使消费者的合法权益受到损害，消费者有权主张电子商务平台经营者与平台内食品经营者承担连带责任，让电商平台为消费者把好食品安全关。《解释》还提出，公共交通运输的承运人向旅客提供的免费餐食，安全责任不能免；惩罚性赔偿不以造成人身损害为前提；进口食品也应符合本地食品安全标准等。

The *Interpretations*, comprising 14 articles, mainly stipulate the identification of subjects of civil liability for food safety, the undertaking of liability for compensation, legal proceedings and so on. In particular, the *Interpretations* emphasize that, if an e-commerce platform operator fails to conduct real-name registration for or examine the license of any food operator on the platform, or fails to fulfill obligations such as reporting and the cessation of provision of network transaction platform services according to laws, thereby damaging legitimate rights and interests of consumers, consumers will be entitled to require the said e-commerce platform operator and the food operator on the platform to bear joint and several liability, so that the e-commerce platform can ensure food safety for consumers. The *Interpretations* also put forward



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that a carrier of public transportation shall not be exempted from safety liability for meals provided by it for passengers for free; punitive damages shall not be awarded on the premise of causing personal damage; imported food shall also conform to local food safety standards.

(Source: <http://www.court.gov.cn/fabu-xiangqing-278191.html>)

三、国务院税委会：明年起对部分商品进口关税进行调整 2020.12.21

CTC of the State Council Adjusts Import Tariffs on Some Commodities from 2021

日前，国务院关税税则委员会发布《关于 2021 年关税调整方案的通知》（下称《通知》），自 2021 年 1 月 1 日起，对部分商品的进口关税进行调整。

The Customs Tariff Commission ("CTC") of the State Council has recently issued the *Circular on the 2021 Tariff Adjustment Plan* (the "*Circular*") to adjust import tariffs on some commodities as of 1st January 2021.

根据《通知》所附《2021 年关税调整方案》（下称《方案》），2021 年将调整部分进口商品的最惠国税率、协定税率和暂定税率。《方案》明确，我国将对 883 项商品实施低于最惠国税率的进口暂定税率。其中，对第二批抗癌药和罕见病药品原料、特殊患儿所需食品等实行零关税，降低人工心脏瓣膜、助听器等医疗器材以及乳清蛋白粉、乳铁蛋白等婴儿奶粉原料的进口关税。

According to the *2021 Tariff Adjustment Plan* (the "*Plan*") attached to the *Circular*, the most-favored-nation tariff rates, conventional tariff rates and provisional tariff rates on some imported commodities will be adjusted in 2021. The *Plan* clarifies that China will implement provisional tariff rates lower than the most-favored-nation tariff rates on 883 commodities. Among others, zero tariffs will be imposed on the raw materials for the second batch of anti-cancer drugs and rare disease drugs, foods needed for special children, etc. And reduced import tariffs will be imposed on heart valve prosthesis,



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hearing aids and other medical equipment, as well as the whey protein powder, lactoferrin and other raw materials for infant milk powder.

为满足国内生产需要,降低燃料电池循环泵、铝碳化硅基板、砷烷等新基建或高新技术产业所需部分设备、零部件、原材料的进口关税。为促进航空领域的国际技术合作,对飞机发动机用燃油泵等航空器材实行较低的进口暂定税率。

In order to meet the needs of domestic production, reduced import tariffs will be imposed on some equipment, parts and raw materials required by new infrastructure or high-tech industries such as fuel cell circulating pumps, aluminum silicon carbide substrates, and arsine. A lower provisional tariff rate will be imposed on aviation equipment, such as the fuel pumps for aircraft engines, to promote international technical cooperation in the aviation field.

(Source: http://gss.mof.gov.cn/gzdt/zhengcefabu/202012/t20201223_3636573.htm)

四、最新刑法修正案获通过

2020.12.26

NPC Passes Latest Amendment to the Criminal Law

近日,第十三届全国人民代表大会常务委员会第二十四次会议审议通过《中华人民共和国刑法修正案(十一)》(下称《修正案》),自2021年3月1日起施行。

Recently, the 24th Session of the Standing Committee of the 13th National People's Congress ("NPC") has recently deliberated and passed the *Amendment XI to the Criminal Law of the People's Republic of China* (the "Amendment"), with effect from 1st March 2021.

《修正案》对法定最低刑事责任年龄作出个别下调,明确已满十二周岁不满十四周岁的人,犯故意杀人、故意伤害罪,致人死亡或者以特别残忍手段致人重伤造成严重残疾,情节恶劣,经最高人民检察院核准追诉的,应当负刑事责任。



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The *Amendment* individually lowers the statutory minimum age of criminal responsibility, clarifying that where a person who has reached the age of 12 but not the age of 14 commits intentional homicide or intentional injury, resulting in the death of another person, or causes serious injuries to another person in extremely cruel means, resulting in severe disability, and if the circumstance is serious, he/she shall bear the criminal responsibility upon approval and prosecution by the Supreme People's Procuratorate ("SPP").

同时,《修正案》大幅提高了欺诈发行、信息披露造假、中介机构提供虚假证明文件和操纵市场等四类证券期货犯罪的刑事惩戒力度。比如,对于信息披露造假,《修正案》将相关责任人员的刑期上限由 3 年提高至 10 年,罚金数额由 2 万元-20 万元修改为“并处罚金”,取消 20 万元的上限限制。

Meanwhile, the *Amendment* greatly increases the criminal punishments on four types of securities and futures crimes, including fraudulent issuance, false information disclosure, provision of false certification documents by intermediaries, and market manipulation. For example, for false information disclosure, the *Amendment* raises the upper limit of the imprisonment term of the responsible persons from three years to ten years, revises the amount of a fine from RMB20,000-200,000 to "concurrently being sentenced to a fine", and cancels the upper limit of RMB200,000.

(Source:

<http://www.npc.gov.cn/npc/c30834/202012/850abff47854495e9871997bf64803b6.shtml>

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本期编辑:

Author:

Chenwei Bao

Tel: 86-21-80127725

Email: wendy.bao@cilslaw.com



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Shanghai CILS® Law Firm, a partnership registered at Room 2615, Enterprise Square, No. 228 Meiyuan Road, Shanghai, PRC.

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