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The Compilation and Application of China's Guiding Cases

CHINA GUIDING CASES PROJECT

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Ladies and Gentlemen:

I am very delighted to accept the invitation from the China Guiding Cases Project (“CGCP”) of Stanford Law School to participate in the seminar titled “China’s Guiding Cases System Turns Six: Retrospect and Prospect” and held in the Stanford Center at Peking University. On behalf of the Research Office of the Supreme People’s Court (“SPC”), I would like to express my congratulations on the organization of the seminar and express my respect for and gratitude to the CGCP and its founder, Dr. Mei Gechlik, for their long-term study and promotion of China’s Guiding Cases (“GCs”) as well as their fruitful work on China’s judicial transparency and related international impact and on China-U.S. legal and judicial exchanges. I want to use this opportunity to explain, for your reference, the compilation and application of China’s GCs.

I. The Establishment of the Guiding Cases System

In November 2010, the SPC released the *Provisions of the Supreme People’s Court Concerning Work on Case Guidance* (the “Provisions”).¹ In December 2011, the first batch of GCs were released, marking the preliminary establishment of a Case Guidance System with Chinese characteristics. To date, 14 batches of GCs, 69 [GCs] in total, have been released.² In December 2011, the *Opinion Concerning the Formats for Preparing and Submitting Guiding Cases* was published to standardize the formatting and content of the GCs.³ Released in June 2012, the *Procedures on the Compilation of Guiding Cases* has refined the work process.⁴ In April 2015, the *Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance”* (the “Detailed Implementing Rules”) was released.⁵ The *Decision of the CPC Central Committee on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law*, which was adopted at the Fourth Plenary Session of the 18th Central Committee of the

¹ 《最高人民法院关于案例指导工作的规定》(*Provisions of the Supreme People’s Court Concerning Work on Case Guidance*), passed by the Adjudication Committee of the Supreme People’s Court on Nov. 15, 2010, issued on and effective as of Nov. 26, 2010, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Cases Rules, June 12, 2015 Edition, <http://cgc.law.stanford.edu/guiding-cases-rules/20101126-english>.

² On December 28, 2016, the Supreme People’s Court released the 15th batch of Guiding Cases, bringing the total to 77 Guiding Cases as of the publication of this Commentary. See 《最高人民法院关于发布第 15 批指导性案例的通知》(*The Supreme People’s Court’s Notice Concerning the Release of the 15th Batch of Guiding Cases*), issued on Dec. 28, 2016, <http://www.court.gov.cn/shenpan-xiangqing-34262.html>.

³ 《最高人民法院研究室关于印发〈关于编写报送指导性案例体例的意见〉、〈指导性案例样式〉的通知》(*Notice of the Research Office of the Supreme People’s Court on the Publication of the “Opinion Concerning the Formats for Preparing and Submitting Guiding Cases” and “Styles of Guiding Cases”*), issued on Dec. 30, 2011, <http://policy.mofcom.gov.cn/blank/claw!fetch.action?id=G000152994&industrycode=S09431&secondcode=751001;751006;120005>.

⁴ This is a non-public document for internal reference only.

⁵ 《〈最高人民法院关于案例指导工作的规定〉实施细则》(*Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance”*), passed by the Adjudication Committee of the Supreme People’s Court on Apr. 27, 2015, issued on and effective as of May 13, 2015, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Cases Rules, June 12, 2015 Edition, <http://cgc.law.stanford.edu/guiding-cases-rules/20150513-english>.



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Communist Party of China, sets forth the goal: “strengthen and standardize [the systems] of judicial interpretations and case guidance, and unify the standards for the application of law.”⁶ Zhou Qiang, President [of the SPC], has requested that case guidance be planned by placing it at the strategic level of adhering to and perfecting the socialist judicial system with Chinese characteristics and that [case guidance] be treated as a strong hand in strengthening an impartial judiciary under the new circumstances of judicial reform.

The Case Guidance System is a judicial system with Chinese characteristics established to summarize adjudication experience, strengthen supervision and guidance, unify the application of law, enhance adjudication quality, and safeguard judicial impartiality. By releasing cases that provide guidance on the adjudication and enforcement work of courts across China, the SPC aims to regulate judges’ discretionary power, to address the problem that “similar cases are adjudicated differently”, to carry forward the spirit and core value of socialist rule of law, to enhance people’s awareness of the rule of law, and to promote good social practices.

II. The Compilation of Guiding Cases

GCs are of authoritative, normative, exemplary, and uniformly applicable nature. They are *de facto* binding. The compilation of GCs has specific standards and standardized procedures and needs to meet requirements for high quality. The status, nature, and effect [of GCs] are superior to those of other cases.

With respect to the procedures, the entities that can recommend [candidate GCs] include:⁷

⁶ 《中共中央关于全面推进依法治国若干重大问题的决定》(*Decision of the CPC Central Committee on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law*), passed at the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China on Oct. 23, 2014, http://www.gov.cn/xinwen/2014-10/28/content_2771714.htm.

⁷ See 《《最高人民法院关于案例指导工作的规定》实施细则》(*Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance”*), *supra* note 5, Articles 4 and 5. Article 4 provides:

The Office for the Work on Case Guidance of the Supreme People’s Court (hereinafter referred to as the “Case Guidance Office”) is in charge of the collection, selection, review, release, study, and compilation of Guiding Cases, as well as the coordination and guidance of the work on case guidance [carried out] by courts nationwide.

Each adjudication unit of the Supreme People’s Court is in charge of such work as the recommendation and review of Guiding Cases, and [shall] designate specific personnel responsible for the liaison work.

Each Higher People’s Court is in charge of such work as the recommendation, investigation, study, and supervision [of the use] of Guiding Cases in its jurisdiction. Candidate Guiding Cases recommended to the Supreme People’s Court by each Higher People’s Court should [first] be discussed and determined by the adjudication committee [of the said high court] or examined and approved by more than half of the members of the adjudication committee.

Intermediate People’s Courts and Basic People’s Courts should recommend candidate Guiding Cases through the Higher People’s Courts and [shall] designate specific personnel responsible for the work on case guidance.



1. All adjudication units of the SPC. Any ruling or judgment rendered by the SPC or a local people's court at any level that has already taken legal effect and that is considered to meet the compilation requirements may be recommended to the Case Guidance Office [of the SPC].
2. All Higher People's Courts in the country. Any Intermediate or Basic Level People's Court may report to the Higher People's Court to which it is subordinated and provide suggestions on the recommendation of GCs. However, the issue as to whether relevant cases should be recommended as [candidate GCs] should be discussed and passed by the Adjudication Committee of the relevant Higher People's Court or be examined and approved by more than half of the members of the committee.
3. Representatives of people's congresses, members of committees of the political consultative conference, people's assessors, experts, scholars, lawyers, and other people from all circles of society who care about the adjudication and enforcement work of people's courts. Cases that meet the GC requirements may be recommended to the original people's court which rendered the effective ruling or judgment or may be recommended directly to the Case Guidance Office of the SPC.
4. Members of the Experts' Committee for the Work on Case Guidance. Cases that meet the GC requirements may be recommended to the Case Guidance Office [of the SPC].

In terms of the recommendation process, the *Detailed Implementing Rules* specifies in detail how the aforementioned entities that can recommend [candidate GCs should] recommend cases.⁸ There are specific requirements for the style and format of the GCs.

Article 5 provides:

Representatives of people's congresses, members of committees of the political consultative conference, people's assessors, experts, scholars, lawyers, and other people from all circles of society who care about the adjudication and enforcement work of people's courts may recommend cases that meet the Guiding Case requirements to the original people's court which rendered the effective ruling or judgment and may also make recommendations to the Case Guidance Office.

For cases that meet the Guiding Case requirements, members of the Experts' Committee for the Work on Case Guidance may make recommendations to the Case Guidance Office.

⁸

See id., Article 6, stating:

Each adjudication unit of the Supreme People's Court and [each] Higher People's Court should submit the following materials when they recommend a candidate Guiding Case to the Case Guidance Office:

- (1) the *Guiding Case Recommendation Form*;
- (2) the text of the case that is written in accordance with the prescribed style and an explanation for the selection [of the case as a candidate Guiding Case]; and
- (3) the related ruling or judgment.

Three paper copies of [each of] the above materials, along with an electronic version, are necessary [for submission].

The recommending court may submit [other materials], including a report on the adjudication of the case, as well as related news reports and research information.



Texts of these cases should be prepared in accordance with relevant documents released by the SPC, including the *Opinion Concerning the Formats for Preparing and Submitting Guiding Cases* and *Styles of Guiding Cases*,⁹ and with reference to the GCs that have been released by the SPC. When each adjudication unit of the SPC or each Higher People's Court recommends a case to be a GC, it should provide materials, including the Guiding Case Recommendation Form, the text of the case [prepared in accordance with the above requirements], an explanation of the selection of the case [as a GC], and the effective ruling or judgment. Opinions arising from reviewing [a candidate GC] should be based on comprehensive and careful examination of different aspects, including the correctness of the ruling or judgment, the guiding nature of the case, and the normative nature of the text.

With respect to the substance [of GCs], Article 2 of the *Provisions* sets forth the principles on the selection requirements for GCs.¹⁰ [A] first [kind of] GCs is [one] about which people have strong views or is of widespread concern to society. Cases of this type draw a lot of attention from society and the issues regarding the application of law stand out. Selecting GCs from these cases can reflect that common social values are recognized in adjudication. This is conducive to improving the social recognition and credibility of judicial adjudication as well as to unifying the social and legal effects through case guidance. [A] second [kind of] GC involves legal provisions that are of relatively general nature. The rulings or judgments rendered in cases of this type are in compliance with the basic spirit of the law and the purpose of legislation. [Selecting these cases as GCs] is conducive to solving difficult issues of the application of law arising from the lack of clarity or specificity in legal provisions encountered in adjudication as well as to effectively regulating the exercise of discretionary power. [A] third [kind of] GC is [one that is] of a typical nature. Cases with typical significance in the application of law can effectively provide guidance on the adjudication of cases that are of typical nature and happen frequently. The uniform guidance can result in consistent adjudication. [A] fourth [kind of] GC is [one that is] of a new type, difficult, or complicated. The adjudication of such cases can effectively solve unprecedented or more difficult issues of the application of law and can therefore guide judges to handle new or complicated cases correctly.

Based on Article 2 of the *Provisions*, the *Detailed Implementing Rules* further clarifies and refines the standards for [selecting] GCs. Article 2 of the *Detailed Implementing Rules* provides:

⁹ See *supra* note 3.

¹⁰ See 《最高人民法院关于案例指导工作的规定》(*Provisions of the Supreme People's Court Concerning Work on Case Guidance*), *supra* note 1, Article 2, which provides:

The Guiding Cases referred to in this [set of] *Provisions* [must be] rulings and judgments that have already come into legal effect and meet the following requirements:

- (1) are of widespread concern to society;
- (2) [involve] legal provisions [that] are of relatively general nature;
- (3) are of a typical nature;
- (4) are difficult, complicated, or of new types; [or]
- (5) other cases which have guiding effect.



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Guiding Cases should be cases whose rulings or judgments have already come into legal effect, [in which] facts are clearly ascertained, law is correctly applied, and reasoning for the adjudication is sufficient, and which [provide] good legal and social outcomes as well as universal guiding significance for the adjudication of similar cases.¹¹

This means that cases which can be released by the SPC as GCs must meet the following requirements at the same time: (1) these cases are adjudicated correctly [in the sense that] facts are clearly ascertained and law is correctly applied; (2) reasoning for the adjudication is sufficient and the cases [provide] good legal and social outcomes; and (3) cases have “universal guiding significance” (e.g., those cases which solve controversial application-of-law issues encountered in adjudication can have the effect of unifying the application of law.)

The effect of a GC lies in the “Main Points of the Adjudication” section. Summarizing and extracting the Main Points of the Adjudication are the essence of the compilation of GCs. The extraction of the main points should meet the following requirements: (1) the extracted main points should be with legal basis, fine accuracy, tight structure, concise expressions, and precise meanings; (2) main points of the adjudication should be loyal to the text of the effective ruling or judgment and should be extracted and summarized on the basis of the reasoning for the adjudication; (3) main points of the adjudication can extract important adjudication rules that are of guiding significance, as reflected in the GCs, can summarize adjudication concepts or methods that are of guiding significance, and can be applicable rules for interpreting laws or rules and methods for ascertaining facts and admitting evidence; (4) main points of the adjudication should be arranged in the order of importance and logic; (5) main points of the adjudication should be innovative [in the sense that] they summarize innovative determinations about the application of law and other issues from rulings or judgments; (6) the extraction of the main points should be scientific and reasonable, with in-depth and good perspectives, and capable of deducing from a GC the rules for handling similar cases; and (7) the main points should be easy to understand and strive to use conceptual terms commonly used in laws and regulations, judicial interpretations, normative documents, and legal theories.

III. The Application of Guiding Cases

The *Provisions* provides that all levels of people’s courts should, in the adjudication of similar cases, refer to GCs released by the SPC. Article 9 of the *Detailed Implementing Rules* states:

Where a case being adjudicated is, in terms of the basic facts and application of law, similar to a Guiding Case released by the Supreme People’s Court, the [deciding] people’s court at any level should refer to the “Main Points of the Adjudication” of that relevant Guiding Case to render its ruling or judgment.¹²

¹¹ See 《〈最高人民法院关于案例指导工作的规定〉实施细则》(*Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance”*), *supra* note 5, Article 2.

¹² See *id.*, Article 9.



To understand [the expression] “refer to”, three points should be considered: first, in the process of adjudicating cases, judges need to actively search and find GCs that are similar to the cases being adjudicated. This requires judges to look for laws, judicial interpretations, and GCs at the same time. Second, when adjudicating a case similar to a GC, judges should try their best to follow the line of reasoning underlying the adjudication of the GC. When ascertaining facts and applying the adjudication basis, especially with respect to the selection, understanding, and application of legal norms, judges should strive to be consistent with the GC. Third, the results of the adjudication of a case should not be “clearly different” from those of the GC to which the case is similar.

Articles 9 to 11 of the *Detailed Implementing Rules* provide clear rules on how to refer to GCs,¹³ primarily covering: the standards for determining “similar cases”; which specific sections of a GC should be referenced; for a case that refers to GCs, which part(s) of the ruling or judgment should reflect the reference; when a public prosecution organ, a party to a case and his defender, or a litigation representative cites a GC as a ground for appeal or defense, whether the personnel handling the case should respond to it and, if so, in which part(s) of the ruling or judgment it should be addressed. Considering that GCs are not a source of law, they cannot be cited as a legal basis in the final decision section of the judgment, but could be cited in the reasoning part of the adjudication. This not only encourages judges to refer to GCs more often when handling cases, thereby strengthening the persuasiveness of the ruling or judgment and fully utilizing the guiding effect of GCs, but also allows judges to demonstrate objectively their line of thoughts underlying the ruling or judgment, enhancing the transparency and credibility of adjudication.

The essence of referencing GCs is to find the similarity between a case and a GC. The key is to decide whether the Main Points of the Adjudication in a GC are applicable to the pending case. The principle established by the SPC is: when both the basic facts and

¹³ See *id.*, Articles 9, 10, and 11. Article 9 provides:

Where a case being adjudicated is, in terms of the basic facts and application of law, similar to a Guiding Case released by the Supreme People’s Court, the [deciding] people’s court at any level should refer to the “Main Points of the Adjudication” of that relevant Guiding Case to render its ruling or judgment.

Article 10 states:

Where a people’s court at any level refers to a Guiding Case when adjudicating a similar case, [it] should quote the Guiding Case as a reason for its adjudication, but not cite [the Guiding Case] as the basis of its adjudication.

Article 11 provides:

In the process of handling a case, the personnel handling the case should inquire about relevant Guiding Cases. Where a relevant Guiding Case is quoted in the adjudication document, [the personnel] should, in the part [of the document where they provide] reasons for their adjudication, quote the serial number and the “Main Points of the Adjudication” of the Guiding Case.

Where a public prosecution organ, a party to a case and his defender, or a litigation agent quotes a Guiding Case as a ground [for the] prosecution (litigation) or defense, the personnel handling the case should, in [providing] the reasons for the adjudication, respond [as to] whether [they] referred to the Guiding Case [in the course of their adjudication] and explain their reasons [for doing so].



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application of law of a pending case are similar to those of a GC, the relevant GC should be referenced. Of course, in terms of legal theory, there is no universal standard for applying GCs. The application of GCs involves a broad range of areas, including logic, rules, policies, balance of interests, value judgment, statutory law, and practice. Based on [other jurisdictions'] experience of using binding precedents, it is generally believed that the comparison technique of referencing precedents consists of three steps: (1) the identification of focal points of the dispute; (2) the analysis of the reasoning for the adjudication; and (3) the decision on whether a certain result of the adjudication should be kept. When comparing the basic facts and the application of law [of a pending case] with those of GCs, judges in China should consider comprehensively the adjudication methods, adjudication rules, legal thinking, judicial concepts, and the rule of law spirit, as applied in the GCs.

When a judge adjudicates a case and does not refer to a GC where needed, a compelling reason must be provided. If a judge neither refers to the GC nor explains why GCs are not referenced, resulting in a drastic departure of the adjudication from the GC and a loss of judicial impartiality, an unfair decision might have been reached and the parties involved have the rights of appeal and petition. GCs are released after the careful discussion and decision made by the Adjudication Committee of the SPC and have *de facto* binding effect on lower courts' adjudication of similar cases. Therefore, when the adjudication of a similar case is in conflict with the laws, regulations, or judicial interpretations on which a GC is based, [the similar case] should be dealt with according to law, including by "amend[ing] the original judgment" or undertaking a "retrial".

IV. Concluding Remarks

The Case Guidance System of China's courts has been established for six years only, but has produced some notable results. However, the system is still new. Its theoretical basis, its relationship with statutes, effect, rules of reference and application, and many other issues merit further study. It needs to be based on China's circumstances and adjudication practice and to be improved through continuous exploration. Adjudication personnel should increase their awareness of cases, develop concepts about judicial impartiality, have a firm grasp on scientific adjudication methods, and earnestly enhance judicial capabilities in the application of law and cases. We sincerely hope that people from Chinese and foreign circles of legal theory, judicial practice, and the entire society will continue to support our work and contribute together to the work of case guidance in China's courts!



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Appendix: Q&A between Judges GUO Feng, SHI Lei, LI Bing and the Audience¹⁴

Question 1: Factors such as social effects need to be considered in the selection of and subsequent reference to GCs. What do these factors specifically refer to?

Judge SHI Lei: The consideration of social effects by the SPC in selecting GCs largely stems from providing guidance for subsequent cases on matters of interpretation and application of laws. For cases that are relatively controversial or involve difficult new issues, the SPC would carefully evaluate their candidacy as GCs. They would investigate and study the case and its field further to determine whether there are cases that are more suited to be GCs.

Judge GUO Feng: The emphasis on social effects in [selecting] GCs was meant to convey [the judiciary's] positions on promoting certain values through court judgments. Guiding Case No. 24, for example, demonstrates the value of protecting ordinary people in traffic accidents. However, a case involving the crime of extorting a confession by torture in which the police officer finally prevailed due to insufficient evidence should not be chosen as a GC no matter how well reasoned the judgment is. This is because choosing such a case as a GC might send a wrong signal to the government organs with investigation authority, thereby increasing the possibility of compromising the protection of criminal suspects. These two examples illustrate the importance of unifying legal and social effects in selecting GCs.

Question 2: How should one treat rulings or judgments rendered by Higher People's Courts or the SPC that are not GCs?

Judge LI Bing: The SPC has released many types of cases through different channels, all of which could serve as important references for a unified judicial system. GCs are different, however, because there is a strict selection process in which GCs are discussed and passed by the Adjudication Committee of the SPC. In adjudication practice, judges may look for earlier rulings or judgments that are not GCs as references, but have no obligation to follow these rulings or judgments. GCs are released by the SPC to specifically guide the adjudication of subsequent cases; therefore, judges should refer to GCs when adjudicating similar cases. As a result, GCs differ fundamentally from other cases in terms of legal effects.

Judge GUO Feng: Earlier cases that are not GCs have neither *de jure* nor *de facto* binding effect on subsequent cases. The correct decision of a case hinges on the ascertainment of facts as well as the lawful interpretation and application of law. If a party considers a case erroneous in its treatment of factual or legal issues, the party can make an appeal or petition in accordance with law. The failure to follow an earlier ruling or judgment itself, regardless of whether it is a GC or any other case, cannot be a reason for determining whether the adjudication of a subsequent case was incorrect. If the decision of a subsequent case is inconsistent with that of a GC, the upper level court that repeals the decision of the subsequent case should do so for specific reasons, including erroneous application of law, instead of for the reason that the relevant GC was not followed.

¹⁴ See Seminar Summary: *China's Guiding Cases System Turns Six: Retrospect and Prospect*, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Guiding Cases *Seminars*TM, November 22, 2016, <https://cgc.law.stanford.edu/event/guiding-cases-seminars-20161122-and-24>. The questions and answers recorded here have been slightly revised by editors. Judges SHI Lei and LI Bing, who are Judge GUO Feng's colleagues at the Research Office of the Supreme People's Court, also attended the seminar.