

Promoting the Rule of Law Based on the Building of Data Platform of Smart City-Region in Guangdong-Hong Kong-Macao Greater Bay Area

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Abstract: GHMGBA uses “smart” technology to focus on building smart government affairs and smart life platform, which is conducive to deepening the cooperation of the GHMGBA, promoting the construction of regional rule of law, and providing experience for the construction of smart city-regions in other bay areas at home and abroad. However, some legal obstacles restrict the construction of the data platform of the smart city-region of the GHMGBA, which are mainly reflected in the lack of legal basis and clear authorization of cross-border network cooperation, the restrictions of administrative division and government departmentalism, and the internet isolation imposed by the Mainland China to maintain national security. Therefore, the GHMGBA should explore the way of collaborative legislation under the central authority to connect the administrative network of GHMGBA, promote the soft law governance of data platform construction, learn from the ADR model and constantly improve the mediation system to deal with administrative disputes arising from the data platform.

1. Introduction

As a pioneer area of reform and opening-up in China, Guangdong-Hong Kong-Macao Greater Bay Area (GHMGBA) is facing challenges and opportunities such as regional traffic integration, government linkage cooperation, industrial transformation and upgrading. Building a data platform for smart city-region will provide new ideas for further deepening cross-border cooperation between Guangdong, Hong Kong and Macao and achieving coordinated development of all aspects of the region. GHMGBA should make full use of “smart” technology to focus on building a platform of wisdom government and wisdom life, which provide “smart” service for the collaborative management and convenience of life in GHMGBA. On the one hand, the construction of the data platform of the smart city-region of the GHMGBA is the core project for its E-government public platform construction. After the completion of the platform, residents of any city in GHMGBA can conduct related administrative and judicial affairs online, reducing the barriers between the information flow of different websites. Business examination and approval, tax payment and social insurance information among government departments can achieve cross-border collaborative processing on this platform, and government information can be unified access to government data platform to achieve resource information sharing. On the other hand, the construction of the smart living data platform is an important project for the construction of convenient public platforms in GHMGBA. Smart life data include smart community, intelligent medical treatment, intelligent travel, mobile phone smart card, etc. At present, the Nine Cities in Guangdong have been able to use WeChat and Alipay to pay for public transport, subway, taxis, high-speed rail and so on, while traffic

and settlement in Hong Kong and Macao still stay in octopus and cash payment forms, which is not conducive to the convergence, communication and development of e-commerce in GHMGBA. Therefore, with the efforts of the coordinating agency of the smart city-region of the GHMGBA, the intelligent life data platform will provide convenient information and service platform for residents of any city in GHMGBA, such as food, clothing, shelter, transportation, medical treatment, education and travel, which will improve the quality of life and happiness level of residents in GHMGBA, and make the life of citizens better. More convenient and intelligent to promote the exchanges and cooperation between residents of Guangdong, Hong Kong and Macao, thus promoting the convenient development of other areas. In short, the construction of the two platforms will help deepen cooperation in GHMGBA, promote the construction of inter-regional rule of law, and provide experience for the construction of other smart city-regions in the bay area at home and abroad.

2. Rule of Law Hindrance to the Construction of Data Platform of GHMGBA's Smart City-Region

2.1 Lack of Rule of Law Basis and Clear Authorization for Cross-Border Network Cooperation

The Chinese Constitution and the Basic Law of Hong Kong and Macao do not provide sufficient normative resources for cooperation between the Mainland China Government and the governments of Hong Kong and Macao as well as the governments of the Hong Kong and Macao Special Administrative Regions. There is a serious lack of a rule of law basis for cross-border cooperation, let alone a clear legal mandate for specific matters of cooperation. Take the network authorization as an example, the mainland network cooperation authorization can obtain the Guangdong local government to support vigorously, but the legal authorization in the Hong Kong and Macao Special Administrative Region is full of difficulties. If the Hong Kong Legislative Council and the Hong Kong SAR Government do not cooperate well enough, not only will there be no legal basis for linking Guangdong, Hong Kong, and Macao with the smart city network platform, but also a series of other forms of cooperation that require legal authorization cannot be carried out. The lack of a rule of law basis for cross-border network cooperation and the lack of clarity on specific legal mandates have become the main rule of law obstacles to Internet data integration and the construction of smart city data platforms in the GHMGBA.

2.2 Administrative Segmentation and the Limitation of Government Orientalism

On the one hand, administrative segmentation is the essential reason for the lack of rule of law and clear authorization of cross-border network cooperation. The basic public construction such as smart city data platform needs the local and Hong Kong and Macao government to break the administrative division and carry on the coordination and cooperation. Because of the limitation of the jurisdiction of the traditional administrative region, the local government often adheres to the individualism and greatly affects the cooperation between the local government and other governments, resulting in the local government cannot expand the scope of public services. GHMGBA has different types of administrative regions, and the local governments cannot reach a consensus on the level of administrative subjects, which hinders the cooperation among the governments of GHMGBA. On the other hand, under the restriction of government orientalism, government is the main body of public service supply and public social affairs governance, and has taken on all aspects of social management. The main role of the government under the restriction of government departmentalism is to manage and control the society, and it is the center of authority and power. The society and citizen organizations must obey the government control, and the government is molded as "all-powerful government" [1]. Each local government only manages the administrative affairs within its own jurisdiction, but in the business promotion, it is often limited by the division of the jurisdiction and fails to take the regional development as the basis and the consideration premise. Historical practice has proved that there are not only common interests among cities, but also different demands. When the interests of different cities are involved, the relationship between local

governments is difficult to coordinate.

2.3 Internet Segregation in Mainland China for the Purpose of Safeguarding National Security

Network security has become a global public problem faced by the international community. The United States continues to enhance the status of cybersecurity in its national security strategy, and its latest “Worldwide Threat Assessment of the US Intelligence Community” regards cyber threats as the top of all kinds of national security threats it faces [2]. China also attaches equal importance to cyberspace security and space and maritime security, and proposes to attach importance to them from a strategic perspective [3]. Obviously, China's cautious attitude towards the opening of the Internet has also led to the continued disconnection of the Internet between Hong Kong, Macao and the Mainland, thus hindering the integration and development of the relevant industries of e-commerce in the three places. It also affects the construction of GHMGBA smart city-region data platform. The basic information flow between Guangdong, Hong Kong and Macao is the premise of cross-border cooperation, and the core issue of the coordinated development of Guangdong, Hong Kong and Macao. In order to find the sustainable development road of GHMGBA through network data, it is necessary to connect networks in GHMGBA.

3. Rule of Law in the Construction of Data Platform of GHMGBA Smart City-Region

3.1 Explore the Way to Coordinate Legislation under the Authorization of the Central Government to Connect the Administrative Networks of GHMGBA

Draw lessons from the world first-class Bay area development experience, the region coordinated development must need the region coordinated legislation to safeguard. Therefore, the central government authorized GHMGBA to establish a legislative coordination mechanism as the premise and basis for connecting Guangdong, Hong Kong and Macao government networks. There are many successful precedents for foreign countries to regulate the coordinated development in the region through a unified and coordinated legislative mechanism in order to avoid local conflicts of interest and thus improve the efficiency of development. Take the Stuttgart region of Germany as an example, there are more than 170 local governments around the center of Stuttgart. In the 1990s, Stuttgart Regional Union was established on the basis of the Stuttgart Regional Union Charter. The Alliance has regional parliaments as decision-making bodies that address the core elements of regional planning [4]. The main role of the alliance is to integrate the power of local governments in the region, its “development planning” is that “local governments must follow the upper law of local planning.” This “development plan” has the legal standard in the German legal system [5], has provided the unified regional coordination function for the German bay area construction. Therefore, GHMGBA can explore the establishment of legislative coordination mechanism while connecting Guangdong, Hong Kong and Macao government affairs network under the authorization of the central government, and then build a smart city data platform.

3.2 The Rule of Soft Law in the Construction of Data Platform

Compared with soft law, hard law does not have flexibility and clarity. The carrier of soft law is diverse, usually referred to as outline, agreement, initiative, promotion law and so on [6]. In the past, Guangdong, Hong Kong and Macao have signed a variety of soft law cooperation documents. For example, the “Deepening Guangdong-Hong Kong-Macao in the Development of the Bay Area” (hereinafter referred to as the “Agreement”) was signed through consensus among many subjects, which embodies the basic principle of win-win cooperation. It is a model of soft law governance for China’s cross-border cooperation. The agreement does not specify the legal responsibilities of the parties and not rely on the mandatory implementation of traditional executive orders. It has the nature of soft law in terms of both its external form and substantive content, and this soft law governance model has been widely adopted by the governments of Guangdong-Hong Kong-Macao in dealing with regional issues. Therefore, in the construction of data platform, the rule of soft law also has its

unique features.

First of all, soft law can provide a quick solution to GHMGBA's current realistic dilemma. Taking the “Deepening Guangdong-Hong Kong -Macao in the Development of the Bay Area” as an example, it analyzes the feasibility of the soft law rule on the construction of GHMGBA smart city-region data platform. Chapter II of the “Deepening Guangdong-Hong Kong -Macao in the Development of the Bay Area” deals with cross-border infrastructure construction, which points out the need to strengthen overall coordination and build a well-developed infrastructure system in the Greater Pearl River Delta. This part of the content is quite general, there is no detailed construction of the relevant content, there is no clear corresponding rights and responsibilities, the agreement is more of a reflection of the principle and constructive requirements. These principled and constructive provisions have provided GHMGBA with a relatively free space for his construction, and to a certain extent, they have freed himself from the shackles of administrative isolation and government individualism. Therefore, on the basis of the above agreement, the governments of GHMGBA can jointly sign an agreement to build smart city data platform, and bring the implementation of building smart data platform into the track of rule of law in the form of system.

Secondly, soft law gives full play to the active participation of multiple social subjects. In the institutional arrangements section of chapter X of the “Deepening Guangdong-Hong Kong -Macao in the Development of the Bay Area”, in addition to providing for a regular intergovernmental joint cooperation mechanism to promote the document, emphasis is also placed on the strengthening of civil society cooperation. Therefore, through the soft law to promote the establishment of the data platform, in order to remove the institutional barriers between the administrative subjects, so that the circulation of elements in the bay area is more convenient, faster and more reasonable.

Finally, soft law can promote the collaborative governance of hard law. The practice of soft law does not negate the necessity of hard law, nor does it replace the existence of hard law. We can promote the legislation of GHMGBA's hard law on the premise of soft law. The NPC can draw lessons from the core concepts of the US Economic Cooperation Act and take the “Deepening Guangdong-Hong Kong-Macao in the Development of the Bay Area” and “the Framework Agreement on Hong Kong/Guangdong Cooperation” and “the Framework Agreement on Macao/Guangdong Cooperation” as the blueprint, under the premise of the Constitution and the basic Law of Hong Kong and Macao, to establish the region law in GHMGBA's smart city data platform.

3.3 Settlement of Interregional Administrative Dispute in Data Platform

We cannot even find one content of settling administrative disputes in the agreements that signed by Guangdong, Hong Kong and Macao governments, which directly affects the execute of these administrative agreements. Therefore, it is necessary to establish a resolution mechanism by arrangement to avoid the regional administrative dispute in GHMGBA. On the one hand, ADR (Alternative Dispute Resolution, abbreviated as ADR) model is the best way to deal with administrative dispute in GHMGBA under the current data platform's circumstances. For example, as to resolve the administrative disputes involved in data platform, the legislative apartment can formulate a law under the authorization of the superior law to apply in administrative dispute resolution mechanism. And three aspects of effort need to be carried out: First, it's necessary to perfect the arbitration and recognition mechanism and the arbitral award implement system in GHMGBA. The government can form a mutually recognized arbitral award mechanism in GHMGBA, and then gradually expanding to the scope of enforcement and the restriction of public order reservations. Second, established an arbitration agency to handle the disputes in GHMGBA. The pilot area can be established in Guangzhou and Shenzhen temporarily, and then gradually expanded to other cities. Defining the purview of cases and acceptance of arbitrate in GHMGBA, and formulated a regulation to ensure its implementation. Third, incubated more high-quality talents to deal with arbitration disputes, arbitrator is the key of arbitration, so the GHMGBA might wish to strengthening the exchange of arbitrators while introducing outstanding arbitrators from Hong Kong and Macao actively, so that the arbitrators can be more familiar with the business and rules of the GHMGBA and meets the needs of arbitration in it.

On the other hand, we need to perfect the mediation mechanism of administrative dispute in data platform. There are three ways to improve it. First, the court mediation should be scattered, this mechanism has achieved a great impact in Hong Kong, referring to Hong Kong and Macao, the court can consign the mediation service to a professional mediation organizations or tribunal. Separating the mediation and judgment is benefit to the mediation mechanism to play a more professional and impartial role in practice. Second, the regional restrictions in GHMGBA should be break. Mainland-Hong Kong Joint Mediation Center has been established in Hong Kong in 2015, which provides a more convenient platform to settle the cross-border commercial disputes and trade disputes. As to dispel the regional restriction of mediation, the government can encourage people to set up more cross-border mediation agency and try to build up an online mediation mechanism under the smart data platform. Third, the smart city data platform can handle cross-border administrative disputes through the dispute resolution function. The data platform of smart city can connect the government network and mediate the administrative dispute professionally of GHMGBA in the smart data platform, which has provided a new development model for mediation.

4. Conclusions

GHMGBA wants to achieve the economic strength of first-class bay area, must make each element inside bay area circulates freely. The GHMGBA focus to build a smart government and smart life platform through the “wisdom” technology, which will deepen the economic cooperation and promote economic growth rapidly in GHMGBA. The completion of smart platform and the implementation of the coordinated legislative mechanism will be able to eliminate the institutional barriers in GHMGBA, connecting each smart city data platform and providing a new platform for government administration and Hong Kong and Macao citizens to integrate into the development of mainland. In short, the completion of the data platform in Guangdong, Hong Kong and Macao will provide a new impetus for GHMGBA development and build a solid foundation for improving government efficiency and constructing a star-rated city.

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