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一、最高法院：推进核心价值观融入裁判文书释法说理 2021.02.18

SPC Promotes Integration of Socialist Core Values into Interpretation and Reasoning of Judgments



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近日，最高人民法院印发《关于深入推进社会主义核心价值观融入裁判文书释法说理的指导意见》（下称《意见》），自 2021 年 3 月 1 日起施行。

Recently, the Supreme People's Court ("SPC") has issued the *Guiding Opinions on Further Promoting the Integration of Socialist Core Values into the Interpretation and Reasoning of Judgments* (the "*Opinions*") for implementation as of March 1, 2021.

《意见》全面规范了法官运用社会主义核心价值观释法说理的基本原则、基本要求、主要方法、重点案件、范围情形和配套机制等内容。其中，《意见》细分三种释法说理情形：一是有裁判依据的，先依法释明，再运用社会主义核心价值观围绕法律依据阐释理由。二是民商事案件无规范性法律文件作为裁判直接依据的，除了可以适用习惯以外，法官还应当以社会主义核心价值观为指引，以最相类似的法律规定作为裁判依据。三是案件涉及多种价值取向的，法官应当依据立法精神、法律原则、法律规定以及社会主义核心价值观进行判断、权衡和选择，确定适用于个案的价值取向，并在裁判文书中详细阐明依据及其理由。

The *Opinions* comprehensively regulate the basic principles, basic requirements, main methods, key cases, applicable circumstances and supporting mechanisms for the judges to use socialist core values for interpretation and reasoning. Among others, the *Opinions* divide the interpretation and reasoning circumstances into three types: First, if there is a judgment basis, the judges shall first interpret the judgment in accordance with the law and then use socialist core values to explain the reason based on the legal basis. Second, if there are no normative legal documents as the direct basis for judgment in a civil or commercial case, in addition to the application of usual practice, the judges shall also use the core socialist values as the guide and take the most similar legal provisions as the basis for judgment. Third, if a case involves multiple value orientations, the judges shall consider multiple factors and make judgment and decision according to the spirit of legislation, principle of legality, legal provisions, and based on socialist core values, determine the value orientation applicable to the case, and specify the basis and reason in the judgment.

(Source: <http://www.court.gov.cn/fabu-xiangqing-287211.html>)



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二、国务院反垄断委员会印发平台经济领域反垄断指南

2021.02.07

Anti-monopoly Guide for Platform Economy Sector Issued

近日，国务院反垄断委员会发布《关于平台经济领域的反垄断指南》（下称《指南》），自发布之日起实施。

Recently, the Anti-monopoly Commission of the State Council has issued the *Anti-monopoly Guide for the Platform Economy Sector* (the "Guide") for implementation from the date of issuance.

《指南》以《反垄断法》为依据，强调平台经济领域的垄断行为应当适用《反垄断法》及有关配套法规、规章、指南等，释放互联网平台不是反垄断法外之地的明确信号。《指南》与《反垄断法》的结构高度契合，由总则、垄断协议、滥用市场支配地位、经营者集中、滥用行政权力排除限制竞争和附则等六章组成，共 24 条，对涉及平台经济领域的《反垄断法》适用问题作出了较为细化的规定。

The *Guide*, formulated based on the *Anti-monopoly Law*, emphasizes that the monopolistic practices in the platform economy sector shall be subject to the *Anti-monopoly Law* and relevant supporting regulations, rules, and guidelines. The *Guide* also releases a clear signal that the Internet platform is not a place beyond the *Anti-monopoly Law*. The *Guide*, highly compatible with the *Anti-monopoly Law*, consists of 24 articles in six chapters, namely, the general provisions, monopoly agreements, abuse of market dominance, the concentration of operators, abuse of administrative power to exclude or restrict competition, and supplementary provisions. Meanwhile, the *Guide* sets out more detailed provisions on the application of the *Anti-monopoly Law* in the platform economy sector.

其中，《指南》针对近年来社会各方面反映较多的“二选一”、“大数据杀熟”等问题作出专门规定，明确了相关行为是否构成垄断行为的判断标准。具体为，一是明确“二选一”可能构成滥用市场支配地位限定交易行为；二是明确“大数据杀熟”可能构成滥用市场支配地位差别待遇行为。



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Among others, the *Guide* gives special provisions on issues that have been frequently reported by all walks of life in recent years, such as "forcing customers to choose only one of the two" and "using big data to defraud old customers", clarifying the criteria for determining whether the relevant act constitutes a monopolistic practice. To be specific, firstly, it clarifies that the act of "forcing customers to choose only one of the two" may constitute an abuse of market dominance to restrict the transactions; secondly, it makes clear that the act of "using big data to defraud old customers" may constitute an abuse of market dominance to conduct differentiated treatment.

(Source: http://gkml.samr.gov.cn/nsjg/fldj/202102/t20210207_325967.html)

三、最高法院发布新刑诉法解释 扩大诉讼代表人确定范围

2021.02.04

SPC Issues New Interpretations on Criminal Procedure Law with Scope for Determining Litigation Representatives Expanded

近日，最高人民法院公布《关于适用〈中华人民共和国刑事诉讼法〉的解释》（下称《解释》），自 2021 年 3 月 1 日起施行。

The Supreme People's Court ("SPC") has recently issued the *Interpretations on the Application of the Criminal Procedure Law of the People's Republic of China* (the "*Interpretations*"), with effect from March 1, 2021.

与以往相比，《解释》新增“认罪认罚案件的审理”“速裁程序”“缺席审判程序”三章，增加 107 条，作了实质修改的条文超过 200 条。重点如下：一、坚持以人民为中心，强化人权司法保障；二、坚持以审判为中心，有效维护司法公正；三、规范涉案财物处理，加强产权司法保护；四、做好监察法与刑事诉讼法的衔接，保持反腐败高压态势。

Compared with the previous ones, the *Interpretations* introduce a total of 107 new articles and three new chapters, namely, "Trial of Cases Involving Guilty Plea and Punishment Acceptance", "Procedures for Expedited Trials" and "Procedures for Trials



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in Absentia", and substantially revise more than 200 articles. The key points are as follows: 1. adhering to the people-centered principle and strengthening the judicial protection of human rights; 2. upholding the trial-centered principle and effectively maintaining judicial justice; 3. regulating the disposal of property involved in the case and intensifying the judicial protection of property rights; and 4. connecting the *Supervision Law* and *Criminal Procedure Law* and keeping a high-pressure anti-corruption situation.

其中,《解释》适度扩大了诉讼代表人的确定范围:以单位内部人员作为第一选择,包括被告单位的法定代表人、实际控制人或者主要负责人,以及被告单位的其他负责人或者职工;在被告单位内部没有合适人员担任诉讼代表人的情况下,可以由被告单位委托律师等单位以外的人员作为诉讼代表人。

Among others, the *Interpretations* moderately expand the scope for determining litigation representatives: internal personnel of a defendant entity shall firstly serve as litigation representatives, including the legal representative, actual controller or main person in charge, other persons in charge, or employees of the defendant entity; in the case that there is no internal personnel of the defendant entity suitable to serve as the litigation representative, the defendant entity may appoint external personnel such as lawyers to act as litigation representatives.

(Source: <http://www.court.gov.cn/fabu-xiangqing-286491.html>)

四、最高法:为跨境诉讼当事人提供网上立案服务

2021.02.03

SPC to Provide Online Case Filing Services for Cross-border Litigants

最高人民法院发布《关于为跨境诉讼当事人提供网上立案服务的若干规定》(下称《规定》),自 2021 年 2 月 3 日起施行。



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The Supreme People's Court ("SPC") issued the *Several Provisions on Providing Online Case Filing Services for Cross-border Litigants* (the "*Provisions*"), with effect from February 3, 2021.

《规定》共 12 条，明确了跨境诉讼服务内容、服务对象、服务载体、跨境当事人身份验证、委托代理视频见证、网上立案流程等，旨在为跨境诉讼当事人提供网上立案指引、查询、委托代理视频见证、第一审民商事登记立案服务。

The *Provisions*, consisting of 12 articles, clarify the content, targets, and carriers of cross-border litigation services, authentication of cross-border litigants, video witness for entrustment, online case filing procedures, etc., aiming to provide cross-border litigants with online case filing guidelines and inquiries, video witness for entrustment, first-instance civil and commercial registration and case filing services.

其中，《规定》提出，通过身份验证的跨境诉讼当事人委托我国内地律师代理诉讼，可以向受诉法院申请线上视频见证。法官通过视频确认委托行为的真实性。在法官视频见证下，跨境诉讼当事人、受委托律师签署有关委托代理文件，无需再办理公证、认证、转递等手续。线上视频见证后，受委托律师可以代为开展网上立案、网上交费等事项。

Among others, the *Provisions* propose that an authenticated cross-border litigant who entrusts a lawyer from Mainland China as the agent ad litem may apply to the court accepting the case for video witness. The judge authenticates the entrustment through the video. Under the video witness of the judge, the cross-border litigant and the agent ad litem sign the relevant entrustment documents, without the need to go through the procedures of notarization, certification, and transmission. After the video witness, the agent ad litem may carry out the online case filing, online payment, and other matters on behalf of the litigant.

(Source: <http://www.court.gov.cn/fabu-xiangqing-286341.html>)

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