Time for the courts to go green

The Supreme People's Court has set up an environmental tribunal and clarified in its new Opinions which parties are able to pursue cases, the courts of first instance and the rules on litigation fees and funds

In response to the recent amendment of the *PRC Environmental Protection Law* (New EPL) which is to come into effect on January 1 2015, the Supreme People's Court (SPC) held a news conference on July 3 2014 and published the *Opinions on Fully Strengthening Environment and Resource Related Adjudication to Provide Strong Judicial Protection for Promoting the Achievement of Ecological Civilisation (Fa Fa [2014] No 11)* (最高人民法院关于全面加强环境资源审判工作为推进生态文明建设提供有力司法保障的意见（法发〔2014〕11号)) (Opinions). These reiterate a number of important principles in Chinese environmental judicial practice, such as the reversal of the burden of proof, and also clarify certain issues related to environmental trials.

Environmental tribunals

There are more than 100 environmental tribunals in various local courts across China, particularly in the western provinces and municipalities, such as Guizhou province, the Chongqing municipality and Yunnan province. The establishment of local environmental tribunals is part of a judicial experiment led by the SPC. However, the SPC did not officially establish its own environmental tribunal until June 2014, when a decision was made at the ninth meeting of the Standing Committee of the National People's Congress. Four judges have now been appointed as the first environmental judges in the SPC.

Article 16 of the Opinions outlines the basic structure of the new environmental courts. All high courts at the provincial level are required to establish a tribunal that specialises in environmental and natural resources cases. Intermediate courts at the city level may establish environmental tribunals (depending on the number of environmental cases in their jurisdictions) which will be under the direction of the corresponding high courts. The local courts are not permitted to establish environmental tribunals, unless the numbers of environmental cases in their jurisdictions are high and the corresponding high courts approve.

Article 17 of the Opinions introduces integrated trials so that all environmental cases will be exclusively tried by environmental tribunals

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Due to the complexity of environmental cases, Article 17 of the Opinions introduces integrated trials so that all

environmental cases will be exclusively tried by environmental tribunals (in contrast to the approach adopted for administrative, civil or criminal trials).

Implementing public interest litigation

The Opinions also provide guidance on how public interest litigation may be brought where it relates to environment protection issues.

Identifying plaintiffs

Article 11 of the Opinions clarifies that two types of plaintiffs can bring public interest litigation in environmental protection cases: the authorities in charge of marine environmental protection and the social organisations set out in Article 58 of the New EPL.

Article 58 of the New EPL suggests only social organisations that meet the stipulated criteria are permitted to bring public interest litigation in the case of environmental protection cases. However, Article 55 of the *PRC Civil Procedure Law* reveals that authorities are also able to bring litigation in relation to conduct that jeopardises the public interest (which includes cases concerning environmental pollution). These authorities include those in charge of marine environmental protection and empowered pursuant to the *PRC Marine Environmental Protection Law* (Marine EPL). Article 90 of the Marine EPL states that the authorities in charge of marine environmental protection may claim compensation, on behalf of the State, from parties responsible for the damages to marine ecosystems, aquatic resources or protected marine areas.

Together, Article 90 of the Marine EPL, Article 58 of the New EPL and Article 55 of the *PRC Civil Procedure Law* make it clear that there are two types of plaintiffs able to raise public interest litigation. This is reaffirmed in the Opinions.

The courts of first instance

Article 12 of the Opinions rules that public interest litigation in relation to environmental protection will first be tried at the intermediate court where the environmental tort took place or in the domicile of the defendant. Although this is not a new development from the SPC, it reflects the judicial interpretation of existing laws. The New EPL is silent with respect to which types of courts of first instance are able to hear public interest litigation cases. However, Article 58 of the New EPL appears to identify the intermediate courts at the city level as the courts of first instance. The social organisations able to bring public interest litigation in environmental protection cases must be registered with the civil affairs authority at or above the city level and have more than five years of experience in environmental protection. As such, the arrangement of intermediate courts being the courts of first instance for environmental public interest litigation fits well with the level of the authority at which the social organisations are registered.

Sharing costs and fees

In a regular civil law case, the plaintiff may seek to recover all lawyer fees, investigation fees and other appraisal fees in the claim against the defendant. However, the judges are unlikely to allow all of these fees to be recovered (due to the litigation cost sharing rule in judicial practice). In order to promote cases regarding public interest litigation and the protection of the environment, Article 14 and 15 of the Opinions adjust the litigation cost sharing rule and explicitly require the defendant to pay the plaintiff the additional fees if the defendant loses the case. To further relieve the economic burden of the plaintiff, Article 15 allows the plaintiff to apply for a delay to, reduction of or exemption from litigation fees or preservation fees for proceedings.

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Litigation fund for protecting the environment

Article 58 of the New EPL requires that social organisations that initiate these cases should not seek economic profits from the litigation. Article 14 of the Opinions suggests the establishment of a designated public interest litigation case fund for environmental protection, which uses the compensation from litigation exclusively for restoring the environment and ecosystem, as well as for maintaining environmental public interest.

Positive signs

The official establishment of an environmental and resources tribunal in the SPC is a positive response to the New EPL. The Opinions send a strong signal that there will be a significant improvement in the judicial handling of trials for environmental cases in China, particularly in the field of public interest litigation cases for the protection of the environment.

Although the reform of the environmental tribunal system is welcome, the key will be to see how the reforms take practical effect. In particular, the majority of existing environmental tribunals are set up in the local courts rather than intermediate courts. The Opinions envisage that local courts will not be permitted to have environmental tribunals unless it is necessary and approved by the higher courts. Moreover, public interest litigation in relation to environmental protection will now first be tried at the intermediate courts. Given these circumstances, we look forward to seeing how the considerable first-hand experience of the local courts' existing environmental tribunals in dealing with public interest litigations is transferred to the higher courts.

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