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法律法规简报 2022-01-27

Legal Update 2022-01-27

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一、十三部门修订发布《网络安全审查办法》

2022.1.4

13 Authorities Revise and Issue the Measures for Cybersecurity Reviews

近日，国家互联网信息办公室等十三部门联合发出《网络安全审查办法》（下称《办法》），自 2022 年 2 月 15 日起施行。



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Recently, 13 authorities, including the Cyberspace Administration of China ("CAC"), have jointly issued the *Measures for Cybersecurity Reviews* (the "*Measures*") for implementation from February 15, 2022.

《办法》将网络平台运营者开展数据处理活动影响或者可能影响国家安全等情形纳入网络安全审查，并明确掌握超过 100 万用户个人信息的网络平台运营者赴国外上市必须向网络安全审查办公室申报网络安全审查。根据审查实际需要，增加证监会作为网络安全审查工作机制成员单位，同时完善了国家安全风险评估因素等内容。

The *Measures* include into the scope of cybersecurity review the impact of the data processing activities conducted by online platform operators or the circumstance in which national security may be affected, adding that any online platform operator possessing the personal information of more than one million users shall be subject to the cybersecurity review by the Cybersecurity Review Office if it intends to go listing overseas. Depending on the actual need of the review, the China Securities Regulatory Commission ("CSRC") may become a member entity under the working mechanism of the cybersecurity review. Meanwhile, national security risk assessment factor and other contents are improved.

据此，申报网络安全审查可能有以下三种情况：一是无需审查；二是启动审查后，经研判不影响国家安全的，可继续赴国外上市程序；三是启动审查后，经研判认为影响国家安全的，不允许赴国外上市。

According to the *Measures*, an application for cybersecurity review may lead to three circumstances: (1) there is no need for cybersecurity review; (2) when cybersecurity review is initiated, the applicant may proceed with its overseas listing as national security will not be affected upon analysis and judgement; and (3) when cybersecurity review is initiated, the applicant is banned from overseas listing as national security may be affected upon analysis and judgement.

(Source: http://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm)



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二、九部门发文推动平台经济规范健康发展

2022.01.20

China to Step up Efforts on Standardized, Healthy and Sustainable Development of the Platform Economy

近日，国家发展和改革委员会等九部门发出《关于推动平台经济规范健康持续发展的若干意见》（下称《意见》）。

Recently, nine authorities including the National Development and Reform Commission ("NDRC") have issued the *Several Opinions on Promoting the Standardized, Healthy and Sustainable Development of the Platform Economy* (the "*Opinions*").

《意见》提出把握三个方面内容：一是突出坚持发展和规范并重。二是突出加强和改进监管。三是突出推动平台经济为高质量发展和高品质生活服务。《意见》从完善规则制度、明确监管重点、提升监管能力等方面入手，推动完善平台经济治理体系。

The *Opinions* state that China will step up efforts to (1) lay equal stress on development and regulation; (2) tighten and improve oversight; and (3) promote the platform economy to serve high-quality development and high-quality life. The *Opinions* propose the improvement of the platform economic governance system by developing sound rules and systems, clarifying the key areas of oversight and improving the oversight capacity.

其中，在完善规则制度方面，重点是围绕反垄断、不正当竞争、平台价格行为等社会关切问题，出台意见或管理办法。建立健全合规管理、信息公示、公平竞争监管、协同治理等制度规范。在明确监管重点方面，重点在反垄断和反不正当竞争、个人信息保护和数据安全、金融等方面，改进提升监管技术手段，补齐监管漏洞。

Among them, in terms of developing sound rules and systems, priorities will be given to issue opinions or administrative measures on anti-monopoly, unfair competition, platform-related price behavior and other matters of public concerns; and to establish and improve institutional regulations on compliance management, information



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disclosure, fair competition supervision, and collaborative governance. In terms of clarifying the key areas of oversight, the focus will be placed on anti-monopoly and anti-unfair competition, personal information protection and data security, financial sector, among others, to improve and upgrade technical means of oversight and fill regulatory loopholes.

(Source:

https://www.ndrc.gov.cn/xxgk/zcfb/tz/202201/t20220119_1312326.html?code=&state=123)

三、最高法：充分发挥司法职能作用 助力中小微企业发展 2022.01.14

SPC Fully Exerts Judicial Functions and Roles to Support Growth of MSMEs

日前，最高人民法院发出《关于充分发挥司法职能作用助力中小微企业发展的指导意见》（下称《意见》）。

Recently, the Supreme People's Court ("SPC") has issued the *Guiding Opinions on Giving Full Play to Judicial Functions and Roles to Support the Growth of Micro-, Small and Medium-sized Enterprises* (the "*Opinions*").

《意见》主要内容包括：一是积极为中小微企业发展营造公平竞争、诚信经营的市场环境。二是加强中小微企业产权司法保护。三是建立办理拖欠中小微企业账款案件“绿色通道”。四是依法保护有挽救价值的中小微企业。五是全面清查超标的查封、乱查封问题。六是最大限度降低执行措施对中小微企业等市场主体的不利影响。

The highlights of the *Opinions* include: first, proactively creating a market environment of fair competition and honest operations for the development of micro-, small and medium-sized enterprises (MSMEs); second, strengthening the judicial protection of the property rights of MSMEs; third, establishing a "green channel" mechanism for handling cases of default on accounts payable of MSMEs; fourth, protecting those



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MSMEs that worth rescue in accordance with the law; fifth, fully examining and addressing the problems of seizure beyond the limit and illegal seizure; and sixth, minimizing the adverse impact of the enforcement measures on MSMEs and other market players.

《意见》强调，依法保护中小微企业生存发展空间。依法公正高效审理反垄断、反不正当竞争案件，严惩强制“二选一”、低价倾销等违法行为。依法认定经营者滥用数据、算法、技术、资本优势以及平台规则等排除、限制竞争行为。依法保障建设工程领域中小微企业和农民工合法权益。支持保障相关部门防范应对房地产项目逾期交付风险，维护购房者合法权益，确保农民工工资支付到位。

The *Opinions* call for efforts to protect the survival and development of MSMEs in accordance with the law; to hear anti-monopoly and anti-unfair competition cases in a fair and efficient manner in accordance with the law and severely punish illegal acts such as forced "Either-or" and low-price dumping; to legally define the practices of operators to exclude or restrict competition by misusing data, algorithm, technology, capital strength and platform rules; to protect the legitimate rights and interests of micro, small and medium-sized enterprises and migrant workers in construction projects in accordance with the law; to support relevant departments in preventing and responding to the risk of late delivery of real estate projects, protect the legitimate rights and interests of property buyers, and ensure that migrant workers' wages are paid in full.

(Source: <https://www.court.gov.cn/fabu-xiangqing-341891.html>)

四、两高出台办理危害食品安全刑事案件司法解释

2021.12.31

Judicial Interpretation on Handling Cases Involving Crimes of Endangering Food Safety Issued

近日，最高人民法院、最高人民检察院联合下发《关于办理危害食品安全刑事案件适用法律若干问题的解释》（下称《解释》），自 2022 年 1 月 1 日起施行。



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Recently, the Supreme People's Court ("SPC") and the Supreme People's Procuratorate ("SPP") have jointly issued the *Interpretation on Several Issues concerning the Application of Laws in the Handling of Cases Involving Crimes of Endangering Food Safety* (the "*Interpretation*"), with effect on January 1, 2022.

《解释》共计二十六条，主要对六个方面内容进行了修订：一是加强对未成年人、老年人等群体食品安全的保护力度。二是依法惩治利用保健食品等骗取财物的行为。三是依法惩治食品相关产品造成食品被污染的行为。四是依法惩治用超过保质期的食品原料生产食品等行为。五是依法惩治在农药、兽药、饲料中添加禁用药物等行为。六是依法惩治畜禽屠宰相关环节注水注药行为。此外，《解释》还对生产、销售有毒、有害食品罪“有毒、有害的非食品原料”和“明知”的认定等问题作出规定。

The *Interpretation* consists of a total of 26 articles, and revisions are made in the following six aspects. The first is to step up action to improve the food safety for minors, the elderly and other groups. The other five aspects cover the punishments imposed in accordance with the law against: the act of committing fraud to gain money via health supplements or otherwise; act of food contamination caused by food-related products; the act of using food raw materials beyond the shelf life to produce food; the act of adding banned drugs to pesticides, veterinary drugs or feedstuffs; and act of injecting water or medicine in the process of slaughtering livestock and poultry. In addition, the *Interpretation* also provides for how to ascertain "toxic and harmful non-food raw materials" and "knowingly" with respect to the crime of producing and selling toxic and harmful food.

(Source: <https://www.court.gov.cn/zixun-xiangqing-339471.html>)

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