中国(广东)自由贸易试验区深圳前海蛇口片区

法律法规政策汇编

Compilation of Laws, Regulations and Policies for China (Guangdong) Pilot Free Trade Zone Qianhai & Shekou Area of Shenzhen

中国(广东)自由贸易试验区深圳前海蛇口片区管理委员会深圳市前海深港现代服务业合作区管理局深圳市律师协会深圳市前海数据服务有限公司





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前海蛇口自贸片区简介

一、区域概况

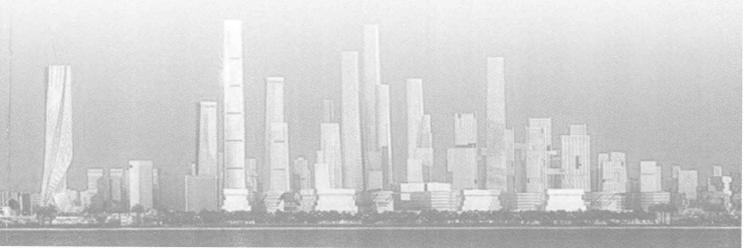
中国(广东)自由贸易试验区深圳前海蛇口片区总面积28.2平方公里,分为前海区块15平方公里(即前海深港合作区范围)和蛇口区块13.2平方公里。其中,前海深港合作区全称为前海深港现代服务业合作区,位于珠江口东岸,南头半岛西侧,土地面积14.92平方公里,共有三大片区:桂湾片区、前湾片区和妈湾片区,规划就业岗位65万个、居住人口15万人,建筑面积2600-3000万平方米;蛇口全称原为招商局集团蛇口工业区,是我国改革开放发源地,是深圳早期开发开放的主要试验区域。

二、历史沿革

"前海概念"于 2008 年国家发改委会同广东省编制珠三角规划纲要(2008-2020)时提出; 2009年,粤港合作联席会议第 12 次会议上,深圳与香港签订了关于推进前海深港现代服务业合作的意向书,前海开发正式提出; 2010年 1月,习近平同志作出批示,要求高度重视前海开发开放,明确由国家发改委牵头编制前海发展总体规划; 2010年 8月 20日,温家宝总理亲临前海考察; 2010年 8月 26日,国务院正式批复《前海深港现代服务业合作区总体发展规划》。2011年 3月,前海开发开放正式纳入国家"十二五"发展规划; 2012年 6月 27日,国务院发布《关于支持深圳前海深港现代服务业合作区开发开放有关政策的批复》,共 22条,构建了比经济特区更加特殊的先行先试政策体系; 2012年 12月7日,习近平总书记视察前海,强调要"依托香港,服务内地,面向世界", 这是习近平总书记上任后到地方视察的第一站; 2014年 12月 31日,国务院正式批复前海蛇口纳入中国(广东)自由贸易试验区; 2015年 4月 21日,中国(广东)自由贸易试验区正式挂牌运作; 2015年 10月 30日,中央政治局常委、国务院副总理张高丽视察前海蛇口自贸片区,他说: "你们于得很好!"

三、发展定位

根据《前海总体发展规划》,前海深港合作区的战略定位为:现代服务业体制机制创新区、现代服务业发展集聚区、香港与内地紧密合作的先导区、珠三角地区产业升级的引领区。重点发展金融、现代物流、信息服务、科技服务及其他专业服务四大产业。根据《中国(广东)自由贸易试验区总体方案》,前海蛇口片区重点发展金融、现代物流、信息服务、科技服务等战略性新兴服务业,建设我国金融业对外开放试验示范窗口、世界服务贸易重要基地和国际性枢纽港。



深圳市律师协会简介

深圳市律师协会是依照《中华人民共和国律师法》和相关法律成立的行业自律性组织,是由深圳市全体律师组成的社会团体法人,受深圳市司法行政机关的指导、监督和上级律师协会的指导,依法对深圳律师实施行业管理。

依法取得律师执业证书,在深圳市注册的执业律师为深圳律协的个人会员;深圳市依法设立的 律师事务所、法律援助机构、外地律师事务所在本市设立的分所为本会的团体会员。

深圳律协的主要宗旨是:提高律师的执业素养,维护律师的合法权益,加强行业自律。其主要职责包括制定律师业发展规划和律师执业规范,支持律师依法执业;负责律师职业道德和执业纪律的教育和督查,开展律师的交流培训活动;协调律师与立法、司法、行政机关的关系;宣传律师工作、举办律师福利事业等。

律师代表大会是深圳律协的最高权力机构,理事会是律师代表大会闭会期间的常设机构,由律师代表大会选举产生。

目前设置专门委员会 20 个:律师权益保障委员会、行业发展战略委员会、法治深圳促进委员会、公益委员会、会员与律师代表工作委员会、参政议政促进委员会、文体与福利工作委员会、实习人员工作委员会、女律师工作委员会、律师文化建设与规则委员会、财务与资产管理委员会、律师事务所管理与合作促进委员会、前海发展战略工作委员会、国际与港澳台工作委员会、司法改革促进委员会、青年律师工作委员会、宣传与公共关系委员会、职业培训委员会、业务创新与发展委员会、律师职业道德与纪律委员会。

律师协会设有秘书处,是协会的执行机构,负责具体落实律师代表大会、理事会和会长办公会议 的各项决定,承担协会的日常工作。

截至 2017 年 2 月 28 日, 我市现有执业律师 10452 人, 实习律师 2256 人。其中男性律师 6854 人, 女性律师 3598 人;全市共有律师事务所 677 家,其中,本市所 605 家,外地分所 72 家。



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序言一

前海是国家目前批复的唯一一个中国特色社会主义法治建设示范区。这是一块金字招牌,赋予前海法治建设"创新、先导、引领和示范"的崇高使命。前海要打造高水平对外开放门户枢纽,建设成为中国自贸区新标杆,法治是核心竞争优势和主要驱动力。完善法治化营商环境,核心内容是制定一套切实可行、接轨国际的贸易规则体系,实现投资贸易的便利化;建立一套对接国际的权利保护机制,包括对交易、产权、资产等的平等保护,让规则公平、透明、可预期,增强市场主体的安全感。通过近几年的努力,前海法治建设和创新取得重大突破,适应现代服务业发展的法律法规政策框架体系初步形成。本汇编正是几年来前海改革创新的制度化结晶。

在肯定成绩的同时,我们也应清醒地认识到,前海的法治建设任重而道远,需要进一步加强顶层设计,深化完善基本体系,突破瓶颈、疏通堵点、激活全盘,聚焦商事制度、贸易监管制度、金融开放创新制度、事中事后监管制度等,率先形成法治化、国际化、便利化的营商环境,加快形成公平、统一、高效的市场环境。要特别注重在推进投资贸易便利化方面,形成与国际经贸规则接轨的"前海表达";在金融创新方面,形成打通境内与境外的"前海方案";在法治人才创新方面,形成制度化、体系化的"前海模式"。用我们的特色试验丰富全局和拓展大局,推动前海法治水平的不断提升,努力使前海的法治建设、法治创新成为中国推进全面依法治国的风向标!

是为序。

深圳市委常委、广东自贸区前海蛇口片区管委会主任 田 夫

序言二

2015年4月27日,深圳前海蛇口自贸片区正式挂牌成立,成为国内首个也是唯一的"自贸试验区+深港合作区+保税港区"三区叠加片区。前海蛇口自贸片区准确把握历史机遇,借助深圳市场化、法治化和国际化的优势与经验,整合深港两地资源,集聚全球高端要素,着力打造深港澳合作新平台和我国自贸区新标杆,目前已成为我国发展最快、效益最好的区域之一。

前海也是国家目前批复的唯一一个中国特色社会主义法治示范区,经过近几年的大胆探索、先行先试,前海蛇口片区发展的法治路径日益清晰,法治建设、法治创新取得重大突破,法治化营商环境正在成为片区发展的核心竞争力和主要驱动力。

全面、公开、透明的法律法规政策制度是衡量一个区域法治化营商环境的重要标志。近年来,全国人大、国务院、国家部委以及省、市陆续发布一系列有关前海蛇口自贸片区的法律法规政策,确保了自贸区重大改革"于法有据"。为此,我们与深圳市律师协会合作,共同整理出版《中国(广东)自由贸易试验区深圳前海蛇口片区法律法规政策汇编》,着眼金融、现代物流业、信息服务业、科技服务业等前海重点发展的现代服务业产业,从综合、产业、配套三大板块,全面系统梳理了与国际经贸规则对接的贸易投资便利化、金融改革创新、服务贸易进一步开放等方面的法律法规政策,形成了全面、权威、及时的中英文双语汇编,以便广大投资者和社会公众进一步了解前海蛇口自贸片区法治化、国际化、便利化的营商环境。

最后,希望以《中国(广东)自由贸易试验区深圳前海蛇口片区法律法规政策汇编》的出版为契机,前海蛇口自贸片区的法治建设再上新台阶,朝着建设中国特色社会主义法治示范区的目标继续阔步前进!

此为序。

深圳市政府党组成员、前海深港现代服务业合作区管理局局长 杜 鹏

序言三

作为广东三大自贸片区之一,前海蛇口自贸片区在新一轮的改革创新中肩负着建设"中国特色社会主义法治示范区"的历史使命。近两年来,前海对标国际化、法治化、市场化的营商环境,对标国际先进贸易投资的规则,在司法体制改革、法治管理创新、法律服务业与经济产业深度融合方面迈出了一大步,很多经验和意见上升为法规制度,被自贸区"基本法"——《中国(广东)自由贸易试验区条例》所吸收。司法局也联合以深圳市律师协会为代表的法律业界,在前海建设合伙联营律师事务所、蓝海法律查明中心、全球法律服务联盟、国际知名律所办事处,积极创建专业、高端、便利的法律服务体系,打造前海法治"大模样"。法治与改革并行已成为前海开发开放的独特优势。

本书由广东自贸区前海蛇口片区管委会、深圳市前海深港现代服务业合作区管理局与深圳市律师协会携手合作,紧密结合前海蛇口自贸片区三大功能区:海湾保税港区、深圳西部港区、蛇口商务区的特点,较全面地收集、整理了常用法律法规和政策规定,有24名不同专业领域的资深律师参与了编辑、翻译,主要内容涵盖银行、证券、保险、基金、投资、融资租赁、保理、互联网金融、小额贷款等的诸多产业,非常具有实用价值,极大地满足了前海企业发展的法治需求!

在此,期望再接再厉,司法局也将全力配合,对重点海外投资企业所在国的法治营商环境进行评估,促进国际化的法律事务联系与协作,努力做到"深圳的企业走到哪里、法律服务就跟到哪里"。

深圳市委委员,市司法局党委书记、局长 蒋溪林

序言四

由本会与前海管理局合作的《中国(广东)自由贸易试验区深圳前海蛇口片区法律法规政策汇编》(以下简称《汇编》),经由法律出版社公开出版,今天终于正式面世。该《汇编》含中英文两版,中文60万字,由我会组织专业律师编纂并负责翻译工作,前海管理局提供相关支持,前后历时两年。期间合作洽谈、沟通联络、整理编纂、翻译校对、出版发行,所涉工作浩繁巨轶,确实耗费了合作各方及参与人员的大量时间和精力。

相信本《汇编》对于全面梳理前海蛇口自贸区法律规章体系,包括就有关自贸区的政策起源与发展脉络,应可谓纲要总结之作。目的在于能够全面了解作为集现代服务与社会主义法治示范区于一体的前海自贸区法治文本的概要综述,进而厘清自贸区发展的基本面,尤其是法治进程中取得的成果以及需要不断完善的方方面面。除此之外,对于了解自贸区的运作情况,以及涉及前海蛇口自贸区的深港合作、商贸投资、金融资本、法律服务等具体事项,相信也有着指引和参考作用。

如果本《汇编》确实对前海自贸区社会主义法治示范区建设以及相关工作方面有所启 迪或裨益,那说明我会全力参与这项工作预如所期。在此要特别感谢前海管理局给予我会 的信任和支持,感谢法律出版社鼎力出版发行。当然,也要对参与编纂的律师同仁们所付 出的辛勤努力表达谢忱和敬意。

深圳市律师协会会长 高 树

Preface I

Qianhai is currently the only state-approved demonstration zone for developing the socialist rule of law with Chinese characteristics, which is a gold standard with a noble mission of "innovation, pioneering, guidance and demonstration" to Qianhai. The rule of law is a core competitive advantage and major driving force to develop Qianhai into a high-level gateway hub to the outside world and a new model of free trade zones in China. The core of optimizing the business environment under the rule of law is to develop a feasible and international trade rule system for investment and trade facilitation, and to establish an international right protection mechanism (including equal protection of transactions, property rights and assets) for fair, transparent and predictable rules to strengthen market players' sense of security. With years of efforts, Qianhai has achieved a major breakthrough in development and innovation in the rule of law, and the framework of laws and regulations adapted to the development of the modern service industry has taken shape. This compilation is the institutional crystallizations of Qianhai reform and innovation.

While affirming achievements, we understand that Qianhai still has a long way in developing the rule of law. We need to strengthen top-level design, perfect the basic system, break through the bottleneck, clear obstacles, activate the whole system, focus on commercial system, trade supervision, financial system of opening and innovation, during-event & post-event supervision and so on, take the lead in creating a law-governed, international and convenient business environment, and quicken our pace to create a fair, uniform and efficient market environment. As for promoting investment and trade facilitation, we should form "Qianhai expressions" in line with international trade rules. As for financial innovation, we should develop "Qianhai plans" that connect domestic and overseas. As for legal talent innovation, we should develop an institutional and systematic "Qianhai model". To sum up, we should enrich and expand the overall situation with our characteristic pilot programs, and continuously advance the development of rule of law in Qianhai so that development and innovation in the rule of law in Qianhai will become a pilot for comprehensively advancing the rule of law in China.

This is the prologue of this book.

Tian Fu,

Member of Standing Committee of Shenzhen Municipal Party,
Director of Guangdong Pilot Free Trade Zone
Qianhai Shekou Area Management Committee

Preface II

On April 27th, 2015, Shenzhen Qianhai Shekou Free Trade Zone was founded and became the first and only integrating pilot free trade zone, Shenzhen-Hong Kong cooperation zone and bonded port in China. Qianhai Shekou Free Trade Zone grasps the historical opportunity and takes advantage of marketization, legalization and internationalization in Shenzhen to integrate resources with Shenzhen and Hong Kong, aggregate global high-end factors, and vigorously forge a new Shenzhen-Hong Kong-Macao cooperation platform and a new post of free trade zones in China. So far, Qianhai Shekou Free Trade Zone has become one of the fastest growing and the best beneficial zones in China.

Qianhai is also the only state-approved demonstration zone for developing the socialist rule of law with Chinese characteristics. With years of bold explorations and pioneering, Qianhai Shekou Free Trade Zone has found a path to rule of law clearly, and achieved a major breakthrough in development and innovation in the rule of law. The business environment under the rule of law is becoming a core competitiveness and major driving force for the development of Qianhai Shekou Free Trade Zone.

Comprehensive, open, and transparent system of laws, regulations and policies are an important mark to measure the business environment under the rule of law. In recent years, the National People's Congress, the State Council, national ministries and commissions, as well as provincial and municipal governments have issued a series of laws, regulations and policies relate to Qianhai Shekou Free Trade Zone, ensuring the legal basis for the major reforms in the zone. For this purpose, we have collaborated with Shenzhen Lawyers Association to systemize and publish the *Compilation of Laws*, *Regulations*, *and Policies for China* (*Guangdong*) *Pilot Free Trade Zone Qianhai Shekou Area of Shenzhen*. The book focuses on the modern service industries prioritized in Qianhai, including finance, modern logistics, information service, science and technology service industries, comprehensively and systematically summarizing laws, regulations and policies on trade and investment facilitation, financial reform and innovation, and further opening of trade in services in line with international economic and trade rules in three sections that detail general information, industries and supporting services. This Chinese-English compilation features comprehensiveness, authoritativeness and impeccable timing, offering investors and the public more knowledge about the international and convenient business environment under the rule of law in Qianhai Shekou Free Trade Zone.

I hope that the publication of the Compilation of Laws, Regulations, and Policies for China (Guangdong) Pilot Free Trade Zone Qianhai Shekou Area of Shenzhen can be an opportunity to motivate the development of rule of law in Qianhai Shekou Free Trade Zone to a next level and continue our efforts to make the zone as a demonstration zone for the socialist rule of law with Chinese characteristics.

This is the prologue of this book.

Du Peng,

Party Member of Shenzhen Municipal Government,
Director of Administration for Qianhai Shenzhen-Hong Kong
Modern Service Industries Cooperation Zone

Preface III

As one of the three free trade zones in Guangdong Province, Qianhai Shekou Free Trade Zone has a mission of becoming a "demonstration zone for developing the socialist rule of law with Chinese characteristics" in the next round of reform and innovation. In the last two years, based on the international and market-driven business environment under the rule of law as well as international advanced trade and investment rules, Qianhai has taken a big step in deep integration of the judicial system reform, management innovation under the rule of law, the legal service industry and the economy industry, during which experience and opinions have been developed into regulations and systems incorporated into the "basic law" of the zone, the *Regulations for China* (*Guangdong*) *Pilot Free Trade Zone*. Shenzhen Municipality Justice Bureau and the legal industry represented by Shenzhen Lawyers Association have jointly established affiliated partnership law firms, Institution for Discerning Law of Benchmark Chambers International, Global Legal Service Alliance and offices of world renowned law firms in Qianhai, vigorously developing a professional, high-end, and convenient legal service system for a "large environment" under the rule of law in Qianhai. Concurrence of developing the rule of law and reform has become a unique advantage for development and opening in Qianhai.

Collaborated by the Management Committee of Shenzhen Qianhai Shekou Area of China (Guangdong) Pilot Free Trade Zone, Authority for Qianhai Shenzhen-Hong Kong Modern Service Industries Cooperation Zone and Shenzhen Lawyers Association, this book comprehensively collects and systemizes common laws, regulations, and policies based on characteristics of the three functional zones of Qianhai Shekou Free Trade Zone: Haiwan Bonded Port, Shenzhen Western Port, and Shekou Business District. There are 24 senior lawyers specializing in different fields participated in editing and translation. Covering banking, securities, insurance, fund, investment, finance leasing, factoring, Internet financing and petty loan, the book is practical and perfectly caters to the development needs of Qianhai enterprises under the rule of law!

Hereby, wish we continue with the persistent efforts and Shenzhen Municipality Justice Bureau will cooperate in evaluating business environments of countries with key overseas Chinese enterprises to promote the association and collaboration of international legal affairs, so that our legal services would be offered wherever Shenzhen enterprises were.

Jiang Xilin,
Member of Shenzhen Municipal Party Committee,
Secretary of the Party Committee and Director of
Shenzhen Municipality Justice Bureau

Preface IV

The Compilation of Laws, Regulations, and Policies for China (Guangdong) Pilot Free Trade Zone Qianhai Shekou Area of Shenzhen (hereinafter referred to as "Compilation") co-authored by Shenzhen Lawyers Association and Qianhai Authority has published by China Law Press eventually. This Compilation is in Chinese and English versions, composed of 600,000 Chinese characters. With supports from Qianhai Authority, professional lawyers arranged by Shenzhen Lawyers Association have spent two years to compile and translate. In these two years, all parties and participants have spent a lot of time and energy on negotiation regarding on cooperation, communication, liaison, sorting, summarization, compiling, translating, proofreading and publication.

I believe that this Compilation is an essence and summarization that comprehensively systemizes laws and regulations in Qianhai Shekou Free Trade Zone, including the origin and history of policies. The Compilation aims to fully understand the collection of modern service and socialist of free trade zones of rule of law in Qianhai Free Trade Zone, clarify the fundamentals factors of free trade zone, especially the rule of law achievements and all aspects that need constantly improvements in the process. In addition, we believe this book also can be guidance and reference to understand the operation in free trade zone, as well as the Shenzhen-Hong Kong cooperation, trade, financial investment, financial capital, legal service and so on.

If this Compilation enlightens and benefits for the construction and other related work of Qianhai demonstration zone, it means our fully engagement has achieved our purposes. I hereby want to express my gratitude to Qianhai Authority for its trust and supports, and China Law Press for publication. I also want to express my deep gratitude and pay a tribute to lawyers for their hard working during the compilation.

Gao Shu, President of Shenzhen Lawyers Association

前言

前海蛇口开发作为新时期推进现代服务业开放的重要窗口,已经上升为国家发展战略,目标是将前海蛇口打造成为集金融、现代物流、信息服务、科技与其他专业服务等现代服务业的高端集聚区,发展为特区中的特区。

前海的发展最重要的是建立良好的法制环境,这是前海成败的关键!为此,广东自贸区前海蛇口片区管委会、深圳市前海深港现代服务业合作区管理局、深圳市律师协会共同联合出版本书,深圳市律师协会的律师同仁们付出了艰辛的劳动、倾注了汗水,将截至2015年12月31日^①涉及前海蛇口经济发展各个方面的法律法规及政策汇编成册并组织进行翻译、校对。本书涵盖了前海蛇口发展的多个产业,主要分为六大篇幅,分别是综合篇、金融产业篇、现代物流产业篇、信息服务产业篇、科技服务产业篇及配套制度,其中金融产业篇涵盖了银行、证券、保险、基金、投资、融资租赁、保理、互联网金融、小额贷款等多个方面。

前海蛇口开发战略给深圳律师行业带来了前所未有的发展机遇,但另一方面,前海蛇口的法律建设也面临诸多挑战,包括熟悉香港相关法律制度及国际规则与国际惯例的挑战、高端产业对法律服务高要求的挑战、面临香港律师业务竞争的挑战、以英语提供法律服务的挑战等。深圳律师虽地处粤港澳地带,但业务领域依旧主要集中在传统的民商事纠纷,对于金融、证券等高端法律业务虽有涉及,但主要为国内业务,对于涉外金融、证券、跨国并购、投融资等高端法律业务涉及较少,提供法律服务面临巨大挑战。希望本书中对前海发展相关的法律法规及相关政策的汇编能为前海蛇口的法律服务提供更多便利。

本书在出版的过程中集结了深圳优秀律师的智慧和心血。律师,是一群追求完美的门徒。尽管世上不存在完美,却不能阻挡追求者的脚步,毕竟,内心的安宁是无止境的。书中难免会存在一些不足,期待广大读者提出宝贵的意见。

编委会

① 其中《网络借贷信息中介机构业务活动管理暂行办法》(银监会令[2016]1号)、《深圳市重点物流企业认定管理办法》(深交[2016]494号)及《外商投资电信企业管理规定》(国务院令第666号)在2016年进行了修订,本书已作相应更新。

Introduction

As an important window to promote the opening up of the modern service industries in the new era, the development of the Qianhai Shekou Free Trade Zone has become a national development strategy. The strategy aims to forge the Qianhai Shekou Free Trade Zone into a high-end, special cluster of modern service industries, integrating finance, modern logistics, information, sci-tech, and other professional services, and a special zone among free trade zones.

The most important thing for the development of Qianhai is to create a good legal environment. This is the key to success. For that reason, the Authority of Shenzhen Qianhai Shekou Area of China (Guangdong) Pilot Free Trade Zone, Authority of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone and Shenzhen Lawyers Association have jointly published this book. Shenzhen Lawyers Association has organized professional lawyers to pour into the sweat to work hard to compile, translate and proofread this book of laws, regulations, and policies relating to all aspects of the economic development of the Qianhai Shekou Free Trade Zone as of December 31, 2015. This book covers laws, regulations, and policies of multiple industries developing in the Qianhai Shekou Free Trade Zone and includes six chapters: General, Financial Industry, Modern Logistics Industry, Information Service Industry, Science Service Industry, and Other Industries. The chapter "Financial Industry" covers laws and regulations for banking, securities, insurance, funds, investment, finance leasing, factoring, Internet finance, and micro-credit.

The development strategy of Qianhai Shekou Free Trade Zone has brought unprecedented opportunities as well as many challenges to Shenzhen lawyers, such as the Hong Kong and Foreign legal system, international rules and practices, the high demand of high-end industries for legal services, competition among foreign lawyers, and the offering of legal services in foreign languages. Although Shenzhen is located in the Guangdong-Hong Kong-Macao belt, Shenzhen lawyers have not engaged in many foreign businesses. They offer finance, securities, and other high-end legal services, but these services are mainly for domestic affairs rather than foreign affairs relating to finance, securities, transnational M&A, financing, or investment. We hope that this book can provide more references for and facilitate Shenzhen lawyers to offer legal services in the Qianhai Shekou Free Trade Zone, and contribute to the construction of a good legal environment in the Qianhai Shekou Free Trade Zone.

The publication of This book includes a Chinese version and an English version. Its publication is the result of the wisdom and effort of excellent lawyers in Shenzhen. Due to limited time and energy, shortcomings in our work are inevitable and that's why we look forward to hearing your valuable opinions.

Editorial Board

① The Interim Measures for the Administration of Business Activities of Online Lending Information Agencies (Order No. 1 [2016] of the China Banking Regulatory Commission), the Administrative Measures for Accreditation of Key Logistics Enterprises of Shenzhen (Shen Jiao [2016] No. 494), and the Provisions on Administration of Foreign-Funded Telecommunication Enterprises (Order No. 666 of the State Council of the People's Republic of China) have been revised in 2016, and this book has been updated accordingly.

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