

Proof-of-Foreign Law Issues in Greater Bay Area

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Abstract

With each of the mainland, Macau, and Hong Kong having separate legal system, choice-of-law is an important issue for inter-regional and international transactions. Proof of foreign law is a crucial step in this choice-of-law process and thus essential to the success of the Greater Bay Area. This article first outlines the choice-of-law process under the mainland law and highlights the various special conflict of laws rules applicable to the mainland courts in the Greater Bay Area. It then presents the survey on the judicial practices of these courts regarding proof of foreign law. Based on the findings of this survey, it is suggested that courts of Hong Kong and mainland should work on establishing a judicial assistance channel to facilitate proof of foreign law in the future.

The Greater Bay Area (GBA) is one of the most significant economic initiatives launched by the Chinese government.¹ It involves substantial economic developments and integration among nine cities in Guangdong province and Hong Kong and Macau.² Given that mainland China, Hong Kong, and Macau each have its own legal system, such integration necessarily creates regional choice-of-law issues. It is no exaggeration to say that the success of the GBA hinges in part on whether those issues can be handled fairly and efficiently.

One of the most crucial choice-of-law issues is the proof of foreign law, including Hong Kong and Macanese law, in mainland Chinese courts in the GBA (“GBA courts” hereinafter).³ The proof of foreign law has long been a thorny issue in Chinese private international law.⁴ The

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