

## The status quo and prospective of civil and commercial judicial assistance in Guangdong-Hong Kong-Macao greater bay area

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### Abstract

Since the return of Hong Kong and Macao, the mainland, as a role of an independent and complete jurisdiction, has signed plenty of arrangements for civil and commercial judicial assistance with Hong Kong and Macao, which has formed the fundamental institution of the civil and commercial judicial assistance in Guangdong-Hong Kong-Macao Greater Bay Area. However, at present, there are numerous prospective questions in the civil and commercial judicial assistance system, which affect the operation result of civil and commercial judicial assistance system and make it hard to meet the need of integration and development in Guangdong-Hong Kong-Macao Greater Bay Area. In the future, Guangdong-Hong Kong-Macao Greater Bay Area should explore a variety of modes of judicial assistance, constantly expand the content of judicial assistance, innovate the method of judicial assistance and build a civil and commercial judicial assistance center in this area. In conclusion, through these measures to promote efficient, normalizing and institutionalized development of civil and commercial judicial assistance system.

**Keywords:** inter-regional private law; regional judicial assistance; Guangdong-Hong Kong-Macao greater bay area

### 1. Introduction: Problems and challenges of civil and commercial judicial assistance in the Guangdong-Hong Kong-Macao Greater Bay Area

According to a 2019 Hong Kong and Macao to the bay area development planning outline, will be built a large bay area of Guangdong energetic world-class city circle, high-quality life "livable appropriate industry appropriate swim", big gulf economic cooperation and the livelihood of the people more closely, also will lead to further increases in civil and commercial disputes, it is an urgent need to strengthen a large bay area of Guangdong civil and commercial judicial assistance system is efficient, the construction of the normalized and institutionalized, in order to improve the flowing in the process of dispute resolution. In this context, the past, in addition to the achievements of civil and commercial judicial assistance in Hong Kong and Macao, there are also the following problems that need to be further strengthened and improved

#### 1.1 The time gap between the slow implementation of the civil and commercial judicial assistance system and the urgent practical needs of the Greater Bay Area

Arrangement mode is the main mode of interregional civil and commercial judicial assistance in China, which refers to article 95 of the basic law of Hong Kong or article 93 of the basic law of the Macao special administrative region. The mainland, the Hong Kong special administrative region and the Macao special administrative region shall consult on the issue of judicial assistance in civil and commercial matters between the two sides. For the outcome of the consultation, the mainland's supreme people's court shall take effect and implement it in the form of judicial interpretation, Hong Kong's legislature shall amend or enact relevant laws to take

effect and implement it, and Macao shall take effect and implement it in the form of gazette. Among them, the consultation and signing of the arrangement requires the parties to reach consensus through consultation, and the conversion and entry into force of the arrangement requires the parties to complete the internal conversion and entry into force procedures. These are two important links in the implementation of the arrangement model, but also two prominent links that cause the slow progress in the institutionalization of inter-regional civil and commercial judicial assistance. Take the recognition and enforcement of marriage and family judgment in the mainland and Hong Kong as an example. After the handover of Hong Kong, the normal circulation mechanism of marriage and family judgment in the mainland and Hong Kong has been suspended, and it is urgent for both sides to reach relevant arrangements. At the end of 2017, Guangdong companies accounted for about 21 per cent of mainland companies listed in Hong Kong. (Zhang 2015) <sup>[6]</sup> Marriage and family cases in modern society involve not only personal relations between family members, but also complex property and commercial relations between family members and between families and third parties. Marital property relationship, parents and children property relationship, property inheritance relationship are closely related to relevant company equity disputes, contract disputes, insurance rights and interests disputes and other commercial disputes. The slow process of implementing the inter-regional civil and commercial judicial assistance arrangement system directly leads to the disconnection between the system supply and the practical demand. With the development of the Guangdong-Hong Kong-Macao Greater Bay Area, the civil and commercial exchanges are getting closer and closer.

## 1.2 The detached line between the limitation of civil and expanding demand of commercial judicial assistance in the Greater Bay Area

There are broad sense and narrow sense of civil and commercial judicial assistance. In the narrow sense, civil and commercial judicial assistance refers to the service and collection of evidence. After 20 years of development, the mainland, Hong Kong and Macao civil and commercial judicial assistance in the four areas of service, evidence collection, arbitration award and court judgment recognition and enforcement have been achieved degree of breakthrough. However, due to the imbalanced system construction, the inter-regional civil and commercial judicial assistance has not been fully institutionalized. The limitation of the scope of application of the civil and commercial judicial assistance arrangement in Hong Kong, Macao and the Guangdong-Hong Kong-Macao Greater Bay Area has a certain scope gap with the development goal of the Guangdong-Hong Kong-Macao Greater Bay Area. Whether Guangdong, Hong Kong, Macao and the Greater Bay Area can first try to promote the institutionalization of civil and commercial judicial assistance in the above areas, and on this basis establish a broader judicial assistance and cooperation system will help to provide a solid institutional guarantee and support for the integrated development of the Greater Bay Area.

## 1.3 The disconnection between the relatively conservative ways of civil and commercial assistance and the development orientation of the Greater Bay Area

Seeking maximum consensus through consultation is an important feature of the arrangement mechanism, so the inter-regional civil and commercial judicial assistance mechanism tends to be cautious. With the passage of time, the development of The Times and the change of the system, the inter-regional judicial assistance mode established in the early part of the arrangement also gradually presents a relatively conservative phenomenon, which is highlighted in the inter-regional civil and commercial judicial assistance mode lags far behind the development trend of modern electronic information society. (Zhang 2016) <sup>[7]</sup> In information technology development, Hong Kong and Macao to the bay area development planning outline of cooperation by Hong Kong and Macao to strengthen urban wisdom, to establish unified, open data port, the construction of public application platform of communication, the construction of universal coverage, with interconnected network of intellisense and wisdom city information cloud platform of time and space, spatial information service platform, such as information infrastructure, develop the intelligence transportation, energy, municipal wisdom, wisdom community. (He 2015) <sup>[3]</sup> In terms of creating a globally competitive business environment, the outline of the development plan for the Guangdong-Hong Kong-Macao Greater Bay Area proposes to improve the international commercial dispute resolution mechanism, build an international arbitration center, and support exchanges and cooperation between Guangdong-Hong Kong-Macao arbitration and mediation institutions. We will build a diversified dispute resolution mechanism and build an international legal services center and an international commercial dispute resolution center in Hong Kong. At the same time, the supreme people's court issued the five-year development plan for the informatization of

the people's courts, and put forward the requirements for the construction of smart courts, requiring the people's courts to make full use of the advanced information system, support the online operation of the whole business, the whole process is open according to law, all-round intelligent services, and promote the Internet +sunshine justice. Obviously, there is a certain degree of institutional disconnection between the relatively conservative ways of civil and commercial judicial assistance in Hong Kong, Macao and mainland China and the goal and requirements of improving the international commercial dispute resolution mechanism and promoting the construction of smart city in the Greater Bay Area. How to innovate the way of civil and commercial judicial assistance with the tide of information development in the Guangdong-Hong Kong-Macao Greater Bay Area is also a question to be considered.

## 1.4 The disconnection between the fragmentation of the construction of the civil and commercial judicial assistance system and the integration of systems in the Greater Bay Area

The mainland and Hong Kong, the mainland and Macao, and Hong Kong and Macao have reached relevant arrangements through pairwise consultations respectively. This has led to the duplication of the inter-regional judicial assistance system for civil and commercial affairs. Among the 12 existing arrangements, there are only four areas of service, evidence collection, arbitration award and recognition and enforcement of judgment. Among them, three arrangements have been signed in the field of service, four arrangements have been signed in the field of civil and commercial judgment, and three arrangements have been signed in the field of enforcement of arbitration award. Moreover, with the repeated construction of the system, the conflicts of legal systems in Hong Kong, Macao and Hong Kong, the unsynchronized arrangement of consultations and the different needs and understandings of all parties further lead to the unnecessary differences of judicial assistance rules between different arrangements in the same field. (Huang1994) One country, two systems and three legal systems are the most prominent legal features of the Guangdong-Hong Kong-Macao Greater Bay Area. Under one country, two systems, the Hong Kong and Macao special administrative regions enjoy a high degree of autonomy and exercise executive, legislative, independent judicial and final adjudication powers. The fourth issue to be considered is how to promote the connection of inter-regional civil and commercial judicial assistance rules in the Guangdong-Hong Kong-Macao Greater Bay Area and give full play to the coordinating role of the civil and commercial judicial assistance system in the legal conflicts of the three regions. To sum up, the 2019 outline of the development plan for the Guangdong-Hong Kong-Macao Greater Bay Area proposes that by 2022, the Guangdong-Hong Kong-Macao Greater Bay Area will basically form the framework of the world-class bay area and world-class city clusters. Through the construction of Guangdong-Hong Kong-Macao Greater Bay Area, it is the development trend of the new era to promote the further integrated development of Guangdong-Hong Kong-Macao Greater Bay Area. (Shao & Yu 2001) <sup>[5]</sup> In this background, to strengthen and promote a large bay area of Guangdong institutionalization, and high-effectiveness of civil and commercial judicial assistance and normal operation, in order to promote a large bay area of

Guangdong rules, improve the international commercial dispute resolution mechanism, building globally competitive business environment, is to strengthen a large bay area of Guangdong goal and the direction of the civil and commercial judicial assistance.

## **2. Suggestions on the future development of civil and commercial judicial assistance in the Guangdong-Hong Kong-Macao Greater Bay Area**

### **2.1 To promote the diversification of judicial assistance modes in civil and commercial affairs**

In retrospect, the higher people's court of Guangdong province and Hong Kong in 1985 the Supreme Court had reached the "civil and commercial litigation document to assist each other preliminary agreement", after added sound to become the Guangdong higher people's court and the high court of Hong Kong civil and economic disputes litigation document to entrust each other problems agreement and to enter into force as of July 1, 1988, for the later in 1999, the port of destination delivery arrangements within provided valuable samples. After the return of Hong Kong and Macao, after more than 20 years of development, the inter-regional civil and commercial judicial assistance system has entered a deep-water period, facing the problems of the revision and improvement of the original arrangement and the construction of the new system. However, the cases involving Hong Kong and Macao in the mainland of China have the characteristics of unbalanced distribution of regions, so the inter-regional civil and commercial judicial assistance promoted by the mainland as a whole in a balanced and unified manner may be difficult to complete the system improvement or construction process in a short time. Compared with other regions in the mainland, Guangdong, as an important city for the trial of cases involving Hong Kong and Macao and inter-regional civil and commercial judicial assistance, has a more urgent demand for the establishment of an efficient and institutionalized inter-regional civil and commercial judicial assistance mechanism. The Guangdong-Hong Kong-Macao Greater Bay Area needs to explore the innovation of models of civil and commercial judicial assistance. Firstly, the Guangdong-Hong Kong-Macao Greater Bay Area should encourage judicial departments to promote the development of civil and commercial judicial assistance system through individual cases. In particular, in the areas of inter-regional bankruptcy, maritime business, judgment recognition and enforcement of some intellectual property rights and arbitration-related cases, we should give full play to the role of individual case exploration, promote judicial assistance in civil and commercial affairs in a flexible and innovative way, and form the fact reciprocity of inter-regional civil and commercial judicial assistance. Secondly, the Guangdong-Hong Kong-Macao Greater Bay Area should introduce unilateral legislation of civil and commercial judicial assistance with more convenient procedures and more relaxed conditions. The function of civil and commercial judicial assistance system is to overcome the contradiction between the regionalism of judicial power and the extraterritorial effect of judicial ACTS. In the field of international civil and commercial judicial assistance, when there is no bilateral or multilateral treaty between countries, sovereign states can still legislate on their own to provide assistance for foreign countries' requests for civil and commercial judicial assistance. So, in the field of

interregional civil and commercial judicial assistance, belong to a country, in every legal law field, there is no fundamental conflict of interest between each other to provide civil and commercial judicial assistance will help maintain a national overall work of the judicial order, also helps to smooth exercise of jurisdiction, in every legal arranged in has not been able to achieve both cases, the use of legislative power should be more aggressive, formulate relevant laws and regulations and laws provide for each other than international civil and commercial judicial assistance conditions more relaxed, more convenient for application of civil and commercial judicial assistance, and promote law field in civil and commercial judicial assistance between the law of reciprocity as soon as possible. Finally, according to article 95 of the "Hong Kong basic law and" Macao basic law "the 93th, in key areas of civil and commercial judicial assistance institutionalized or issue, in case to explore and unilateral legislation, on the basis of the experience of a large bay area can explore through consultation of Guangdong, Hong Kong and Macao to sign big bay area three civil and commercial judicial assistance agreement, Hong Kong and Macao to promote the whole big bay area rules of civil and commercial judicial assistance system integration. Therefore, in the current in the mainland as a whole to negotiated in Hong Kong and Macao civil and commercial judicial assistance arrangements for path model, on the basis of a large bay area of Guangdong in interregional civil and commercial judicial assistance arrangements, on the basis of existing exploration cases and unilateral legislation as supplement, contribute to the fact that civil and commercial judicial assistance reciprocity and the law of mutual benefit, finally the diversification of a large bay area of Guangdong tripartite agreement mode of civil and commercial judicial assistance.

### **2.2 To expand the contents of judicial assistance in civil and commercial matters**

Currently, among the 12 inter-regional civil and commercial judicial assistance arrangements, some of them are reached earlier, and the system is facing modification and improvement. Therefore, the Guangdong-Hong Kong-Macao Greater Bay Area should explore and improve the system of these arrangements. For example, in the field of delivery," Service arrangement in inner port" and "service arrangement in inner Australia" only adopt the method of entrusted service, but the application effect is affected by the long time, multiple links and single path of the entrusted service procedure. In the future, the Guangdong-Hong Kong-Macao Greater Bay Area should consider perfecting and improving the judicial assistance system of civil and commercial service. On the one hand, it should improve the entrustment service procedure, establish the point-to-point direct entrustment mode between the accepting court and the assisting court in the Guangdong-Hong Kong-Macao Greater Bay Area, reduce entrustment links and improve the service efficiency. On the other hand, it will explore the introduction of other alternative methods of consigning service, including electronic service, party service or third-party service, to enrich the ways of document service. And as in the field of the arbitral award recognition and enforcement, the Hong Kong arbitration arrangements within specification only for execution of arbitral awards, did not establish the arbitration award recognition program,

can't solve the client only needs recognition in practice the award of the arbitration but do not need to execute the arbitral award requirements, apply for approval to the party with legal obstacles, a big bay area should promote to establish the arbitral award of Guangdong approval procedure, clear the arbitration ruling is the relationship between the recognition and enforcement procedure. The Guangdong-Hong Kong-Macao Greater Bay Area may conduct trial judicial assistance in areas where bilateral arrangements have not yet been reached. For example, for the conflict of civil and commercial jurisdiction in Guangdong-Hong Kong-Macao Greater Bay Area, we can explore and reach a coordination agreement on the conflict of civil and commercial jurisdiction in Guangdong-Hong Kong-Macao Greater Bay Area. In the case of jurisdiction conflict, the author restricts the jurisdiction, and adopts the method of "first filing, first accepting" to avoid parallel litigation. Or learn from the inter-regional case transfer system of the United States, establish the case transfer system in the Guangdong-Hong Kong-Macao Greater Bay Area, and solve the problem of parallel litigation caused by jurisdiction conflict. Specifically, Guangdong, Hong Kong and Macao can fully discuss and consult on the conditions, procedures and other contents that are not convenient for the court to transfer cases, and formulate relevant norms. When there is a conflict of jurisdiction, the accepting court can decide whether to dismiss the lawsuit and transfer the case to the other court according to the criterion. In addition to the traditional civil and commercial judicial assistance, the Guangdong-Hong Kong-Macao Greater Bay Area can also explore broader judicial ties and cooperation. For example, the construction of the Guangdong-Hong Kong-Macao Greater Bay Area litigation and arbitration parallel procedure resolution mechanism, judicial information reporting system, legal investigation mechanism.

### 2.3 To explore diversified ways of judicial assistance in civil and commercial affairs

The ways of judicial assistance include active judicial assistance and passive judicial assistance. Active judicial assistance means that the requested party conducts judicial ACTS on behalf of the requesting party, while passive judicial assistance means that the requested party permits and agrees to the request party to perform certain judicial ACTS in its territory. (Andera 2008). At present, the interregional civil and commercial judicial assistance arrangement in China mainly adopts active judicial assistance, but there are also some discussions on introducing passive judicial assistance. In the consultation on service arrangement between the mainland and Macao in 2006, the original Australian text raised the issue of negative judicial assistance for direct service of judicial documents, that is, "the judicial personnel of the principal can be accompanied by the judicial personnel of the agent to perform direct service in the territory of the other party. However, considering that there are many provinces and cities in the mainland, if all of them were delivered directly to Macao, it would increase the burden on the Australian side, so it was not adopted<sup>[22]</sup>. however, in the end, although the service and evidence collection arrangement failed to adopt the negative judicial assistance method of document service in the field of service, it adopted the negative method in the field of evidence collection and judicial assistance "People's justice", 12th issue, 2001. Judicial

assistance. Article 19 states: "at the request of the entrusting court, the entrusting court may allow the entrusting court to send judicial personnel to attend when the entrusting court is executing the entrustment to obtain evidence. If necessary, with the consent of the client, the judicial officers of the principal court may question the witnesses, expert witnesses, etc." In theory, positive judicial assistance and negative judicial assistance are judicial assistance, compared with the positive judicial assistance, passive judicial assistance allows the requester directly into the requested Fang Yu engaged in judicial practices, and on the one hand, can reduce the entrusted to assist phase of the various links, the requester can directly deal with the problems of judicial assistance in time, reduce the time delay, on the other hand also reduce the requested method of judicial assistance work, reflect the judicial trust between legal family, is an efficient form of judicial assistance. In the field of interregional civil and commercial judicial assistance, the passive judicial assistance is not completely unfeasible. The Guangdong-Hong Kong-Macao Greater Bay Area can explore the establishment of a negative judicial assistance system, allowing the accepting court to serve or collect evidence directly across the border with the consent of the other party. On the other hand, the electronic platform of civil and commercial judicial assistance in Guangdong-Hong Kong-Macao Greater Bay Area is explored by means of information technology. Since January 2016, the mainland's first inter-district judicial assistance case management platform system covering four levels of people's courts has been officially launched<sup>[23]</sup>. however, the system is currently only used in the mainland and has not yet been introduced in Hong Kong and Macao. In the future, we should make full use of information technology to establish a unified electronic platform for civil and commercial judicial assistance in Guangdong, Hong Kong, Macao and Dawan district, so as to realize online transmission, online review and online handling of inter-regional civil and commercial judicial assistance cases, and realize real-time management, whole-process management and dynamic tracking. Specifically, the electronic platform for civil and commercial judicial assistance in Guangdong, Hong Kong, Macao and Dawan district can include the following contents :(1) document transfer function. The content of service shall be built on the electronic platform, and all civil and commercial judicial assistance documents shall be archived electronically, transmitted and served through the network platform, and the time of manual delivery shall be reduced. (2) case inquiry function. The inquiry number system of civil and commercial judicial assistance cases was established on the electronic platform to allow the entrusting court to inquire the judicial assistance situation on the unified platform to follow up the judicial assistance process. (3) data exchange and information reporting function. The content of information exchange and information notification shall be established on the electronic platform, so that the three courts can provide relevant legal materials to each other and inform each other of the implementation of interregional civil and commercial judicial assistance arrangements, and the entrusted court and the entrusted court can directly communicate on the handling of specific civil and commercial judicial assistance cases. (4) electronic forensics function. The construction of remote video forensics content on the electronic platform, so that the three courts with the



help of audio-visual transmission technology to provide forensic judicial assistance.

#### **2.4 To innovate the construction of inter-regional judicial assistance platform for civil and commercial affairs**

According to the outline of the development plan for the Guangdong-Hong Kong-Macao Greater Bay Area, the Greater Bay Area will further improve the international commercial dispute resolution mechanism and promote the construction of a diversified dispute resolution mechanism featuring extensive consultation, joint contribution and Shared benefits. Highly effective, normalization and institutionalization of civil and commercial judicial assistance in improving the international or flowing of interregional civil and commercial dispute resolution process and the result of the dispute resolution liquidity plays a fundamental institutional guarantee and support role, is also a large bay area of Guangdong international commercial dispute diversified dispute settlement mechanism, and sharing. In practice, the construction of centralized civil and commercial judicial assistance center is helpful to improve the efficiency of civil and commercial judicial assistance, which has been recognized in the international practice of civil and commercial judicial assistance in China. Beginning in 2003 the Supreme People's Court has specified in Beijing, Shanghai, Guangdong, Zhejiang, Jiangsu province, the five parts of the higher people's court may, according to the Hague convention direct external request of international judicial assistance and deal directly with the member of the convention the central authorities put forward and transfer the written request for judicial assistance, set up under the Hague convention of judicial assistance window, greatly improving the efficiency of international civil and commercial cases judicial assistance. Based on this experience, in the future, Guangdong, Hong Kong, Macao and Dawan district should not only promote the construction of international legal service center, international business litigation center, international business mediation center and international commercial arbitration center, but also explore the establishment of a matching civil and commercial judicial assistance center. To be specific, with the authorization of the supreme people's court, the inter-regional judicial assistance center for civil and commercial affairs in the Guangdong-Hong Kong-Macao Greater Bay Area can be established to directly and uniformly accept, administer and transmit requests for judicial assistance in civil and commercial matters from relevant courts in the mainland and from Hong Kong and Macao. On the one hand, the interregional civil and commercial judicial assistance center in the Greater Bay Area directly entrusts the relevant court model, which eliminates the need to transfer through local higher people's courts, reduces the transfer link and the duplication of institutions, and is conducive to improving the efficiency of interregional civil and commercial judicial assistance. Big bay area on the other hand, the establishment of unified interregional civil and commercial judicial assistance center, comprehensive management of interregional civil and commercial judicial assistance from the mainland, unified process standards and examination standards case, help to promote unified rules and docking of interregional civil and commercial judicial assistance system, enhance the competitiveness of the bay

area of the rule of law, Hong Kong and Macao to give full play to the big bay window platform.

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