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法律法规简报 2021-08-30

Legal Update 2021-08-30

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一、《市场主体登记管理条例》明年 3 月起施行 2021.08.24

Regulation on the Registration and Management of Market Entities to Take Effect from March 2022



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8 月 24 日, 《中华人民共和国市场主体登记管理条例》公布, 自 2022 年 3 月 1 日起施行。

The *Regulation on the Registration and Management of Market Entities of the People's Republic of China* (the “*Regulation*”) was released on August 24, 2021, which will take effect from March 1, 2022.

《条例》包括登记事项、登记规范、监督管理、法律责任等内容。法律责任方面, 《条例》明确, 实行注册资本实缴登记制的市场主体虚报注册资本取得市场主体登记的, 由登记机关责令改正, 处虚报注册资本金额 5% 以上 15% 以下的罚款; 情节严重的, 吊销营业执照。实行注册资本实缴登记制的市场主体的发起人、股东虚假出资, 未交付或者未按期交付作为出资的货币或者非货币财产的, 或者在市场主体成立后抽逃出资的, 由登记机关责令改正, 处虚假出资金额 5% 以上 15% 以下的罚款。

The *Regulation* includes registration items, registration norms, supervision and management, and legal responsibilities. According to the *Regulation*, if a market entity falsely claims registered capital to obtain market entity registration, the registration authority shall order the entity to rectify the wrongdoing and impose a penalty equivalent to 5-15% of the registered capital; the business license could be revoked under serious circumstances. If initiators and shareholders of a market entity make false claims of capital contribution or fail to make monetary or non-monetary contributions on time, or withdraw capital after official establishment of the market entity, the registration authority shall order related entities to rectify the wrongdoing and impose a penalty equivalent to 5%-15% of the registered capital.

(Source:

https://xmu.canyinban.cn/http/77726476706e69737468656265737421e7e056d2203f7e1e7d06/zhengce/content/2021-08/24/content_5632964.htm)

二、个人信息保护法：规范 APP 过度收集个人信息

2021.08.20



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Personal Information Protection Law to Forbid Excessive Collection of Personal Data

8 月 20 日, 十三届全国人大常委会第三十次会议表决通过《个人信息保护法》, 该法自 2021 年 11 月 1 日起施行。

The Standing Committee of the 13th National People's Congress concluded its 30th session on August 20, 2021, and voted to pass the *Personal Information Protection Law*, which will take effect from November 1, 2021.

在收集个人信息方面, 该法明确, 处理个人信息应当具有明确、合理的目的, 并应当与处理目的直接相关, 采取对个人权益影响最小的方式。收集个人信息, 应当限于实现处理目的的最小范围, 不得过度收集个人信息。

According to the law, personal information shall be processed according to clear and reasonable purposes, be directly related to the purposes, and shall have the least impact on personal rights and interests. Personal information shall be gathered in the minimum scope to realize the purposes, and excessive personal information shall not be gathered.

在禁止“大数据杀熟”方面, 该法提出, 个人信息处理者利用个人信息进行自动化决策, 应当保证决策的透明度和结果公平、公正, 不得对个人在交易价格等交易条件上实行不合理的差别待遇。

Besides, the law proposed that personal information processors should make sure automatic decisions are transparent and fair, and must not adopt any unreasonable differences in terms of price and other transaction conditions.

(Source: http://www.gov.cn/xinwen/2021-08/20/content_5632486.htm)

三、市场监管总局出台《市场监督管理严重违法失信名单管理办法》 2021.08.02



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SAMR Issues Administrative Measures for Lists of Parties with Seriously Unlawful and Dishonest Acts for Market Regulation Authorities

近日，国家市场监督管理总局发布《市场监督管理严重违法失信名单管理办法》（下称《办法》），自 9 月 1 日起施行。

The State Administration for Market Regulation ("SAMR") has recently issued the *Administrative Measures for Lists of Parties with Seriously Unlawful and Dishonest Acts for Market Regulation Authorities* (the "*Measures*"), which shall come into effect from September 1, 2021.

《办法》扩大了严重违法失信名单列入范围，聚焦食品、药品和特种设备等直接关系人民群众生命健康安全的市场监管领域，针对市场秩序中固疾顽症，强化信用约束和失信惩戒，着力解决群众痛点、治理难点，促使市场主体提升守法诚信经营意识和水平。

The *Measures* expand the targets to be included in the lists of parties with seriously unlawful and dishonest acts, focus on the market regulation areas that are directly related to the life and health of the people, such as food, drugs and special equipment, respond to the serious problems disrupting the market order, strengthen credit constraints and the punishment on dishonest acts, seek to solve the pain points faced by the people and the challenges to the governance, and prompt market entities to raise their awareness to and level of legal compliance and business integrity.

(Source: http://gkml.samr.gov.cn/nsjg/fgs/202108/t20210801_333255.html)

四、最高法就反不正当竞争法司法解释征求意见

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SPC Seeks Comments on Judicial Interpretations on Anti-Unfair Competition Law



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近日，最高人民法院发布《关于适用〈中华人民共和国反不正当竞争法〉若干问题的解释（征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈截至 9 月 19 日。

The Supreme People's Court ("SPC") has recently issued the *Interpretations on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the People's Republic of China (Draft for Comment)* (the "*Draft for Comment*") to solicit public comments by September 19, 2021.

《征求意见稿》对反不正当竞争法第二条、第六条、第八条、第十一条、第十二条等相关内容作出解释。其中，《征求意见稿》明确，未经其他经营者和用户同意而直接发生的目标跳转，法院应当认定为反不正当竞争法第十二条第二款第一项规定的“强制进行目标跳转”。

The *Draft for Comment* sets out the interpretations on relevant provisions in Articles 2, 6, 8, 11 and 12 of the *Anti-Unfair Competition Law*. Among others, the *Draft for Comment* specifies that a target jump directly occurring without consent of other operators and the users will be deemed by the court to have constituted "compelling a target jump" stipulated in Item 1 Paragraph 2 Article 12 of the *Anti-Unfair Competition Law*.

《征求意见稿》指出，经营者违背诚实信用原则和商业道德，擅自使用其他经营者征得用户同意、依法收集且具有商业价值的的数据，并足以实质性替代其他经营者提供的相关产品或服务，损害公平竞争的市场秩序的，法院可以依照反不正当竞争法第十二条第二款第四项予以认定。

The *Draft for Comment* also makes clear that if an operator, in breach of the honesty and integrity principle and business ethics, and without authorization, uses any data with commercial value that are lawfully collected by another operator upon its users' consent, and is capable of materially replacing another operator in the provision of relevant products or services, thus harming the market order of fair competition, the court may determine that such act has constituted the act as specified in Item 4 Paragraph 2 Article 12 of the *Anti-Unfair Competition Law*.



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(Source: <http://www.court.gov.cn/fabu-xiangqing-315851.html>)

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