

China Insight



PRC Supreme People's Court Enacts New Document to Unify Standards for Application of Laws

Dear Sir or Madam,

On 1 December 2021, the Supreme People's Court of the People's Republic of China released, with immediate effect, the Implementing Measures for the Unified Application of Laws ("Implementing Measures"). The Implementing Measures aim to unify the standards of application of laws by the PRC People's Courts. Please find below an overview of the Implementing Measures.

Kind regards,

CMS, China

On 1 December 2021, the Supreme People's Court ("**SPC**") of the People's Republic of China ("**PRC**") released, with immediate effect, *the Implementing Measures for the Unified Application of Laws* ("**Implementing Measures**").

The *Implementing Measures* consist of 20 articles to unify the standards of application of laws by the SPC and focus on 5 aspects, namely (1) general regulations on the unified application of laws, (2) further clarification on the circumstances and scope of "similar legal case retrieval" ("**SLCR**") which is an information search task aiming to retrieve supporting cases for a query case, (3) further classification on the scope of cases to be discussed on professional judges' meetings of the People's Courts ("**Professional Judges' Meetings**"), (4) improvement of resolving specific application of laws issues, and (5) construction of a platform for unified application of laws and its database.

1. General regulations on the unified application of laws

Since the promulgation of the *Provisions of the SPC on Guiding Cases Works* (effective as of 26 November 2010) which introduced the SPC guiding cases, several measures and opinions have been further released by the SPC on application of laws, such as the *Implementing Measures of the SPC for Establishing the Mechanism for Resolving Law Application Differences* (effective as of 28 October 2019), the *Guiding Opinions of the SPC on Unifying the Application of Laws and Strengthening the Retrieval of Similar Case (for Trial Implementation)* (effective as of 31 July 2020, "**Guiding Opinions**"), the *Opinions of the SPC on Perfecting the Working Mechanism of Unifying Standards for Application of Laws* (effective as of 14 September 2020) and the *Guiding Opinions on Perfecting the Working Mechanism of the Professional Judges' Meeting of People's Courts* (effective as of 12 January 2021, "**Guidelines for Professional Judges' Meetings**") (jointly referred to as the "**Previous SPC Documents**"), to improve the predictability and uniformity of court decisions in the PRC. The *Implementing Measures* now consistently regulate the unified application of laws in general.

According to Article 1 of the *Implementing Measures*, "unified application of laws" means various work of the People's Courts including the SPC to promote the unified and correct implementation of the laws, including drafting and making of judicial interpretations or other normative documents, publication of law cases,

implementation of an SLCR system, convening Professional Judges' Meetings for case discussions, etc. The *Implementing Measures* reiterate the basic requirements for unified application of laws in order to ensure that the normative guidance of judicial interpretations and cases is fully implemented.

2. Further clarification on the circumstances and scope of SLCR

The *Implementing Measures* clarify the circumstances and scope of SLCR as well as the specifications for the production of SLCR instructions or reports. They also strengthen the requirements of the SLCR system in order to promote the principle of "same judgment for all similar cases / 类案同判".

a) When to conduct SLCR

Article 6 of the *Implementing Measures* adds four more circumstances for conducting SLCR. A judge handling a case shall now conduct SLCR under the following circumstances:

- (1) where the case is to be submitted to the adjudication committee or Professional Judges' Meetings for discussion;
- (2) where there are no clear judgment rules or unified judgment rules have not yet been formed;
- (3) where the case is significant, difficult, complex or sensitive;
- (4) where the case involves multi-party disputes or has aroused widespread social concern and, thus, may affect social stability;
- (5) where there is a potential conflict with the SPC's ruling on similar cases;
- (6) where the relevant unit or individual reports that the judge has acted in violation of the law in the trial;
- (7) where the Supreme People's Procuratorate has lodged a protest against a court judgement;
- (8) where, during the trial, the public prosecution, the parties and their advocates or litigants submit guiding cases or decisions of the SPC in force in similar cases to support their claims; or
- (9) where the president and chief judge of a People's Court requires retrieving similar cases by using his/her authority of trial supervision and administration.

b) Scope of SLCR

Similar cases refer to cases that are similar to pending cases in terms of basic facts, focus of dispute, issues concerning the application of laws, etc. and that have entered into force as judged by People's Courts. According to Article 4 of the *Guiding Opinions*, four kinds of resources shall be subject to SLCR, i.e.

- (1) guiding cases released by the SPC;
- (2) typical cases released and cases with effective judgments rendered by the SPC;
- (3) cases released for reference and cases with effective judgments rendered by the Higher People's Courts on the provincial level; and
- (4) cases with effective judgments rendered by the handling People's Court or its superior People's Court at the next higher level.

The *Implementing Measures* have now modified the *Guiding Opinions* and stipulate that the sources of SLCR can be limited to guiding cases released by the SPC and cases with effective rulings and judgments rendered by the SPC. I.e., typical cases released by the SPC do not need to be subject to the SLCR.

(For information: "typical cases" are those cases which have a significant social impact and a typical meaning and are, therefore, released by the SPC from time to time for reference of all People's Courts when they are hearing similar cases. "Guiding cases" are also typical cases which, however, are determined by the SPC to have a specific guiding function. All People's Courts must follow the guiding cases released by the SPC when hearing similar cases.)

c) Description or report on SLCR

According to Article 7 of the *Implementing Measures*, the handling judge shall include a description of the relevant SLCR in the trial report or produce a special report on SLCR. The description or the report on SLCR shall objectively, comprehensively and accurately reflect the results from the SLCR and shall be filed with the case archives. In addition, when a case has undergone the SLCR as regulated under Article 6 of the *Implementing Measures*, the collegiate bench of the SPC (the "**Collegiate Bench**") shall include the standards of the unified application of laws into the scope of its deliberation of the case.

Such description and report requirements are not new and have already been regulated in the *Guiding Opinions*. According to Articles 7 and 8 of the *Guiding Opinions*, further, the SLCR description or report shall include the subject, time, platform, method and result of the SLCR, the main points of the judgment on similar cases, the controversial focus of the pending case, etc.

3. Further classification on the scope of cases to be discussed on Professional Judges' Meetings

According to the *Guidelines for Professional Judges' Meetings*, a Professional Judges' Meeting is an internal working mechanism of the People's Courts to provide advice to its trial departments and its Presidents of the Court (including the trial committees). Professional Judges' Meetings are for discussions on application of laws in a case or application of rules of evidence that are highly relevant to the determination of facts.

a) Cases subject to discussion by the Professional Judges' Meeting

According to the *Guidelines for Professional Judges' Meetings*, under 5 kinds of circumstances, cases shall be submitted to the Professional Judges' Meeting for discussion purpose, i.e.

- (1) where a single-judge court considers it necessary,
- (2) where a majority opinion cannot be formed within the Collegiate Bench, or where a judge holding a minority opinion considers it necessary,
- (3) where the unified application of laws is necessary,
- (4) where the case falls into the scope of Article 24 of the Opinions of the Supreme People's Court on Improving the System of Judicial Accountability of People's Courts, and
- (5) where it is necessary in other circumstances.

Now, Article 9 of the *Implementing Measures* further clarifies that, when a case to be decided is similar to the case retrieved from the guiding case in terms of basic facts and application of laws, the Collegiate Bench shall refer to the guiding case for its decision. However, in such case, the guiding case shall be cited as a reason for the decision but not a basis for the decision. Where the guiding case is cited in the reasons for decision, the serial number of the guiding case shall also be indicated.

Further, where the proposed outcome of a pending case is inconsistent with the guiding cases or the standards for the application of the laws in the SPC's similar case decisions, or where the proposed outcome of a decision will create new standards for the application of the laws, such cases shall also be submitted to the Professional Judges' Meeting or the Judicial Committee of the SPC ("**Judicial Committee**") (when it is not suitable for discussion at Professional Judges' Meetings for reasons such as confidentiality) for discussion.

b) The set-up of an inter-departmental Professional Judges' Meeting mechanism of the SPC

In addition, according to Articles 11 and 12 of the *Implementing Measures*, the SPC shall establish and improve the mechanism of inter-departmental Professional Judges' Meetings to study and resolve inter-departmental differences in the application of law or major problems in the application of laws across fields. All discussion records and meeting minutes of Professional Judge's Meetings shall be filed jointly with the relevant cases.

4. Improvement of resolving specific issues of application of laws

The *Implementing Measures* also intend to improve the SPC's resolution of issues of application of laws by the Judicial Committee.

According to Articles 13 and 14 of the *Implementing Measures*, each trial department of the SPC shall analyze and study the cases in which the Collegiate Bench hold different decisions as the Professional Judges' Meetings or decisions of the Judicial Committee, sort out and summarize the problems of any inconsistent and unclear

application of laws in trial and execution practice. The Trial Management Office of the SPC shall discover, collect and collate the problems of inconsistent and unclear application of laws in a timely manner through case quality assessment and letters from the public. Concerning inconsistent and unclear application of laws, the Trial Management Office of the SPC may organize research in various forms, propose solutions to be submitted to the Judicial Committee of the SPC for discussion, and clarify specific rules of adjudication in the form of trial committee resolutions on the application of laws, etc.

5. Construction of a platform for unified application of laws and its database

The *Implementing Measures* further stipulate the requirements for the construction of a platform for unified application of laws and a related case database to enhance the level of technology application in unifying application of laws. Such platform and database aim at enhancing the level of technology application in unifying application of laws and regulating the exercise of discretionary power of judges and solving practical difficulties of judges (e.g. they do not need to conduct SLCR on cases that have been amended or revoked).

According to Articles 16 and 17 of the *Implementing Measures*, after the relevant ruling documents of the guiding cases issued by the SPC, cases of second instance, retrial cases, petition cases, execution review supervision cases, cases discussed by the Professional Judges' Meetings, compensation committees, judicial relief commissions, judicial committees of the People's Courts, and other typical cases of general guidance (excluding death penalty cases) have been made public online, they shall also be compiled and be incorporated into the database of the platform for unified application of laws. Cases shall be removed from the database when they are no longer of general guidance or reference value or be timely updated when they have been reversed or set aside.

6. Conclusion

With the promulgation of the *Implementing Measures* and the construction of a unified application of laws platform and its case database, the guiding cases released by the SPC and cases with effective rulings and judgments rendered by the SPC tend to play a more and more important role in the court trial proceedings of the SPC and all other People's Courts at lower levels. With the unified application of laws, more and more legal issues are expected to be interpreted or clarified by the SPC in a more unified and professional way, which shall have positive impacts on solving legal disputes in strict accordance with PRC law and generally on enhancing the PRC legislative and judicial system.

It will, however, be in our view difficult for the public to monitor the status of the implementation of the *Implementing Measures* because they mainly regulate the internal routine work of the SPC and other People's Courts. Therefore, it will be particularly important and recommendable for legal professionals including inhouse counsels to regularly check published guiding cases, rulings and judgments to identify any development or tendency in the PRC law from the practice perspective in their respectively relevant industrial sectors.

In case you have questions or for further information, please contact the authors of this newsletter:



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