



Newsletter

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October 31, 2023

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Update

The Full Text of the Law on Foreign State Immunity Is Released

On September 1, the *Law on Foreign State Immunity* (“Immunity Law”) has been adopted. The full text of the Law has now been published and will come into force from January 1, 2024.

The Immunity Law consists of twenty-three articles, which improve the foreign state immunity system and clarify the jurisdiction of the courts of China over civil cases involving foreign states and their property. The Immunity Law makes it clear that a foreign country that responds to a lawsuit or defends a case for the sole purpose of claiming immunity, or whose representatives appear and testify before a Chinese court, is not considered to have accepted the jurisdiction of the Chinese courts; if a foreign country carries out a commercial activity with an organization or an individual of another country, including China, that takes place within the territory of China, or if the activity takes place outside the territory of China but has a direct impact on China’s territory, the country shall not be immune from the

jurisdiction of the Chinese court with respect to litigation arising out of such a commercial activity. Commercial activities refer to transactions in goods or services, investments, lending, and other acts of a commercial nature, which are not in the exercise of sovereign power.

Guizhou Province Announced the Regulations Against Unfair Competition

On October 9, the website of Guizhou People's Congress announced the *Regulations of Guizhou Province Against Unfair Competition* ("Regulations").

The Regulations consist of five chapters and twenty-six articles, with a special chapter on unfair competition, investigation of suspected unfair competition, and legal liability. It is clear that if an operator bribes another person in violation of Article 8 of the Regulations, the supervision and inspection department shall confiscate the illegal income and impose a fine of not less than RMB 100,000 yuan and not more than RMB 3 million yuan; if an operator engages in prize sales in violation of Article 12 of the Regulations, the supervision and inspection department shall order the cessation of the illegal act and impose a fine of not less than RMB 50,000 yuan and not more than RMB 500,000 yuan; where an operator engages in unfair competition in violation of the provisions of these Regulations, and there are statutory circumstances such as taking the initiative to eliminate or mitigate the harmful consequences of the illegal act, the administrative penalty shall be mitigated or reduced in accordance with the law; and where the violation of the law is minor and corrected in time, and does not result in any harmful consequences, no administrative penalty shall be imposed.

NDRC Revised the Catalogue of Encouraged Industries in Hainan Free Trade Port

On October 21, the National Development and Reform Commission ("NDRC") announced on its website the *Announcement on Publicly Soliciting Opinions on the Catalogue of Encouraged Industries in Hainan Free Trade Port (Revised Draft)* ("Draft Catalog"), with the deadline for feedback on November 20, 2023.

The Draft Catalog consists of two parts, one is the encouraged industries in the existing national industrial catalog, and the other is the new encouraged industries in Hainan Free Trade Port, which is applicable to enterprises producing and operating in Hainan Free Trade Port, of which foreign-invested enterprises are in accordance with the "Encouragement of Foreign Investment Industry Catalog". Among them, Hainan Free Trade Port new encouraged industries include pharmaceuticals, green building materials production, deep processing and manufacturing of agricultural and forestry products, cosmetics development, production, new energy special-purpose vehicle manufacturing, medical equipment development and production, medical emergency protection materials development and production, generic drug development and production, general or high-end general processors, memory and operating systems, databases, other basic hardware and software R&D and applications, and car Internet and automatic driving technology R&D, testing and application.

Certain Violations with Active Disclosure of Violations Is Exempted from Customs Administrative Penalties

On October 9, the General Administration of Customs officially issued the *Announcement on Matters Relating to the Handling of Active Disclosure of Violations* ("Announcement"), which shall remain valid

from October 11, 2023 to October 10, 2025.

The Announcement stipulates that import and export enterprises shall not be subject to administrative penalties if they take the initiative to disclose violations of customs regulations under one of the eight specified circumstances, including active disclosure to the Customs within six months from the date of occurrence of the tax-related violation; active disclosure to the Customs within two years from the date of occurrence of the tax-related violation exceeding six months, but the omission or underpayment of tax is less than 30% of the proportion of the tax due. or the amount of tax omitted or underpaid is less than RMB 1 million yuan. The Announcement also specifies that import and export enterprises that take the initiative to report their tax-related violations to the Customs in writing and correct them in a timely manner, and are recognized by the Customs as having taken the initiative to disclose such violations, may apply to the Customs for reduction or exemption of late payment of taxes in accordance with the law. If they meet the requirements, the Customs will reduce or waive them.

The State Council Supports Application for Establishment of China (Inner Mongolia) Pilot Free Trade Zone

Chinese government website released on October 16, “The State Council on the Promotion of High-Quality Development of Inner Mongolia Strive to Write a New Chapter of Chinese-Style Modernization of the Opinions” (“Opinions”).

The Opinions put forward to speed up the optimization and upgrading of industrial structure; promote iron and steel, non-ferrous metals, building materials, and other key areas to carry out energy saving, pollution reduction, and carbon technology transformation, encourage ferroalloys, coking, and other areas of enterprise optimization and restructuring; accelerate the development of an open economy, and support the procedures to apply for the establishment of China (Inner Mongolia) Pilot Free Trade Zone. The Opinions further consolidate the industrial foundation, promote the high-quality development of the comprehensive bonded area, and strengthen the policy support. The new energy, new materials, modern equipment manufacturing, modern coal chemical industry, dairy industry, agricultural and livestock products and other areas, in the development of key industries, the landing of major projects will be supported.

SAMR Publicly Solicits Opinions on the Product Quality Law

On October 18, the State Administration for Market Regulation (“SAMR”) announced the *Notice on Soliciting Opinions on the Product Quality Law (Publicly Solicited Draft)* (“Draft Product Quality Law”), and the deadline for feedback is November 18, 2023.

The Draft Product Quality Law consists of six chapters and 111 articles, stipulating the operator’s product quality obligations, product quality supervision, quality promotion and quality infrastructure, and legal liability. It also clarifies that the State Council supervises and manages the implementation of integrated management of national product quality, in charge of the national product quality supervision and promotion. The system of product quality and safety traceability will be implemented, operators engaged in the production, sale, storage, transportation and use of products for related services of products with significant quality and safety risks shall establish a product quality and safety traceability system to ensure

that the whole process of product traceability. Any organization or individual has the right to complain and report product quality violations.

Offshore Access Requirements for NBFCs Are Reduced

On October 17, the Nation Financial Regulatory Administration issued the revised *Measures for the Implementation of Administrative Licensing Matters for Non-Bank Financial Institutions* (“Measures”), which will come into effect on November 10, 2023.

The Measures consist of seven chapters and 204 articles. The Measures adjust the entry conditions for some matters. In conjunction with the Measures for the Administration of Enterprise Group Finance Companies and the Measures for the Administration of Automobile Finance Companies, which have been revised in recent years, the Measures simultaneously adjust the conditions for the establishment of organizations and shareholders’ access and improve the conditions for access to the special business of finance companies. We will continue to expand opening up to the outside world. The Measures reduce the entry conditions for foreign institutions to acquire shares in financial asset management companies and abolish the total asset requirement for foreign financial institutions to act as contributors to financial asset management companies. The Measures promote the work of simplification and decentralization. The approval of the qualifications of the heads of financial departments and internal audit departments of financial asset management companies is canceled and replaced by an ex post facto reporting system. Also, the Measures improve the relevant administrative licensing provisions.

Pilot “Cross-border Wealth Management” Business in Guangdong, Hong Kong and Macao Greater Bay Area Has Been Further Optimized

First, the entry requirements for investors and supporting more residents of the Greater Bay Area to participate in the pilot are optimized. The Greater Bay Area expands the scope of participating organizations by adding new securities companies that meet the requirements as participating entities to provide investment products and related services to individual clients of the “Southbound Pass” and “Northbound Pass”. The Greater Bay Area also expands the scope of qualified investment products under the “Southbound Pass” and “Northbound Pass” to better meet the diversified investment needs of residents in the Greater Bay Area. The Greater Bay Area appropriately increases the quota for individual investors. The publicity and sales arrangements are optimized, and guide financial institutions to provide quality financial services to residents of the Greater Bay Area.

As a next step, the financial administrations of the Mainland, Hong Kong and Macao will revise and improve the relevant implementation rules or operational guidelines and promote the early implementation of the various initiatives. At the same time, they will continue to optimize the “Cross-border Wealth Management” business based on the pilot situation, so as to steadily and orderly promote the interconnection of the financial markets of Guangdong, Hong Kong and Macao in support of the construction of the Greater Bay Area.

Article(s)

Impact of U.S. New Semiconductor and Advanced Computing Controls Regulations on China

by Ran An

On October 17, 2023, the Department of Commerce's Bureau of Industry and Security ("BIS") issued two groundbreaking rules that have sent shockwaves through the world of international trade. These rules, with their primary focus on bolstering U.S. national security, promise to redefine the economic landscape, particularly for those with vested interests in China, and will update and expand the Export Administration Regulations ("EAR") controls designed to restrict China's access to U.S. semiconductors and related technologies, such as advanced computing chips. BIS also released a final rule that adds to the list of entities involved in the development of advanced computing items that violate U.S. national security and foreign policy interests. The new rules will be open for public comments until December 18, 2023, and will come into force on November 17, 2023, superseding the previous rules.

A. Advanced Computing Chips Rule

The Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections Interim Final Rule (the "Advanced Computing Chips Rule") adjusts the parameters established in the interim final rule (IFR) issue on by BIS on October 7, 2022 (the "October 7 IFR"). To determine whether an advanced computing chip requires a license, BIS adds new ".z paragraphs" to existing Export Control Classification Numbers ("ECCNs") to identify project types that meet or exceed certain advanced computing parameters, and removes "interconnect bandwidth" as a parameter to identify restricted chips. According to the new rule, if they exceed (i) the performance threshold set in the October 7 IFR; or (ii) a new "performance density threshold", these computing items will be restricted from export.

The Advanced Computing Chips Rule expands and clarifies licensing requirements for advanced integrated circuits ("ICs") under ECCN 3A090, applying to any destination in a specific scope: applications for permits transporting to or within Macau and destinations in Group D:5 (including China) will be reviewed on a presumption of denial basis. The new rule clarifies the scope of certain U.S. person and end-use controls while imposing stricter restrictions on licensing requirements by expanding advanced computing end-use controls and broadening the country scope of the revised Advanced Computing Foreign Direct Product ("FDP") Rule.

In addition, the Advanced Computing Chips Rule establishes a new License Exception Notified Advanced Computing ("NAC") for Consumer ICs with artificial intelligence capabilities below restrictive thresholds. It sets out new "red flag" guidance and additional due diligence requirements to assist foundries in identifying restricted chip designs from countries of concern. The Temporary General License (the "TGL") is another innovative way to allow for the integration, assembly, inspection, testing, quality assurance, and distribution of certain advanced computing projects.

B. Semiconductor Manufacturing Items Rule

The Export Controls on Semiconductor Manufacturing Items Interim Final Rule (the “Semiconductor Manufacturing Items Rule”) removes previous ECCN 3B090 and adds restrictions on additional types of semiconductor manufacturing equipment under ECCNs 3B001 and 3B002. The new rule expands licensing requirements for semiconductor manufacturing equipment to countries other than China and Macau, as well as 21 other countries to which the United States has an arms embargo (i.e., Group D:5). To ensure that U.S. companies cannot support advanced Chinese semiconductor manufacturing, the new rule controls U.S. personnel while codifying previously existing agency guidance. It also details controls imposed under the October 7 IFR limiting the ability of U.S. persons to support the development or production of ICs at certain semiconductor manufacturing facilities (“fabs”) in China.

C. Impact on China

China’s tech sector, characterized by rapid innovation and expansion, now finds itself at a crossroads. The new export controls are particularly threatening to the semiconductor industry, where Chinese companies have made significant strides. These firms may face challenges in obtaining critical components, impacting their supply chains and potentially jeopardizing their competitive edge in the global market. Global supply chains have long relied on China for manufacturing and assembly. The new regulations are poised to disrupt these intricate networks. Companies must now reevaluate their supply chain strategies and consider diversification as a means to mitigate risks associated with these disruptions. The ripple effects will be felt across industries, from consumer electronics to automotive manufacturing.

Navigating this evolving landscape requires a nuanced understanding of export control regulations and compliance. Both U.S. and Chinese companies need to be acutely aware of their obligations and potential legal challenges that may arise. Engaging legal experts is paramount to navigating these intricate waters, minimizing risks, and ensuring compliance with the new rules. China’s economy, closely intertwined with global trade, will feel the reverberations of these rules. Reduced exports, challenges for foreign investments, and the potential slowing of economic growth are among the economic consequences. Industries from manufacturing to technology will grapple with the impacts, necessitating adaptive strategies to survive in the changing climate.

D. Conclusion

In the face of these monumental changes, businesses must adopt a forward-thinking approach. Diversifying supply chains, enhancing trade security measures, and proactively seeking legal counsel for compliance and risk management are crucial strategies for navigating the evolving landscape.

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