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法律法规简报 2023-01-31

Legal Update 2023-01-31

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NDRC Issues Administrative Measures for Review and Registration of Medium- and Long-term Foreign Debts of Enterprises

一、全国人大常委会表决通过修改对外贸易法 2023.01.03

NPC Standing Committee Votes to Adopt Revisions to Three Laws Including Foreign Trade Law

近日，第十三届全国人民代表大会常务委员会第三十八次会议通过《关于修改〈中华人民共和国对外贸易法〉的决定》（下称《决定》）。《决定》自公布之日起施行。



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The 38th session of the Standing Committee of the 13th National People's Congress (NPC) has recently adopted the Decision on Revising the *Foreign Trade Law of the People's Republic of China* (the "Decision"). The *Decision* shall become effective from the date of release.

《决定》对原对外贸易法作如下修改：删去第九条。此次修改旨在精简对外贸易经营者相关手续办理流程，将自由贸易试验区相关改革试点经验在全国范围内复制推广，删去第九条关于对外贸易经营者备案登记的规定。原对外贸易法根据本《决定》作相应修改并对条文顺序作相应调整，重新公布。

The *Decision* proposes the following revisions to the previous foreign trade law: The previous Article 9 is deleted. As the revisions aim to streamline relevant handling procedures for foreign trade operators and promote the experiences from the pilot reform in free trade areas nationwide, the provisions on record-filing of foreign trade operators in the previous Article 9 are removed. The previous foreign trade law shall be re-promulgated after it is revised according to the *Decision* and the sequence of its articles is adjusted accordingly.

(Source:

<http://www.npc.gov.cn/npc/c30834/202212/1fb87c771e914c30918cf750b69cbaa6.shtml>)

二、全国人大常委会就公司法修订草案二审稿等 13 件草案征意 2023.01.03

NPC Standing Committee Seeks Comments on 13 Drafts Including the Second Draft Revision for Review of the Company Law

日前，第十三届全国人民代表大会常务委员会第三十八次会议对《中华人民共和国公司法（修订草案）（二次审议稿）》（下称《二审稿》）、《中华人民共和国增值税法（草案）》、《中华人民共和国金融稳定法（草案）》、《中华人民共和国民事诉讼法（修正草案）》、《中华人民共和国行政诉讼法（修正草案）》等 13 件法律草案进行了审议，并对外公布全文，面向社会征求意见，征求期限为 30 日。



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The 38th session of the Standing Committee of the 13th National People's Congress (NPC) has recently deliberated 13 draft laws, including the *Company Law of the People's Republic of China (Second Draft Revision for Review)* (the "Second Draft"), the *Value-Added Tax Law of the People's Republic of China (Draft)*, the *Financial Stability Law of the People's Republic of China (Draft)*, the *Civil Procedure Law of the People's Republic of China (Draft Revision)*, and the *Administrative Procedure Law of the People's Republic of China (Draft Revision)*. The full texts of all these drafts are published to solicit public opinions within a term of 30 days.

《二审稿》拟作如下主要修改：一是强化股东出资责任。二是完善公司治理。三是完善董事责任规定。四是强化上市公司治理。其中，《二审稿》明确失权股权未转让或者注销的，由其他股东按照出资比例缴纳相应出资；公司不能清偿到期债务的，股东认缴出资加速到期；股东转让未届缴资期限股权的，出让人对受让人未按期缴纳的出资承担补充责任。

The *Second Draft* mainly proposes the following revisions: (1) reinforcing the responsibilities of the shareholders for contributions; (2) perfecting corporate governance; (3) improving the rules on the responsibilities of directors; and (4) strengthening the governance of listed companies. Among others, the *Second Draft* stipulates that where the lost stock rights are not transferred or deregistered, other shareholders shall pay the relevant capital contributions according to the proportion of capital contributions; where a company is unable to repay its debts due, the subscription by shareholders will expire more quickly; where a shareholder transfers the stock rights for which the time limit for capital contribution has not expired, the transferor shall assume supplementary liability against the transferee for the capital contribution that has not been paid on time.

(Source:

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844232f701856183bc3d4377>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181842c261c01856172441f020a>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844230ec0185616ca4db769b>



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<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844232f701856162d2424287>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844230ec01856159618475ee>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844232f701856153a09641d6>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181842c261c0185614a1e1100ee>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181842c261c018561423bfd00cf>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181842c261c018561387f97009c>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844232f70185613513b340d2>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844230ec0185612c16b27450>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181842c261c01856126d4870007>

<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff808181844232f70185611f164d4045>

三、国家发改委印发《企业中长期外债审核登记管理办法》 2023.01.05

NDRC Issues Administrative Measures for Review and Registration of Medium- and Long-term Foreign Debts of Enterprises

《企业中长期外债审核登记管理办法》（下称《办法》）共包括总则、外债规模和用途、外债审核登记、外债风险管理和事中事后监管、法律责任等六章三十七条。《办法》将于 2023 年 2 月 10 日施行。

The Administrative Measures for Review and Registration of Medium- and Long-term Foreign Debts of Enterprises (the “Measures”) includes six chapters and thirty-seven



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articles, such as General Provisions, Size and Use of Foreign Debt, Examination and Registration of Foreign Debt, Foreign Debt Risk Management and In-process and Ex-Post Supervision, and Legal Liability, etc. The *Measures* will be effective on February 10, 2023.

与 2015 年印发的《国家发展改革委关于推进企业发行外债备案登记制管理改革的通知》相比,《办法》主要有五方面的调整变化:(一)科学划定管理范围,做到监管全覆盖。(二)强化外债募集资金用途管理,切实服务实体经济发展。(三)细化审核登记程序,提高透明度和便利性。(四)创新和丰富事中事后监管。(五)引导企业加强外债风险管理。

Compared to the *Circular of NDRC on Promoting the Administrative Reform of the Record-filing and Registration System for the Issuance of Foreign Debts by Enterprises* issued in 2015, the *Measures* has five main changes: (1) scientifically delineating the management scope to achieve full regulatory coverage; (2) strengthening the management of the use of funds raised by foreign debt, and effectively serving the real economy development; (3) refining the audit and registration procedures to improve transparency and convenience; (4) innovating and enriching in-process and ex-post supervision; (5) guiding enterprises to strengthen foreign debt risk management.

(Source: https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202301/t20230110_1346285.html)

四、国知局就商标法修订草案征求意见 2023.01.16

CNIPA Seeks Comments on Draft Revision to Trademark Law

近日,国家知识产权局起草了《中华人民共和国商标法修订草案(征求意见稿)》(下称《征求意见稿》),现向社会征求意见,意见反馈截止于 2 月 27 日。



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The China National Intellectual Property Administration (CNIPA) has recently drafted the *Trademark Law of the People's Republic of China (Draft Revision for Comment)* (the “*Draft*”) to solicit public opinions by February 27, 2023.

《征求意见稿》进一步理顺体系，将商标法扩充为 10 章 101 条。其中，新增 23 条，从现有条文中拆分形成新条文 6 条，实质修改条文 45 条，基本维持现有法条内容 27 条。其修改的主要内容包括：一是顺应时代发展要求，服务经济社会高质量发展。二是维护社会公平正义，营造公平竞争的市场秩序。三是完善商标授权确权程序，固化“放管服”改革成果。四是强化商标使用义务，引导商标注册回归制度本源。五是加强商标专用权保护，打击商标侵权行为。六是加强商标监督管理，规制商标违法行为。七是其他修改。

The *Draft* further rationalizes the law system, expanding the trademark law to 101 articles in 10 chapters, of which 23 articles are added, six are formed by rearranging the existing clauses, 45 are materially revised, and 27 are basically kept unchanged. The main revisions include: (1) following the latest trends and serving the high-quality economic and social development; (2) safeguarding social fairness and justice and creating a market order of fair competition; (3) improving the procedures for trademark authorization and right confirmation and reinforcing the results of the reform of “streamlining administration, delegating power and strengthening regulation and improving services”; (4) reinforcing the obligations in trademark use and guide trademark registration to follow the rules; (5) enhancing the protection of trademark exclusive rights and cracking down on trademark infringement; (6) strengthening trademark supervision and management, and punishing trademark violations; and (7) proposing miscellaneous revisions.

(Source: http://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html)

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