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China’s Case Guidance System: Application and Lessons Learned (Part I)

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I. Introduction

March 2018 marks the entry of the China Guiding Cases Project (“CGCP”) of Stanford Law School into its eighth year of operation. Established in February 2011, a few months after the Supreme People’s Court (“SPC”) of China issued a set of groundbreaking rules on Guiding Cases (“GCs”) (“指导性案例”), the CGCP has grown from a project supported by a few Stanford Law School students to one armed with a global team of nearly 200 members and more than 50 advisers. The activities of the CGCP have multiplied, ranging from the translation and analysis of GCs to the implementation of new initiatives, such as the Belt and Road (“B&R”) Series and CGCP Classroom. Thanks to its team’s efforts, the CGCP has a website equipped with advanced search functions benefiting nearly 100,000 users around the world, has a presence on different social media platforms (e.g., with more than 22,000 followers on LinkedIn), and has organized various seminars and a large-scale international conference, which will be held on March 30, 2018, bringing together U.S. and Chinese judges and other distinguished guests to exchange their expertise and experience.

It is time for the project, and for stakeholders interested in bringing about more meaningful changes in China’s judiciary, to make careful plans for the future. This issue of Guiding Cases Surveys, therefore, shares the authors’ observations on the developments of case guidance in China and discusses, in the last part, lessons learned from these developments and the outlook for China’s Case Guidance System. The next issue of Guiding Cases Surveys, which will be published shortly after this issue, continues the discussion of lessons learned by taking a close look at the application of GCs in courts across China.

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1 Details of the series, which primarily consists of B&R Cases and B&R Texts, are available at https://cgc.law.stanford.edu/belt-and-road. B&R Cases is a serial publication of the China Guiding Cases Project that provides full-text versions and high-quality English translations of court cases in China that are related to the country’s Belt and Road Initiative. B&R Texts is a compilation of primary sources forming the legal framework of China’s Belt and Road Initiative, including legal cooperation agreements between China and countries along the “Belt and Road” routes.

2 CGCP Classroom is an online, mobile-friendly, and interactive platform through which the CGCP releases videos about Guiding Cases, cases related to China’s Belt and Road Initiative, and other topics. Through these informative videos, the CGCP spreads knowledge of Chinese law to the global community so as to promote public education and participation. For more information about this initiative, see https://cgc.law.stanford.edu/cgcp-classroom.


5 Unless stated otherwise, any reference to “a court” or “courts” “in”/“across” “China” herein means “a court” or “courts” “in mainland China”. Courts in mainland China are different from courts in Macao, Hong Kong, and Taiwan, as the last three groups of courts operate in legal systems that are different from the legal system in mainland China.
II. Observation One: China’s Case Guidance System Goes Beyond Guiding Cases

The establishment of China’s “Case Guidance System” (“案例指导制度”) was formally announced in the SPC’s Second Five-Year Reform Plan of People’s Courts (2004–2008).6 In this plan, the SPC pledged to “establish and improve China’s Case Guidance System” and to “attach importance to the role played by Guiding Cases in unifying standards for the application of law and guiding the adjudication work of lower-level courts”. To this end, the highest court stated that it would “formulate regulatory documents on the Case Guidance System”. Accordingly, the SPC issued an important regulatory document in 2010, namely, the Provisions of the Supreme People’s Court Concerning Work on Case Guidance (the “Provisions”),7 and another in 2015, the Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance” (the “Detailed Implementing Rules”).8

Both the Provisions and the Detailed Implementing Rules merely refer to Guiding Cases, giving an impression that the Case Guidance System is simply a system of Guiding Cases. For example, after specifying in the preamble that the Provisions was formulated by the SPC “to carry out work on case guidance” so as to “summarize adjudication experiences, unify the application of law, enhance adjudication quality, and safeguard judicial impartiality”, the Provisions: (1) states that the SPC will uniformly release GCs, “which have guiding effect on adjudication and enforcement work in courts throughout the country” (Article 1, Provisions), (2) provides a set of criteria used in the selection of GCs (Article 2, Provisions),9 and (3) explains that candidate GCs can be recommended to the SPC level by level within the court system or by representatives of people’s congresses, members of committees of the political consultative conference, experts, scholars, lawyers, and other people from all circles of society (Articles 4–5, Provisions). Because only GCs were mentioned in the context of the term “案例指导制度” (literally translated as “Case Guidance System”), “Guiding Cases System” was used to refer to this term, “案例指导制度”.10

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9 First, the underlying rulings or judgments of GCs must be those that “have already come into legal effect”. Second, the rulings or judgments must be “of widespread concern to society”; involve “legal provisions [that] are of relatively general nature”, be “of a typical nature”, be “difficult, complicated, or of new types”, or be “other cases which have guiding effect”.
Recent developments, however, show that the Case Guidance System actually comprises other types of cases, in addition to GCs, which the SPC has been releasing since 2011. As explained below, in Parts III and IV, the system also covers those cases selected by the Beijing Intellectual Property Court to have guiding effect and those Typical Cases ("典型案例") released by the SPC to help the development of China’s B&R Initiative.

III. Observation Two: The Beijing Intellectual Property Court’s Reform of the Case Guidance System Has Produced Good Results

1. Challenges in the Development of the Case Guidance System

To date, the SPC has released 92 GCs, which are summaries of the underlying judgments or rulings rendered by courts of different levels and from different regions. A total of 519 subsequent cases which explicitly mention GCs (“SCs”) have been identified by the CGCP through the end of 2016, compared with 181 identified by the end of 2015. The next issue of Guiding Cases Surveys™ will provide a complete table of GCs and the corresponding SCs identified through the end of 2017.

Of the 92 GCs, 15 are criminal cases (referenced in 18 SCs), 18 administrative cases (referenced in 92 SCs), 55 civil cases (referenced in 409 SCs), and 4 other cases (referenced in no SCs). (See Table One.) The 55 civil cases cover different areas of law, such as tort, contract, company, insurance, and intellectual property. Of the 409 SCs referencing civil GCs, 186 cite one of the two traffic accident liability disputes: GC No. 19 (ZHAO Chunming et al. v. The Automobile Transport Company of Fushan District, Yantai Municipality, WEI Deping, et al., A Motor Vehicle Traffic Accident Liability Dispute) (15 SCs) and GC No. 24 (RONG Baoying v. WANG Yang and Alltrust Insurance Co., Ltd. Jiangyin Branch, A Motor Vehicle Traffic Accident Liability Dispute) (171 SCs). This seems to reflect that legal issues addressed in these two GCs are more commonly encountered than those issues addressed in other GCs.

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11 For a cumulative analysis of the first 64 GCs, see id.


Table One: GCs and Subsequent Cases Referencing GCs by Type

<table>
<thead>
<tr>
<th>Types of Guiding Cases</th>
<th>Number of GCs (released to date)</th>
<th>Number of Subsequent Cases Referencing GCs (identified through the end of 2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal (GC Nos. 3–4, 11–14, 27–28, 32, 61–63, 70–71, 87)</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>Administrative (GC Nos. 5–6, 21–22, 26, 38–41, 59–60, 69, 76–77, 88–91)</td>
<td>18</td>
<td>92</td>
</tr>
<tr>
<td>Civil (the remaining GCs)</td>
<td>55</td>
<td>409</td>
</tr>
<tr>
<td>Others (e.g., Maritime, State Compensation)</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>92</strong></td>
<td><strong>519</strong></td>
</tr>
</tbody>
</table>

Despite the growing explicit reference to GCs (i.e., from very few SCs before 2015 to 519 by the end of 2016), there are quite a few challenges in the development of the Case Guidance System. In his presentation delivered at a seminar held by the CGCP on October 19, 2017, Judge LIU Yijun of the Beijing Intellectual Property Court shared his observations about these challenges. One challenge is that the small number of GCs can only address a limited number of legal issues, and as a result, guidance provided by GCs cannot fully meet the needs arising from numerous legal disputes in China.

Judge Liu continued to point out two other challenges that have limited the application of GCs: many judges are unwilling to use GCs because of the unclear legal status of these cases and/or are uncertain about how to use GCs in adjudication. These two challenges are reflected in the CGCP’s study of the SCs identified through the end of 2015. In 134 of the 181 SCs identified, it was the parties (or their lawyers) who, as reported in the judgments or rulings, mentioned a GC, in their submissions or oral arguments. In the remaining 47 cases, the deciding courts filled the gap left by the (lawyers of the) parties and took the initiative to refer to the GC in their judgments or rulings. But this phenomenon is more an exception than the rule. Among the above-mentioned 134 cases, i.e., those in which parties or their lawyers referred to a GC, the deciding courts of only 38 cases stated in the judgments or rulings whether the GC was or was not applied, and the deciding courts of the other 96 cases did not even mention the GC in their decisions, as if it were never mentioned by the parties or their lawyers.

15 Seminar Summary: On Building China’s New IP Case System: A Discussion with Chinese Judges as well as Legal and Big Data Experts, supra note 3.
16 For more discussion of judges’ attitude toward GCs, see Mei Gechlik, Dimitri Phillips, and Oma Lee, Survey
Both challenges are rooted in the limitations of the Provisions and the Detailed Implementing Rules. Article 7 of the Provisions provides that courts in China merely “should”, rather than “must”, “refer to” GCs when adjudicating similar cases. The lack of expressions stating that judges are formally bound by GCs reflects the unclear legal status of these cases.\footnote{See, e.g., 郭锋、吴光侠、李兵 (GUO Feng, WU Guangxia, LI Bing), 《关于案例指导工作的规定》实施细则的理解与适用 (Understanding and Applying the Detailed Implementing Rules on the “Provisions Concerning Work on Case Guidance”), 《人民司法》 (THE PEOPLE’S JUDICATURE), Issue No. 17 (2015), at 30.}

As for judges’ uncertainty about how to use GCs, the Detailed Implementing Rules provides some clarifications. In this document, the SPC makes it clear that “[w]here a case being adjudicated is, in terms of the basic facts and application of law, similar to a Guiding Case”, the deciding court “should refer to the ‘Main Points of the Adjudication’ of that relevant Guiding Case to render its ruling or judgment” (Article 9, Detailed Implementing Rules). The “Main Points of the Adjudication” is one of the six sections of a GC; the other five sections are: “Keywords”, “Related Legal Rule(s)”, “Basic Facts of the Case”, “Results of the Adjudication”, and “Reasons for the Adjudication”. The “Main Points of the Adjudication” section usually has one or a few paragraphs stating the general principle(s) applied in the underlying ruling or judgment. The Detailed Implementing Rules continues to require that any GC referenced in a SC be quoted as a “reason”, but not a “basis” (again, a reflection of the unclear legal status of GCs), for the court’s decision (Article 10, Detailed Implementing Rules).

The Detailed Implementing Rules, however, gives rise to other uncertainties about how to use GCs. The document provides that a GC loses its guiding effect if it is (1) “in conflict with a new law, administrative regulation, or judicial interpretation” or (2) is “replaced with a new Guiding Case” (Article 12, Detailed Implementing Rules). There are no provisions stating explicitly that a GC loses its guiding effect if it is found to be in conflict with a departmental rule issued by a ministry under the State Council, a local regulation issued by a provincial legislature, or a local governmental rule issued by a local government. The lack of such provisions may prompt one to wonder whether GCs somehow enjoy certain superiority, specifically, in relation to departmental rules, local regulations, and local government rules, even though the legal status of GCs remains unclear.

Other issues, which are not addressed in the Provisions and the Detailed Implementing Rules, have also led to more uncertainties. What will happen if a judge fails to refer to a GC that still has guiding effect and is clearly applicable to a case? Will the judgment be considered erroneous? Will the judge be held accountable? If a GC is found to have errors but has not lost its guiding effect according to Article 12 of the Detailed Implementing Rules, are judges still expected to refer to it? Eventually, more regulatory documents need to be issued by the SPC and/or other authorities to address these issues so as to improve the Case Guidance System.

The SPC is aware of the need to reform the Case Guidance System. In *The Opinion of the Supreme People’s Court Concerning Comprehensively Deepening the Reform of People’s Courts—The Fourth Five-Year Reform Plan of People’s Courts (2014–2018)*, the SPC has pledged to, *inter alia*, “improve the mechanism for unifying the application of law [by …] reforming and improving the mechanism for selecting, assessing, and releasing Guiding Cases”. In the same document, the SPC also emphasizes the need to “fully use, in the promotion of [understanding of] law, the functions of making trials open, stating reasons in [courts’ adjudication] documents, and publishing cases” and to “improve the database of cases”.

In 2015, the SPC put its pledge into practice by establishing the IP Case Guidance and Research (Beijing) Base in the Beijing Intellectual Property Court (“BIPC”). According to Judge JIANG Shuwei and Judge LIU Yijun, the two judges of the BIPC who explained the operation of the base during their visit to Stanford Law School, the BIPC’s implementation of a case guidance system that focuses on intellectual property will help the SPC accumulate useful experiences. A successful model used in the BIPC may, hopefully, be replicated to help improve the entire Case Guidance System.

Designated with the task of becoming a national research center for IP case guidance, a center for identifying IP-related GCs, an information center for IP cases and related developments, and a national comprehensive service center for IP case guidance, the IP Case Guidance and Research (Beijing) Base has, in partnership with a leading big data company in China, developed a big data platform to support the implementation of the IP Case Guidance System.

The big data platform consists of a system for reviewing cases to determine which should be identified as having guiding effect, a system for making cases available to the public via a website with advanced search functions, and a system that facilitates the application of these cases. The assistance of an automated review system and from approximately 200 volunteer legal experts who manually reviewed many candidate cases, more than 500 intellectual property cases with guiding effect have been selected. All of these cases with guiding effect have been included in a database; the database features a so-called SmartPush function. By using this function, a judge can input his or her full-text draft judgment and SmartPush automatically identifies judgments of prior similar cases for the judge to consider. To address the needs of the public, SmartPush allows ordinary expressions, instead of legal jargon, to be entered into the system and relevant cases are returned to provide a lay person with legal guidance. Finally, the system that facilitates the application of these cases includes a knowledge-base that covers not only these

cases and their main points but also related legal texts and other materials about intellectual property.

According to Judge LIU Yijun, as part of the implementation of the IP Case Guidance System, judges in the BIPC are required to abide by applicable effective judgments and rulings of prior cases adjudicated by the BIPC or upper-level courts, such as the High People’s Court of Beijing Municipality and the SPC. If other courts at the same level as the BIPC have adjudicated prior similar cases, the judgments or rulings of those cases should still be referenced by the BIPC judge(s) adjudicating the pending case. Judge Liu emphasized that the above practice reflects the BIPC’s efforts in establishing the principle that subsequent cases should be adjudicated in accordance with effective judgments and rulings rendered in prior similar cases.

All of these efforts have produced results. By the end of 2016, prior effective judgments or rulings were explicitly referenced in 763 cases adjudicated by the BIPC. Of these 763 cases, 657 were cases in which prior effective judgments or rulings were submitted to the BIPC by the parties to the disputes, and 106 were cases in which judges took the initiative to refer to prior effective judgments or rulings. The adjudication results of these cases show that in over 200 of these 763 cases, the BIPC’s decisions were made by following the prior effective judgments or rulings, while in another 80 cases, the prior effective judgments or rulings were distinguished (and not followed). In the rest of the 763 cases, the prior effective judgments or rulings were determined to be either completely irrelevant or submitted without following the court’s procedures.

Overall, the new IP Case Guidance System has made a positive impact by increasing judicial competence and transparency. After the big data platform is, as scheduled, promoted nationwide in late 2018 and connected with international databases in 2019, the system is likely to be more equipped to help ensure that similar cases are adjudicated similarly.

IV. Observation Three: China’s Belt and Road Initiative Has Fueled the Development of the Case Guidance System

In June 2015, two years after President XI Jinping rolled out the B&R Initiative, an ambitious plan to expand China’s businesses in foreign countries, the SPC released the Several Opinions of the Supreme People’s Court Concerning Judicial Services and Safeguards Provided by the People’s Courts for the “Belt and Road” Construction. The SPC recognizes that, to help develop the initiative, the judiciary “needs to analyze and study in-depth the characteristics and patterns of various cases related to the “Belt and Road” construction, to strengthen judicial interpretations and case guidance” and “needs to establish a sound system for [conducting]
specific statistical analyses of cases related to the “Belt and Road” [construction], to release typical cases, […] so as to effectively prevent legal risks” (emphasis added).

A narrow reading of the term “case guidance” suggests that the SPC needs to release GCs to provide guidance for the adjudication of cases related to the B&R Initiative. Yet no GCs of this type have been released. Instead, a total of 18 “B&R Typical Cases” have been released by the SPC in two batches, eight in 2015 and another ten in May 2017; the CGCP publishes these as B&R Cases™ 20. This development indicates that the term “case guidance” carries a broader, more generic meaning, i.e., “guidance through cases”, such that these cases are not confined to GCs but rather include other important cases, e.g., B&R Typical Cases.

The significance of the principles expounded in the B&R Typical Cases gives support to this interpretation. Although briefer than GCs (with only three sections: facts, results of adjudication, and typical significance of the case), the B&R Typical Cases show how courts in China have successfully resolved disputes involving not only parties from B&R countries but also from different areas of law, including international law. B&R Typical Cases 7, 13, and 14 illustrate the significance of these cases.

The underlying judgments of both B&R Typical Case 7 (Jiangsu Taihu Boiler Co., Ltd. and PT. Krakatau Engineering Corporation as well as the Wuxi Branch of Bank of China Limited, A Dispute over Fraud with a Guarantee) and B&R Typical Case 14 (Hyundai Heavy Industries Co., Ltd. and the Zhejiang Provincial Branch of the Industrial and Commercial Bank of China Limited, An Appeal Concerning a Dispute Over a Demand under an Independent Guarantee) were rendered in accordance with the Uniform Rules for Demand Guarantees of the International Chamber of Commerce, at a time when China had neither legislation nor judicial interpretations on demand guarantees. These two cases show the importance of Chinese banks’ strict adherence to international rules on demand guarantees to facilitate international transactions. The principles developed through these cases were ultimately “codified” by the SPC in December 2016, when the Provisions of the Supreme People’s Court on Several Issues Concerning the Handling of Disputes over Independent Guarantees came into effect.23
In the underlying judgment of B&R Typical Case 13 (Kolmar Group AG, A Case of an Application for the Recognition and Enforcement of a Civil Judgment of the High Court of Singapore), the deciding court in China recognized and enforced a judgment rendered by the High Court of Singapore on the basis that a Singaporean court had previously enforced a judgment of a court in China (i.e., the principle of reciprocity). To explain the significance of this case, the SPC wrote:

This [case] not only has landmark significance in the mutual recognition and enforcement of commercial judgments [between] China and Singapore but also will powerfully advance the realization of judicial cooperation in the area of mutual recognition and enforcement of civil and commercial judgments between countries along the Belt and Road.

B&R Typical Case 13 turns out to be just the beginning of a series of exciting developments related to the recognition and enforcement of foreign court judgments. On June 30, 2017, a court in Hubei Province recognized and enforced a U.S. court judgment based on the principle of reciprocity (specifically, on the ground that a Chinese court judgment had been recognized and enforced by another U.S. court). On September 12, 2017, China signed the Hague Convention on Choice of Court Agreements, which requires member countries to recognize and enforce judgments rendered by the court chosen by the parties to a dispute. All of these developments are apparently in line with a pledge made by the SPC in late September 2017 to “increase judicial cooperation with countries and regions involved in the Belt and Road Initiative”. Chief Justice ZHOU Qiang, President of the SPC, reportedly said, “a comprehensive judicial system needs to be created by making bilateral or multilateral treaties […]. The more judicial cooperation among the countries and regions, the more improvements to the initiative.”

The competence courts in China show in rendering the underlying judgments of B&R
Typical Cases and the resulting impact of these cases testify to their significance. Guidance provided by these significant cases fills important gaps left by the relatively small number of GCs released to date, thereby helping fuel the development of the Case Guidance System. However, the impetus produced by these typical cases is limited because they are not GCs, which, as pointed out by Judge GUO Feng, Deputy Director of the Research Office of the SPC, “are of authoritative, normative, exemplary, and uniformly applicable nature. They are de facto binding”.29 Only GCs, but not these typical cases or other cases decided by China’s courts, are allowed to be referenced in judgments of similar, subsequent cases. It remains unclear whether some B&R Typical Cases will be re-issued as GCs or whether the SPC will directly release GCs to provide guidance for the adjudication of cases related to the B&R Initiative.

The Chinese leadership’s recent decision to establish three courts (one in each of Xi’an, Shenzhen, and Beijing) to handle B&R disputes gives hope that judgments rendered by these specialized courts may eventually be authorized to carry guiding effect,30 just like how the BIPC has been authorized to implement the IP Case Guidance System to guide the court’s adjudication of intellectual property cases. While it is too early to predict whether a type of B&R case guidance system will be established in these B&R courts, the success of the BIPC’s experiences in implementing a specialized case guidance system and the growing need for a predictable and transparent dispute settlement mechanism to protect the interests of parties involved in B&R investment projects make the establishment of a type of B&R case guidance system promising. If this happens, experiences from these B&R courts will certainly help take the development of the Case Guidance System to another level.

V. Lessons Learned and Outlook

The outlook for the long-term success of China’s Case Guidance System hinges on whether the above-mentioned unclear legal status of GCs in China’s statute-based legal tradition and other uncertainties will be effectively addressed by the SPC in the near future. How far the SPC can go, in turn, depends very much on whether the Chinese leadership sees the exceptional value of the system inside (by, inter alia, improving the ruling party’s governance) and outside China (by facilitating the country’s economic expansion around the world).

The Chinese leadership’s consistently positive statements about the need for judicial reform to ensure fairness inside China provide a powerful fount of support for the Case Guidance System to thrive. In the Decision of the CPC Central Committee on Several Major Issues

Concerning Comprehensively Deepening Reforms (aka the “Third Plenum Decision”), adopted by the Communist Party of China in November 2013, the ruling party emphasized the need to “ensure independent and impartial exercise, in accordance with law, of adjudication power” and to “promote open trials”. Then, in the Decision of the CPC Central Committee on Several Major Issues Concerning Comprehensively Moving Forward “Governing the Country According to Law” (aka the “Fourth Plenum Decision”), adopted in October 2014, the ruling party noted a few primary goals, including: (i) “the steady progression of the construction of a rule-of-law government and the continuous improvement of the judicial system” and (ii) “judicial fairness”. Further, during the Nineteenth National Congress of the Communist Party of China, held in October 2017, President XI Jinping reported to the Congress that the ruling party must “deepen the reform of the judicial system” and must “strive to let the people feel fairness and justice in every judicial case”. The fact that these expressions were used by the highest authority at the most significant, high-profile occasion signals the leadership’s strong interest in implementing meaningful judicial reforms, and this bodes well for the development of the Case Guidance System.

With regard to China’s external affairs, the possibility of having a B&R case guidance system cannot be underestimated because one of the biggest obstacles in the implementation of the B&R Initiative consists in legal risks associated with China’s global investment projects. Should the B&R case guidance system be able to minimize these risks and, thereby, help implement the initiative, which was launched by President Xi and is now included in the ruling party’s charter, the SPC will gain significant political support to comprehensively reform the Case Guidance System.

Thus, the political landscape is favorable for the development of the Case Guidance System. Meanwhile, the SPC should continue improving the system, to the extent possible, making it capable of bringing about the positive changes discussed in the preceding paragraphs. To this end, at least two steps can be taken based on lessons learned from the above observations on recent developments of the Case Guidance System. First, the success of testing the Case Guidance System in the BIPC shows that similar experiments can be considered in other specialized courts in China (e.g., maritime courts and railway transportation courts in China).
Implementing a case guidance system within a branch of courts that handle similar types of cases allows the SPC to focus on difficulties encountered in smaller and similar settings. Second, since the release of 18 B&R Typical Cases has fueled the development of the Case Guidance System, more similar cases or even GCs related to the initiative should be released. The value of these cases in reducing the legal risks associated with the initiative will increase the likelihood of establishing a B&R case guidance system in the new B&R courts.

Further steps can be taken by the SPC to improve the Case Guidance System by focusing on lessons learned from the application of GCs in courts across China. In the next issue of Guiding Cases Surveys™, these steps will be discussed based on the results of an empirical study of all SCs referencing GCs, as identified through the end of 2017.