



Practical Dilemmas and Optimization Suggestions of the Mechanism for Bridging Mediation and Arbitration in Guangdong, Hong Kong and Macao Greater Bay Area

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Abstract. This paper discusses the practical dilemmas of the interface mechanism of mediation and arbitration in Guangdong, Hong Kong and Macao Greater Bay Area, and puts forward optimization suggestions. By analyzing the deficiencies of judicial competence and collaborative regulatory mechanisms, the imperfections of legal service mechanisms, and the difficulties in the interface of litigation and arbitration rules, this paper puts forward suggestions such as establishing an integrated platform for multi-disciplinary dispute prevention and resolution, improving the path of legal rules interface, expanding the scope of application of extraterritorial laws, and building a platform for arbitration cooperation among Guangdong, Hong Kong and Macao. These suggestions aim to improve the efficiency and effectiveness of dispute resolution within the Greater Bay Area, promote the optimization of the regional rule of law environment, and enhance the synergy of cross-border dispute resolution.

Keywords: Guangdong, Hong Kong and Macao Greater Bay Area; mediation and arbitration; dispute resolution mechanism

1 Introduction

Amidst the backdrop of global integration and regional collaboration, the Guangdong-Hong Kong-Macao Greater Bay Area stands out as a beacon of openness and economic vitality within China. This region, known for its bustling cross-border interactions, is confronted with intricate challenges in the realm of dispute resolution. As the volume of economic activities within the area swells, the importance of a robust interface between various dispute resolution mechanisms, particularly mediation and arbitration, becomes ever more apparent.

This paper endeavors to dissect the intricate challenges that arise at the intersection of mediation and arbitration within the Greater Bay Area's dispute resolution frame-

work. It aims to identify the practical issues that hinder the effectiveness of these mechanisms and to propose targeted solutions that could enhance their synergy. The ultimate goal is to contribute to the strengthening of the rule of law within the Greater Bay Area, thereby fostering an improved legal environment conducive to regional development. By doing so, the paper seeks to amplify the effectiveness of cross-border dispute resolution, ensuring that it is well-equipped to handle the complexities of an increasingly interconnected economic landscape.

Furthermore, the paper aspires to offer a solid legal foundation that supports the stability and growth of the Greater Bay Area. It is envisioned that through the optimization of the dispute resolution interface, the region can not only resolve conflicts more efficiently but also enhance its attractiveness as a hub for international business and investment. The proposed measures are expected to facilitate a more harmonious and integrated approach to dispute resolution, which is essential for maintaining the dynamic and competitive edge of the Greater Bay Area in the global economy.[1]

2 Analysis of Practical Dilemmas

2.1 Inadequacy of Judicial Competence and Collaborative Regulatory Mechanisms

In the process of the construction of Guangdong, Hong Kong and Macao Greater Bay Area, due to the special characteristics of “one country, two systems” and “three jurisdictions”, the insufficiency of judicial competence and collaborative regulatory mechanism has become a major challenge. There are significant differences among the three places in terms of legal systems, jurisdiction and application of laws, which have led to a relative lag in cooperation in mutual legal assistance. At present, mutual assistance in litigation proceedings between the Mainland, Hong Kong and Macao is mainly confined to the mutual recognition and enforcement of judgments, and there is no clear arrangement for pre-litigation preservation or litigation preservation assistance, which limits the depth and breadth of judicial cooperation. In addition, the lack of uniformity in the legislative and judicial competence of the three places is also a barrier to realizing the convergence of systems and rules. For example, Hong Kong and Macao enjoy independent legislative power, while Guangdong Province enacts regulations within the scope of state authorization. This discrepancy has led to horizontal conflicts at the legislative level, making cooperation in enacting laws an obstacle. [2]

2.2 Imperfections in the Legal Service Mechanism

The issue of information sharing and synergistic cooperation among the legal service industries is also a difficulty in the construction of the Greater Bay Area. Due to the differences in the legal systems of the three regions, there are obstacles to the cooperation and deep integration of the legal service industry. Despite the existence of policy documents as the basis for implementation, there is a lack of high-level legal protection and a cross-regional legal framework with a system. In addition, the issue of unified management and planning of regions where legal services are concentrated needs to be

resolved urgently. [3] For example, the rules of the financial industry in the three places differ greatly, with Hong Kong practicing mixed business while the mainland practicing separate business, and this difference makes the convergence of rules in the financial field face greater difficulties. The imperfect information sharing mechanism among the legal services industry has led to inefficiencies in cross-regional legal services. There is a lack of effective synergy and cooperation mechanisms among legal service organizations in the three regions, and information asymmetry has seriously affected the quality and efficiency of legal services.

2.3 Difficulties in the Convergence of Litigation and Arbitration Rules

In respect of the convergence of litigation rules, although Guangdong, Hong Kong and Macao have implemented several inter-regional arrangements for judicial assistance in civil and commercial matters, which provide institutional safeguards for civil and commercial exchanges, they still face several challenges in actual operation. For example, the difficulty of service is a challenge in cross-border litigation. The success rate of entrusting the service of judicial documents in civil and commercial matters between the Mainland and Hong Kong is relatively low, and there are many steps and a long period of time for service. In addition, the principles of the basis of jurisdiction among the three places are not the same, and mainland law does not exclude parallel litigation. [4] In the future, if there are many cross-border cases, the problem of conflict of jurisdiction will be more prominent. In respect of the convergence of arbitration rules, although the arbitration institutions of Guangdong, Hong Kong and Macao are very active in promoting the convergence of arbitration rules, they still face greater challenges and difficulties. For example, the issue of whether Hong Kong (Macao)-funded enterprises registered in the nine cities of the Greater Bay Area can submit commercial disputes with no foreign-related elements to Hong Kong and Macao arbitration institutions for arbitration needs to be resolved urgently. There are significant differences among the arbitration institutions of the three places in terms of arbitration rules, procedures, and enforcement of awards, leading to the complexity and difficulty in the convergence of arbitration rules.

3 Optimization Suggestions

3.1 Establishment of an Integrated Platform for Multi-Disciplinary Dispute Prevention and Resolution

3.1.1 Dispute Compliance Early Warning and Neutral Assessment Mechanism.

Establish a dispute compliance early warning system to monitor and analyze potential legal risks in enterprise operations in real time and warn of possible disputes in advance through big data analysis and artificial intelligence technology. Establishment of a neutral assessment mechanism, whereby a third-party assessor with specialized knowledge and rich experience conducts an independent assessment of disputes, provides an objective and fair assessment report, and helps the parties to rationally choose

a dispute resolution method. Establishing a feedback mechanism for the effect of dispute resolution, tracking and evaluating the whole process of dispute resolution, summarizing the experience in a timely manner, and optimizing the dispute resolution. [5]

3.1.2 Integration of Adjudication, Negotiation, Conciliation and Arbitration Functions.

In order to improve the efficiency and effectiveness of dispute resolution, it is recommended to integrate the various functions of adjudication, negotiation, mediation and arbitration to form an integrated dispute resolution mechanism. A unified dispute resolution platform should be established to integrate various dispute resolution resources and realize information sharing and collaborative work. Optimize the dispute resolution process, simplify procedures, reduce duplication of work, and improve the efficiency of dispute resolution. Strengthen cooperation between various dispute resolution organizations, establish regular communication and collaboration mechanisms, and form synergies to jointly promote the efficient resolution of disputes.

3.2 Path Choice for Convergence of Legal Rules

3.2.1 Model Law Path and Harmonized Legislation.

The model law path and unified legislation are important means for the convergence of legal rules. The model law path can promote the consistency and coordination of legal rules by formulating a set of standardized legal rules to provide reference and guidance for various regions. Uniform legislation, on the other hand, can ensure that legal rules are consistently enforced throughout the Greater Bay Area through the formulation of uniform laws and regulations, reducing the problems of legal conflicts and inconsistencies. Through the combination of the Model Law Pathway and Uniform Legislation, the convergence and harmonization of legal rules in the Greater Bay Area can be effectively promoted.

3.2.2 Judicial Precedent Path and Regional Market Construction.

Drawing on international experience and combining with the actual situation of the Greater Bay Area, a set of legal systems adapted to the characteristics of the regional market can be gradually constructed. Specific measures include firstly, establishing a unified judicial precedent library to collect and organize judicial precedents within the Greater Bay Area for the reference and reference of courts around the region. Secondly, promoting the unification of legal rules for the regional market, formulating unified market access standards and regulatory rules, and promoting the integration of the regional market and the rule of law. Finally, strengthen judicial cooperation, establish a cross-regional judicial collaboration mechanism, promote the sharing and mutual recognition of judicial precedents, and enhance the authority and influence of judicial precedents.

3.3 Practice and Improvement of Articulation of Litigation Rules

3.3.1 Expanding the Scope of Application of Extraterritorial Laws.

Allowing the application of extraterritorial laws under specific circumstances can effectively solve the problem of conflict of laws in cross-border disputes and improve the efficiency and effectiveness of dispute resolution. Specific measures include firstly, formulating clear rules on the application of laws and stipulating under what circumstances extraterritorial laws can be applied. Secondly, establishing an extraterritorial law identification mechanism to ensure the accurate application of extraterritorial laws. Finally, strengthening training and guidance on the application of laws to improve judges' and lawyers' understanding and mastery of extraterritorial laws.

3.3.2 Judicial Assistance to Achieve Smooth Litigation Procedures in Cross-Border Disputes.

Establish a mechanism for cross-border judicial assistance and clarify the duties and procedures of courts around the world in assisting in cross-border disputes. Establish a green channel for cross-border disputes, simplify procedures, shorten time and improve the efficiency of dispute resolution. Promote cross-border judicial collaboration and establish a regular communication and collaboration mechanism to facilitate the smooth conduct of judicial assistance.

3.4 Practice and Improvement of Articulation of Arbitration Rules

3.4.1 Signing of Mutual Legal Assistance Arrangement.

Signing the MLA arrangement is an important measure for the convergence of arbitration rules. By signing the judicial assistance arrangement, it can clarify the duties and procedures of the courts in various places to assist in the enforcement of arbitral awards and ensure the smooth enforcement of arbitral awards. To formulate the specific content of the judicial assistance arrangement, and to clarify the duties and procedures of the courts in various places in assisting in the enforcement of arbitral awards. Establishing a communication and collaboration mechanism for judicial assistance to ensure the smooth conduct of judicial assistance. Strengthen training and guidance on judicial assistance and improve judges' and lawyers' understanding and mastery of judicial assistance arrangements. [6]

3.4.2 Establishing an Arbitration Cooperation Platform Among Guangdong, Hong Kong and Macao.

Establishing an arbitration cooperation platform can integrate the arbitration resources of the three places and promote the unification and coordination of arbitration rules. Establish the organizational structure and operation mechanism of the arbitration cooperation platform and clarify the responsibilities and division of work of arbitration institutions in each place. Promote the unification and coordination of arbitration rules, formulate uniform arbitration rules and procedures, and ensure the fairness and impar-

tiality of arbitral awards. Strengthen the publicity and promotion of the arbitration cooperation platform, increase the visibility and influence of the arbitration cooperation platform, and attract more disputing parties to choose the arbitration cooperation platform to resolve their disputes.

4 Conclusion

Through an in-depth analysis of the practical dilemmas of the mediation-arbitration interface mechanism in Guangdong, Hong Kong and Macao, this paper puts forward a series of optimization recommendations. These recommendations include the establishment of an integrated platform for multi-disputes prevention and resolution, the improvement of the path of convergence of legal rules, the expansion of the scope of application of extraterritorial laws, and the establishment of an arbitration cooperation platform among Guangdong, Hong Kong and Macao. The implementation of these measures will help improve the efficiency and effectiveness of dispute resolution within the Greater Bay Area, promote the optimization of the regional rule of law environment and enhance the synergy of cross-border dispute resolution. With the gradual implementation of these recommendations, the rule of law in the Greater Bay Area of Guangdong, Hong Kong and Macao will be more complete, providing solid rule of law protection for the stability and development of the region.

References

1. Zhao Xi, Wu Libin. Study on the Convergence of Commercial Mediation Rules in Guangdong, Hong Kong and Macao Greater Bay Area [J]. *Henan Social Science*, 2024, 32 (09): 97-108.
2. REN Wendai, ZHANG Li-e. Chronicle of high-quality development of foreign-related rule of law construction in Guangdong, Hong Kong and Macao Bay Area cities [N]. *Democracy and Law Times*, 2024-08-29 (001).
3. Zhang Liang. Paths of Civil and Commercial Law Conflict Resolution between the Mainland, Hong Kong and Macao under the Construction of Guangdong-Hong Kong-Macao Greater Bay Area [J]. *Social Scientist*, 2024, (04): 8-13.
4. Jing Yan. Multi-disciplinary Commercial Dispute Resolution Mechanisms in the Guangdong-Hong Kong-Macao Greater Bay Area: Innovation, Impact and Prospects [J]. *Industrial Innovation Research*, 2024, (13): 57-59.
5. Mo Ran, Chen Yan. Governance Rethinking and Mode Remodeling of Cross-border Data Flow in Guangdong, Hong Kong and Macao Greater Bay Area [J]. *Journal of Politics and Law*, 2024, 41 (03): 42-51.
6. Zhu Guobin. Legal Dilemma and Way Forward in Promoting the Construction of Guangdong-Hong Kong-Macao Greater Bay Area [J]. *Shenzhen Social Science*, 2024, 7 (03): 35-44.

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