



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 2022-11-30

Legal Update 2022-11-30

目录

Contents

- ◇ [生态环境部启动全国碳排放权交易市场 2021 与 2022 年度配额分配](#)
MEE Launches Quota Allocation for 2021 and 2022 at China Carbon Emission Trade Exchange
- ◇ [最高法就民法典合同编通则解释征求意见](#)
SPC Solicits Comments on the Interpretation on the Part of Contract under the Civil Code
- ◇ [最高法出台涉外民商事案件管辖若干问题规定](#)
SPC Issues Provisions on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases
- ◇ [最高法就反垄断民事诉讼司法解释征求意见](#)
SPC Seeks Comments on the Judicial Interpretation of Anti-monopoly Civil Litigation

一、生态环境部启动全国碳排放权交易市场 2021 与 2022 年度配额分配 2022.11.03

MEE Launches Quota Allocation for 2021 and 2022 at China Carbon Emission Trade Exchange



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近日，生态环境部编发《2021、2022 年度全国碳排放权交易配额总量设定与分配实施方案（征求意见稿）》（下称《征求意见稿》），现公开征求意见，征求截止于 11 月 12 日。

The Ministry of Ecology and Environment (MEE) has recently issued the *Implementation Plan for the Setting and Allocation of Total Quota for National Carbon Emission Right Trading for 2021 and 2022 (Draft for Comment)* (the "Draft for Comment") to solicit public opinions by November 12, 2022.

《征求意见稿》明确了 2021、2022 年全国碳市场配额管理的实施范围，将发电机组按照燃料种类及机组容量划分为四个类别；明确配额分配的方法及规则，2021、2022 年配额实行免费分配，沿用基准法核算重点排放单位机组配额量，按不同机组类别设定相应碳排放基准值，将各机组、各重点排放单位、各行政区域年度配额总量加总，最终确定各年度全国配额总量。《征求意见稿》增加盈亏平衡值的概念，作为制定供电、供热基准值的重要依据，并将负荷（出力）系数修正系数拓展至常规燃煤热电联产机组。对于存在合并、分立与关停情况的重点排放单位，《征求意见稿》规定了其配额核定方法。

The *Draft for Comment* clarifies the scope of the quota management in national carbon market for 2021 and 2022, and divides generator units into four categories as per the fuel type and unit capacity. It specifies the methods and rules of quota allocation. In 2021 and 2022, quota will be allocated free of charge; the benchmark method will still be used to calculate the quota for the units of key emission entities, and the corresponding carbon emission benchmark values will be set according to different categories. The total annual quota of each generator unit, each key emission entity, and each administrative region will be added up to finally determine the total annual national quota. The *Draft for Comment* adds the concept of break-even value as an important basis for formulating benchmark values for power supply and heating, and extends the correction coefficient of the load (output) coefficient to conventional coal-fired cogeneration units. The *Draft for Comment* also stipulates the quota calculation method for the key emission entities subject to merger, division, and shutdown.

(Source: https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202211/t20221103_999595.html)



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二、最高法就民法典合同编通则解释征求意见 2022.11.07

SPC Solicits Comments on the Interpretation on the Part on Contract under the Civil Code

日前，最高人民法院发布《关于适用〈中华人民共和国民法典〉合同编通则部分的解释（征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈截止到 2022 年 11 月 20 日。

The Supreme People's Court (SPC) has recently issued the *Interpretation on the Application of the General Provisions of the Contract Part of the Civil Code of the People's Republic of China (Draft for Comment)* (the "Draft for Comment") to solicit public opinions by November 20, 2022.

《征求意见稿》涵盖一般规定、合同的订立、合同的效力、合同的履行、合同的保全、合同的变更和转让、合同的权利义务终止、违约责任、附则等九部分内容，共计七十三条。其中，针对缔约过失的赔偿范围，《征求意见稿》明确，当事人一方假借订立合同，恶意进行磋商，或者实施其他严重违背诚信原则的行为，对方请求赔偿其因丧失其他缔约机会而造成的损失，人民法院依法予以支持，但是应当扣除其为取得该机会所应支出的合理费用。

The *Draft for Comment* consists of 73 articles in nine parts, covering general provisions, conclusion of contracts, effect of contracts, performance of contracts, preservation of contracts, modification and assignment of contracts, termination of rights and obligations under a contract, default liability, and supplementary provisions. Among others, regarding the compensation scope for negligence in the conclusion of a contract, the *Draft for Comment* specifies that where a party engages in consultation with malicious intention under the guise of concluding a contract or conducts any other acts seriously violating the principle of good faith, and the other party claims compensation for its loss caused by loss of other opportunities to conclude the contract, the claim shall be upheld by the people's court, provided that the reasonable expenses made by the other party for obtaining such opportunities shall be deducted.



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Fax: +86 21 80127724
www.cilslaw.com

(Source: <https://www.court.gov.cn/zixun-xiangqing-378071.html>)

三、最高法出台涉外民商事案件管辖若干问题规定 2022.11.15

SPC Issues Provisions on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases

日前，最高人民法院发出《关于涉外民商事案件管辖若干问题的规定》（下称《规定》），自 2023 年 1 月 1 日起施行。

The Supreme People's Court (SPC) has recently issued the *Provisions on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases* (the "*Provisions*"), with effect on January 1, 2023.

根据《规定》，基层法院管辖第一审涉外民商事案件，法律、司法解释另有规定的除外。同时明确，中级法院管辖争议标的额大的涉外民商事案件、案情复杂或者一方当事人人数众多的涉外民商事案件、其他在本辖区有重大影响的涉外民商事案件。《规定》采取了分区域梯度划分标的额管辖标准的模式，北京、天津、上海、江苏、浙江、福建、山东、广东、重庆辖区中级法院，管辖诉讼标的额人民币 4000 万元以上（包含本数）的涉外民商事案件；第二档为人民币 2000 万元以上（包含本数）。《规定》还明确，高级法院管辖诉讼标的额人民币 50 亿元以上（包含本数）或者其他在本辖区有重大影响的第一审涉外民商事案件。

According to the *Provisions*, grassroots courts have jurisdiction over foreign-related civil and commercial cases of the first instance, unless otherwise stipulated by laws and judicial interpretations. It is also clarified that the intermediate courts have jurisdiction over foreign-related civil and commercial cases involving high amounts in dispute, complicated cases, or cases filed by many persons as the litigant, and other foreign-related civil and commercial cases that have significant influence in their jurisdiction. The *Provisions* adopt the model in which jurisdiction criteria on the value of subject matter are grouped by region into two tiers. The intermediate courts in Beijing, Tianjin, Shanghai, Jiangsu, Zhejiang, Fujian, Shandong, Guangdong, and Chongqing have



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jurisdiction over the foreign-related civil and commercial cases with the value of subject matter of CNY40 million or higher; and cases with the value of subject matter of CNY20 million or higher are included in the second tier. The *Provisions* also clarify that, the high courts have jurisdiction over first-instance foreign-related civil and commercial cases in which the value of subject matter of litigation is CNY5 billion or higher or other cases that have significant influence in the jurisdiction.

(Source: <https://www.court.gov.cn/zixun-xiangqing-379181.html>)

四、最高法院就反垄断民事诉讼司法解释征求意见 2022.11.21

SPC Seeks Comments on the Judicial Interpretation on Anti-monopoly Civil Litigation

近日，最高人民法院起草了《关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）》（下称《征求意见稿》），现向社会征求意见，意见反馈截至 12 月 9 日。

Recently, the Supreme People's Court (SPC) has drawn up the *Provisions on Several Issues Concerning the Application of Law in the Hearing of Civil Monopoly Dispute Cases (Draft for Public Comment)* (the "*Draft for Comment*") for public comments by December 9, 2022.

《征求意见稿》从程序规定、相关市场界定、垄断协议、滥用市场支配地位、民事责任等方面对反垄断民事诉讼从程序到实体作了较为全面的细化规定。《征求意见稿》根据修改后反垄断法的规定和数字经济等新业态发展状况，重点新增有关反垄断实体审查判断标准和互联网平台行为规制内容。《征求意见稿》提出，分析界定互联网平台所涉相关商品市场时，结合被诉垄断行为的特点、产生或者可能产生排除、限制竞争效果的具体情况、互联网平台的类型等因素，可以选择根据特定互联网平台整体界定相关商品市场，也可以选择依据该互联网平台与被诉垄断行为最相关一边的商品界定相关商品市场。



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The *Draft for Comment* has laid down more comprehensive and detailed provisions on anti-monopoly civil litigation from procedural to substantive rules, with regard to procedural provisions, definition of the relevant market, monopoly agreements, abuse of dominance, and civil liability. Based on the provisions of the revised Anti-Monopoly Law and the developments in new formats of business such as the digital economy, the *Draft for Comment* focuses on new additions relating to criteria on anti-monopoly substantive review and the regulation of internet platform behavior. According to the *Draft for Comment*, in analyzing and defining the relevant commodity market involving the Internet platform, people's courts may, according to factors such as the characteristics of the alleged monopolistic behavior, specific circumstances that have or may have the effect of excluding or restricting competition, and the type of an internet platform, choose to define the relevant commodity market based on a specific internet platform as a whole or based on the commodities on the side of the Internet platform that are most related to the alleged monopolistic behavior.

(Source: <https://www.court.gov.cn/zixun-xiangqing-380101.html>)

本期编辑:

Author:

Haotian Tan

Tel: 86-21-80127725-809

Email: jerry.tan@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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