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法律法规简报 2021-05-26

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一、全国人大常委会就《期货法（草案）》公开征求意见

2021.04.29

NPC Seeks Comments on Futures Law (Draft)



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近日, 全国人大常委会对《中华人民共和国期货法(草案)》(《期货法(草案)》)进行了初次审议, 面向社会征求意见, 时间截止于 5 月 28 日。

Recently, the National People's Congress (the "NPC") has deliberated the *Futures Law of the People's Republic of China (Draft)* (the "*Futures Law (Draft)*") for the first time to seek public comments by May 28, 2021.

《期货法(草案)》共有 14 章 173 条, 主要可分为六个方面: 明确立法宗旨、原则和监管体制; 系统规定期货交易、结算和交割制度; 规定其他衍生品交易的基本制度; 确立期货交易者权益保护制度; 规范期货经营机构、期货交易场所、期货结算机构和期货服务机构运行; 及明确期货市场的监督管理和法律责任。

The *Futures Law (Draft)* comprises 14 chapters and 173 articles, which can be categorized into six aspects: (i) clarification of legislative purpose, principles, and regulatory mechanisms; (ii) systematization of futures transactions, settlement, and clearing framework; (iii) regulation of other derivative transaction frameworks; (iv) certifying protection of the rights and interests of futures traders; (v) standardizing the operation of futures business institutions, futures exchanges, futures clearing agencies and futures service agencies; and (vi) clarifying supervisory responsibilities and legal liabilities in the futures market.

尽管《期货法(草案)》冠以期货之名, 实际上已将“其他衍生品”也纳入了法律规范当中, 但目前回购交易并没有被纳入规制对象中。同时, 《期货法(草案)》规定了投资者保护制度, 建立了多元化纠纷解决机制。交易者与期货经营机构等发生纠纷的, 双方可以向行业协会等申请调解; 交易者提起操纵市场、内幕交易等期货民事赔偿时, 满足一定条件可以提起集体诉讼; 在普通交易者与期货经营机构发生纠纷的情况下举证责任倒置, 由较为强势的期货经营机构承担举证责任。

While the law bears the name "Futures Law", it would supersede the concept of "futures" and include in its scope "other derivatives". Despite the broad coverage of other derivatives, repo transactions are not currently subject to regulation in the *Futures Law (Draft)*. Meanwhile, the *Futures Law (Draft)* includes the investor protection system and builds diversified dispute resolution mechanism. In the case of dispute



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between traders and futures business institutions, both parties can approach CFA to apply for settlement; in the event that a trader files for civil compensation such as for market manipulation, insider trading and other futures-related issues, a class action suit could be launched when certain conditions are met; the burden of proof reverses from ordinary traders to futures business institutions so that they bear the responsibility of proof.

此外,《期货法(草案)》承认主协议、补充协议以及交易双方做出的约定等,共同构成具有法律约束力的单一协议,破产管理人将无法挑选对其有利的合同予以继续履行并选择对其不利的合同予以终止;《期货法(草案)》认可了在终止情形下按净额对全部交易盈亏进行结算,且净额结算不因交易任何一方依法进入破产程序而无效或者撤销,在法律规范层面认可了我国衍生品交易的终止净额结算机制不受交易一方进入破产程序的影响。按照特殊法优于一般法的效力层级,单一协议及终止净额结算条款将优于《破产法》适用。

Besides, the *Futures Law (Draft)* recognizes that a master agreement, together with the supplementary agreements and other agreements made by both parties constitute a complete, single and legally binding agreement between the parties. Thus, a bankruptcy administrator would be unable to "cherry pick" and continue a favorable contract but terminate an unfavorable one. *Futures Law (Draft)* further confirms and acknowledges that, upon the termination of the single agreement, the profits and losses of all the transactions under a single agreement would be settled on a net basis and close-out netting would not be invalidated or revoked due to the commencement of any bankruptcy proceeding with respect to any party to the transaction in accordance with the law. The single agreement and close-out netting clauses will prevail over the *Bankruptcy Law*, pursuant to the PRC legislative principle that special laws are superior to general laws in the hierarchy of legal authorities.

(Source:

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff80818178f9100801791b69a3425052>)



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二、市场监管总局拟规范电子商务经营者登记

2021.05.11

SAMR to Regulate Registration of E-commerce Operators

近日, 国家市场监督管理总局制发《关于进一步规范电子商务经营者登记工作的通知(征求意见稿)》(下称《征求意见稿》), 现公开征求意见, 意见反馈时间截至 6 月 10 日。

The State Administration for Market Regulation ("SAMR") has recently formulated and issued the *Circular on Further Regulating the Registration of E-commerce Operators (Draft for Comment)* (the "*Draft for Comment*") to solicit public comments by June 10, 2021.

根据《征求意见稿》, 对于进驻平台销售商品或者提供服务的经营者, 电子商务平台经营者应当依法要求经营者提供其身份、地址、联系方式、行政许可等真实信息并进行核验、登记, 建立登记档案, 并至少每六个月核验更新一次。《征求意见稿》还要求, 电子商务平台应当为经营者办理营业执照登记提供便利。鼓励电子商务平台经营者同总局进行系统接口对接, 对于进入平台经营且未办理市场主体登记的经营者, 经经营者授权同意, 可由平台代为申请办理市场主体登记等。

According to the *Draft for Comment*, for operators who enter into the platform to sell products or provide service, e-commerce platform operators shall request them to provide such true information as their identity, address, contract information and administrative license, verify and register such information, and establish archives in accordance with the law. Such information shall be verified and updated once every six months. The *Draft for Comment* also requires that e-commerce platforms shall provide convenience to the operators on their platforms when they apply for business license. E-commerce platform operators are encouraged to link their systems with those of the SAMR; for operators who have entered into the platform for business operation but have not gone through market entity registration, e-commerce platform operators may apply for market entity registration on their behalf upon consent from them.



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(Source: http://www.samr.gov.cn/hd/zjdc/202105/t20210507_329234.html)

三、央行就《动产和权利担保统一登记办法》征求意见 2021.05.19

PBC Seeks Comments on Measures for Unified Registration of Movable Property and Rights Guarantee

近日，中国人民银行起草了《动产和权利担保统一登记办法（修订征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈时间截至 6 月 3 日。

The People's Bank of China ("PBC") has recently drafted the *Measures for Unified Registration of Movable Property and Rights Guarantee (Revised Draft for Comment)* (the "*Draft for Comment*") to solicit public comments by June 3, 2021.

《征求意见稿》主要修订内容如下：一是将《应收账款质押登记办法》名称修改为《动产和权利担保统一登记办法》；二是修改法律依据；三是明确登记范围；四是明确登记机构职责；五是删除优先顺位条款；六是增加当事人登记的提示条款；七是修改担保人或担保权人为单位的登记编码信息；八是约定登记内容增加“担保范围”及“禁止或限制转让担保财产”，并明确最高额担保中应将最高债权额作为必要登记事项；九是细化征信中心的职责；十是其他文字修改。

The *Draft for Comment* mainly proposes the following revisions: (1) changing the title "Measures for the Registration of Pledge of Accounts Receivables" into "Measures for Unified Registration of Movable Property and Rights Guarantee"; (2) adjusting the legal basis; (3) clarifying the scope of registration; (4) defining the duties of the registration entities; (5) deleting the provisions on priority order; (6) adding provisions on reminders for registration for the party concerned; (7) revising the code information in case of an entity serving as guarantor or creditor; (8) specifying that "scope of guarantee" and "prohibiting or restricting the transfer of guaranteed property" shall be added to the registration contents and that, in case of maximum guarantee, the maximum obligation



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amount shall be taken as an essential registration item; (9) detailing the duties of credit reporting centers; and (10) other textual revisions.

(Source: <http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4251286/index.html>)

四、最高法院发布审理银行卡民事纠纷案件若干问题规定 2021.05.24

SPC Issues Provisions on Several Issues Concerning the Trial of Cases Involving Civil Disputes over Bank Cards

日前，最高人民法院公布《关于审理银行卡民事纠纷案件若干问题的规定》（下称《规定》），自 2021 年 5 月 25 日起施行。

The Supreme People's Court ("SPC") has recently issued the *Provisions on Several Issues Concerning the Trial of Cases Involving Civil Disputes over Bank Cards* (the "*Provisions*") for implementation from May 25, 2021.

《规定》共 16 条，主要对持卡人与发卡行、非银行支付机构、收单行、特约商户等当事人之间因订立银行卡合同、使用银行卡等产生的民事纠纷进行规范。其中，《规定》指出，发卡行在与持卡人订立银行卡合同时，对收取利息、复利、费用、违约金等格式条款未履行提示或者说明义务，致使持卡人没有注意或者理解该条款，持卡人主张该条款不成为合同的内容、对其不具有约束力的，人民法院应予支持。《规定》还根据纠纷产生主体的不同，对不同主体之间的盗刷责任予以明确，并提出不得重复受偿原则等。

The *Provisions*, consisting of 16 articles, mainly govern the civil disputes arising from the conclusion of bank card contract, use of bank card and other matters between card holders and issuing banks, non-bank payment institutions, acquiring banks, franchised merchants and other parties concerned. Among others, the *Provisions* stipulate that, where an issuing bank fails to perform its obligation to notify or explain the standard terms involving the collection of interests, compound interests, expenses and liquidated damages when concluding a bank card contract with the card holder, thus causing the card holder's failure to notice or understand such terms, and the card holder claims that



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such terms shall not be a part of the contract and shall not be binding, the people's court shall uphold such claim. The *Provisions* also define the liability for using false card in transaction to be assumed by various subjects according to the subjects involved in a dispute, and propose the principle of "no repeated compensation".

(Source: <http://www.court.gov.cn/fabu-xiangqing-304771.html>)

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