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New Guiding Opinion from the Supreme People's Court of the PRC: judicial precedents to play a more important role in the PRC's future legal practices

Abstract

This article provides the readers with an update on the recent provisional guidance issued by the Supreme People's Court of the PRC ("SPC") titled Guiding Opinion Concerning Strengthening Search for Similar Cases to Unify the Application of Law (for Trial Implementation) ("SPC New Guidance") which marks the latest movement in the PRC judicial reform to establish a case search system and advocate the practice of following the legal principles derived from prior judicial precedents.

I. Introduction

The People's Republic of China (PRC) has a civil law system that is largely based on statutory law rather than case law. Unlike the common law system where the judicial precedents of the high-level courts have binding force on the lower level courts' decisions, the courts under the civil law system are not usually bound by judicial precedents. In order to unify the interpretation of laws, the SPC has issued judicial practice notices to guide the lower courts when interpreting the laws.

Although the PRC has a civil law system, it is noteworthy that the PRC has also been implementing a series of efforts to reform its judicial system. In order to fill any potential gaps between codified laws and judicial practice, the use of case precedents has been emphasized in the legal reform. The SPC issued its *Provisions on Case Guidance* in 2010 to set out how the precedents might be taken into consideration when the courts decide cases.

On 27 July 2020, the SPC issued the SPC New Guidance, which has taken effect from 31 July 2020. When the courts decide cases, judges will have to carry out relevant research and follow the judicial precedents if the conditions are met. Hence, it is expected that the judicial precedents will play an increasingly important role in the PRC's future legal practices. Lawyers are also expected to assist the courts or arbitration tribunals in respect of the relevant legal precedents in the PRC.

II. Overview of the SPC New Guidance and its practical implications

Above all, it should be stressed that the issuance of the SPC New Guidance does not mean that the PRC has become a "case law" jurisdiction. As part of the PRC judicial reform, the SPC New Guidance aims to fill the gaps between legislation and judicial interpretations by advocating the practice of following the legal principles derived from prior judicial precedents. In this respect, the SPC New Guidance is in accord with, and gives weight to, most of the existing judicial practice of the PRC courts.

1. Definition of "similar cases" and required circumstances (Articles 1 and 2)

The application of case precedents in the civil law jurisdiction is rather limited in scope and carries no direct legal binding force. According to Article 1 of the New SPC Guidance, the term "similar cases" refers to those cases which have already been adjudicated and are similar to the pending case in terms of the basic facts, the focus of the dispute and the application of law.

"Similar cases" may only be referred to in significant, difficult, or complex cases. According to Article 2 of the New SPC Guidance, there are four situations in which a search for and/or reference to a similar case is required:

- a. When a case is proposed to be submitted to a judges' meeting or adjudication committee for discussion
- b. When the relevant judicial principles or rules are unclear or conflicting
- c. When the court president or division head requires such a search under his supervision
- d. When another relevant situation requires such a search

2. Search methods and responsible individuals (Articles 3, 5, 6, 7, 8)

The judge presiding over the pending case is responsible for conducting the search for similar cases and should ensure that such a search is done accurately and properly by using either the SPC's database or another case database. The New SPC Guidance also recommends several methods for conducting the search, including but not limited to using keywords, legal provisions or some related cases.

The presiding judge should compare the search results with the pending case so as to identify whether the cases are suitably similar and whether the case precedents have referencing values for the pending case.

To improve the case search system, the New SPC Guidance also requires the presiding judge to (a) discuss particulars of the similar case search and highlight the relevant circumstances in the judges' meetings or adjudication committee, or (b) prepare a report of the similar case search for future use.

3. Search range and priority (Article 4)

Generally speaking, the similar case search shall be carried out in the following sequence, which shows priority in the application or reference:

- a. SPC guiding cases (最高院指导性案例)
- b. SPC typical cases (典型案例) and judgments or rulings of the SPC
- c. Reference cases issued by the Higher People's Court and decisions by those courts
- d. Higher-level courts and judgments of the same level court

Except for the SPC guiding cases, the priority should be given to those cases laid down in the preceding three years. If a similar case can be identified using the above order, it is not necessary to carry out further searches.

As there may be a number of similar cases that can be identified in the case search system, the above order and the three-year requirement give more certainty as to which case precedents should take priority. Also, if the parties want to submit one or more similar cases in support of their legal position, it is important to bear in mind the above order of priority.

4. The legal consequences of similar case searches (Articles 9, 10 and 11)

As aforementioned, similar cases will not have the legal binding force under the current PRC law regime. However, given that similar cases will be referred or considered by judges, such cases may be *de facto* binding in practice.

- a. According to Article 9 of the New SPC Guidance, the SPC guiding cases shall be referred to (参照) or followed in the pending case unless such guiding cases conflict with the subsequently enacted law or issued judicial interpretation. Other types of case precedents are not binding and are only relevant for the presiding judge to consider.
- b. Article 10 addresses how the courts should respond to the parties' submission of similar cases. If the procurators, parties or their representatives submit SPC guiding cases in support of their legal position, the relevant court shall state whether such SPC guiding cases are to be followed in the pending case and give reasons for their applicability. For other types of cases, the relevant court retains the discretion to simply clarify or explain whether such similar cases should be followed.
- c. Article 11 deals with situation in which the similar cases identified are inconsistent with the application of law. Such inconsistency is to be resolved by the relevant mechanism provided under the PRC law, in which the relevant court should take into consideration various factors, such as the level of court at which the similar case was judged, the date of judgment and whether the similar case was discussed by the adjudication committee.

In addition, Articles 12 and 13 propose ways to develop the similar case search system in the PRC courts, including better utilization of technology to build up case databases and organizing the case search results on a regular basis for the judges' reference.

Practicing lawyers should also be duty-bound to assist the courts and arbitration tribunals in providing the appropriate cases.

III. Conclusion

It is good to see that the PRC has been adopting reference to judicial precedents in the process of the PRC's judicial reform, which will make case results more predictable. There is no doubt that the New SPC Guidance will encourage practitioners to use similar cases and assist judges and arbitration tribunals in making more consistent judgments by referring to case precedents with similar factual matrices and application of law.

This article is substantively based on a recent Reed Smith Clients Alert written by the authors.

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