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Research on the optimization of international arbitration rules in the Guangdong-Hong Kong-Macao Greater Bay Area: with reference to the *IBA Rules on the Taking of Evidence*

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Abstract. The Greater Bay Area is actively engaging in the international economic system. Aligning with the *IBA Rules on the Taking of Evidence* and improving related legal procedures is of great significance for enhancing the level of international arbitration. However, the Greater Bay Area currently lacks unified and clear standards for evidence disclosure and sanction measures; cross-examination is ineffective due to the varied levels of legal professionals; and immunity rights face challenges due to legal system differences and third-party funded arbitration. After a detailed study and consideration of the practical situation in the Greater Bay Area, targeted solutions are proposed, including the establishment of a unified immunity rights guideline, the design of a diversified regulatory model, and the clarification of a unified evidence disclosure model. These measures will help the Greater Bay Area build a more scientific and reasonable arbitration legal system.

Keywords: Greater Bay Area, *IBA Rules on the Taking of Evidence*, evidence disclosure, cross-examination, legal opinion immunity

1. Introduction

Optimizing evidence disclosure, cross-examination, and immunity rights under the *IBA Rules on the Taking of Evidence* (hereinafter referred to as the *IBA Rules*) is crucial for improving the international commercial arbitration standards in the Greater Bay Area and ensuring economic development. For example, in cross-border commercial dispute arbitration, differences in evidence disclosure rules can lead to protracted cases. Current research is fragmented and lacks a systematic and in-depth analysis of these three aspects in the unique legal environment of the Greater Bay Area. Practical guidance is insufficient, making it difficult to propose feasible improvement paths. Therefore, the goal of this study is to comprehensively review the existing issues, develop legal pathways tailored to the Greater Bay Area's situation, and propose actionable suggestions to facilitate the effective integration of the Greater Bay Area's legal rules with the *IBA Rules*.

2. Relevant legal provisions and current practices in the Greater Bay Area

The Greater Bay Area consists of nine cities in Guangdong Province, along with Hong Kong and Macao Special Administrative Regions. In its process of economic development, the alignment with international rules is critical. Among them, research on aligning with the *IBA Rules on the Taking of Evidence* and improving the paths for evidence disclosure, cross-examination, and immunity rights is of great importance. Currently, the Greater Bay Area has unique legal provisions and practices in these areas. Below is a detailed explanation of the situation regarding evidence disclosure, cross-examination, and immunity rights in the Greater Bay Area.

2.1. Evidence disclosure

In the Greater Bay Area (GBA), different regions operate under distinct legal systems and regulations. As a province within Mainland China, Guangdong applies the legal framework of the Mainland. China's rules on evidence disclosure in arbitration are stipulated in the Arbitration Law—specifically regarding circumstances in which "the opposing party conceals evidence that may

materially affect the fairness of the arbitral award." Similarly, the Civil Procedure Law addresses the issue, stating that "the opposing party concealed evidence sufficient to affect the fairness of the arbitral award from the arbitration institution." Furthermore, the Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement of Arbitral Awards by People's Courts define three essential elements that constitute such concealment of evidence in arbitration proceedings[1]. This judicial interpretation primarily serves to clarify the standards for determining "concealment of evidence" as a ground for non-enforcement during the enforcement procedures involving domestic arbitral awards under the Civil Procedure Law [1].

In international commercial arbitration, disclosure rules are directly related to the fairness and efficiency of arbitration. In 2024, Guangdong continued to enhance its efforts in foreign-related legal construction, hosting events such as the "2024 China Arbitration Week Guangzhou Session," which covered topics such as "New Models in Foreign-Related Arbitration: ODR and AI Arbitration, *IBA Rules*, and Cross-Examination." During this session, Zhao Hangen, Vice President of the Foreign-Related Legal Services Subcommittee of the Guangzhou Lawyers Association, introduced the application of the *IBA Rules on the Taking of Evidence*, focusing on practical arbitration procedures such as "document disclosure."

2.2. Cross-examination

In January 2024, the Guangdong High People's Court issued the Guidelines (II) on the Alignment of Judicial Rules for the Adjudication of Hong Kong- and Macao-related Commercial Disputes by Mainland Courts in the Guangdong-Hong Kong-Macao Greater Bay Area. Although the primary aim of these guidelines is to coordinate judicial rules for commercial disputes involving Hong Kong and Macao, their provisions on cross-examination offer valuable reference for international commercial arbitration. For the first time, the guidelines explicitly allow Mainland courts within the Greater Bay Area to adopt cross-examination procedures under appropriate circumstances. This marks a shift from the traditional "judge-led questioning" model to a "party-led questioning" model for witness examination. Such provisions provide clear guidance and regulation for the practice of cross-examination in international commercial arbitration cases involving parties from Hong Kong or Macao.

In Hong Kong, the cross-examination system under the common law framework is relatively mature and sophisticated. Lawyers are afforded significant latitude in cross-examination and may utilize strategic questioning techniques to challenge witness credibility or expose contradictions in the evidence. For example, in complex cases, Hong Kong lawyers may employ various tactics, such as leading questions, challenges to a witness's motivation, or inquiries into the accuracy of memory, to secure favorable outcomes for their clients [2]. In contrast, the legal system in Macao imposes more restrictions on the use of leading questions. In cross-examinations, lawyers are generally prohibited from using such questions unless under specific circumstances, such as confirming basic witness information, rebutting dishonest testimony, or refreshing a witness's memory [3].

2.3. Immunity rights

There are various types of privilege, among which legal professional privilege is one of the most frequently invoked in disputes over evidence disclosure. Legal professional privilege is generally divided into two categories: legal advice privilege and litigation privilege. Significant differences exist between the legal frameworks of Guangdong and those of Hong Kong and Macao in terms of legal advice privilege. In mainland China, the protection of communications between lawyers and clients is stipulated in the Lawyers Law of the People's Republic of China, which provides that lawyers must keep confidential any information and matters that their clients or others do not wish to disclose, and which the lawyer becomes aware of in the course of their professional activities[2]. However, such protection is typically grounded in professional ethics and practice rules, rather than in a clearly defined legal advice privilege.

In contrast, legal advice privilege is more comprehensively developed and broadly applied in Hong Kong. It is intended to protect communications between clients and their lawyers from compulsory disclosure, thereby enabling clients to seek professional legal advice freely. According to Article 35 of the Basic Law of the Hong Kong Special Administrative Region, Hong Kong residents have the right to confidential legal advice, among other protections. As a key city in the Greater Bay Area, Hong Kong has actively explored and reformed its third-party funding (TPF) regime for arbitration. Relevant documents have been successively introduced, such as the Consultation Paper on Third Party Funding for Arbitration, the Code of Practice for Third Party Funding of Arbitration, the Report on Third Party Funding for Arbitration, the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, and the Code of Practice for Third Party Funding of Arbitration [4]. These developments affirm the necessity of introducing a TPF regime and amending relevant laws, while offering specific recommendations. Inheriting the common law tradition, Hong Kong's legal system places considerable emphasis on the protection of privilege. In judicial practice, Hong Kong courts typically scrutinize whether the invocation of privilege meets the legal requirements. For instance, a party must demonstrate that the communication was made for the purpose of obtaining legal advice and that the content of the communication is confidential in nature [5]. In Macao, the scope of legal advice privilege in the public domain differs from that in Hong Kong. In cases involving the public interest, Macao courts may be more inclined to require the disclosure of legal opinions relevant to the case, in order to uphold judicial fairness and ensure the realization of public interest.

[1] Arbitration Law of the People's Republic of China, Article 58. Civil Procedure Law, Article 237. Supreme People's Court's Provisions on Several Issues Concerning the Enforcement of Arbitral Awards by People's Courts, Article 16, Paragraph 1.

[2] Law of the People's Republic of China on Lawyers, Article 38, Paragraph 2.

3. Examining the gaps in comparison with the *IBA Rules on the Taking of Evidence*

3.1. Evidence disclosure

The *IBA Rules on the Taking of Evidence* in International Arbitration provide detailed provisions regarding the scope, method, and timing of evidence disclosure. For instance, Article 3 sets forth clear standards on the scope and conditions for submitting documentary evidence, as well as the preparation and presentation of witness testimony [6]. However, in the Guangdong–Hong Kong–Macao Greater Bay Area (GBA), there is currently a lack of unified and explicit standards for evidence disclosure. On the one hand, parties may be unaware of which documents they are obligated to disclose, which can result in the unjustified withholding of material evidence. In the absence of clear disclosure standards, parties may selectively submit evidence that favors their position while concealing unfavorable documents. Such conduct not only undermines the arbitral tribunal's ability to accurately ascertain the facts of the case, but also impairs the fairness of the arbitral process. On the other hand, the absence of clear disclosure standards may leave arbitral tribunals without a sound basis for determining whether particular evidence should be disclosed. Tribunals may have to devote significant time and resources to define the scope and criteria for disclosure, which inevitably impacts the efficiency of the arbitral proceedings. A notable example is Hertz Capital International Ltd. v. China Vocational Education Co., Ltd. [7], in which an email unfavorable to the respondent was not disclosed. Based on the case facts, it appeared that the respondent was uncertain whether the claimant had access to the document and therefore, as a tactical decision, chose not to disclose it. However, this omission led to a series of complications: during cross-examination, the tribunal was unable to uncover facts potentially favorable to the respondent, and as a result, the tribunal rejected the respondent's related claims. In this context, the court held that the tribunal's approach did not constitute “a serious procedural irregularity causing substantial injustice,” thereby placing responsibility on the respondent for the outcome.

Moreover, effective sanction measures are crucial for ensuring the smooth conduct of arbitration proceedings and the enforcement of arbitral awards. Currently, there are areas in the Greater Bay Area that need further refinement in terms of sanction measures. As international commercial activities become more complex, the existing sanctions may be insufficient to address new types of violations. For instance, in commercial arbitration involving cross-border e-commerce, fintech, and other sectors, new forms of evidence falsification and concealment may emerge, and the existing sanctions may struggle to effectively address these behaviors.

3.2. Cross-examination

Cross-examination is a critical element of litigation in common law systems like those of the UK and the US. The cross-examination process involves four stages: the lawyer first examines their own witness to elicit testimony favorable to their side, followed by the opposing lawyer’s cross-examination, which aims to challenge the witness’s credibility, accuracy, and completeness of their testimony. If necessary, the parties’ lawyers may conduct a re-examination or re-cross-examination to clarify or reinforce certain points. Cross-examination places high demands on the professional competence of those involved in the litigation, requiring lawyers and parties to possess extensive legal knowledge and questioning skills in order to achieve the intended outcomes.

However, the competence of legal practitioners in the Greater Bay Area in this regard remains uneven. Some lawyers, having grown accustomed to the traditional judge-led model of examination, may find it challenging to adapt to the adversarial cross-examination system. Furthermore, organizing and conducting effective cross-examination presents considerable difficulties. It requires close coordination among the court, parties, and legal representatives. Every stage—from pre-hearing preparations to the sequencing of witness appearances and the order of questioning—must be meticulously planned. A lack of effective coordination among these parties can undermine the effectiveness of cross-examination. For example, in P v. D & Others [8], the arbitral party filed an application with the Commercial Court of the High Court of England and Wales under Section 68 of the Arbitration Act 1996, arguing that the arbitral tribunal committed a "serious irregularity" by failing to permit cross-examination of a key witness. In this case, Justice Michael Burdon upheld the challenge, holding that the tribunal had acted inconsistently with the testimony of a crucial witness without allowing the opposing counsel to conduct cross-examination. Such conduct was found to be in breach of Section 33 of the Arbitration Act 1996, which mandates that arbitral tribunals must act fairly and impartially between the parties.

3.3. Legal privilege

The Greater Bay Area encompasses the socialist legal system of Mainland China, the common law system of Hong Kong, and the civil law system of Macau. Regarding legal professional privilege, different legal systems have distinct regulations and interpretations. In Mainland China, the recognition of legal professional privilege is more focused on maintaining the fairness of legal procedures and protecting the legitimate rights and interests of the parties. In Hong Kong, due to its common law tradition, the recognition of legal professional privilege emphasizes the confidential relationship between the lawyer and the client, as well as the independence of the legal profession [9]. Macau’s legal system also has its own unique approach to legal professional privilege, which differs from both Mainland China and Hong Kong. These differences make it difficult to achieve uniformity in the standards for recognizing legal professional privilege across the Greater Bay Area. Courts may need to spend considerable

time and resources studying the relevant regulations from different legal systems to determine the applicable standards. This not only increases judicial costs but also reduces judicial efficiency.

With the continued economic development of the Greater Bay Area and the increasing frequency of international commercial activities, third-party funding in arbitration has gradually emerged in the region. Third-party funded arbitration involves a funder providing financial support for an arbitration case in exchange for a portion of the proceeds from a successful outcome. While third-party funding has contributed to the rapid development of international commercial arbitration, it also presents challenges to the legal privilege system [10]. The involvement of third-party funders may expose information that is normally protected by legal privilege to the risk of disclosure. During the arbitration process, the tribunal may need to examine various pieces of information related to the case, including legal opinions that may be protected by legal privilege. Due to the interests of the third-party funders, they may demand that the claimant disclose information that is otherwise protected by privilege, in order to assess the likelihood of success and the potential return on investment. As a result, the confidentiality of arbitration may be compromised, and the legal privilege system could be weakened or abandoned.

4. Advantages and referencing significance of the *IBA Rules on the taking of evidence*

The *IBA Rules on the Taking of Evidence* hold an important position in international arbitration. Compared to the Prague Rules (Rules on the Efficient Conduct of Proceedings in International Arbitration), the *IBA Rules* have been widely applied in international arbitration, including commercial arbitration and investment treaty arbitration. The advantage of the *IBA Rules* lies in the fact that they consolidate the wisdom of practitioners and arbitration experts from both the Anglo-American and civil law systems, providing a relatively unified framework for handling evidence in arbitration across different legal systems. This compatibility allows parties from different countries and regions to better understand and follow the evidence rules in international arbitration, thus reducing uncertainty arising from legal differences. Additionally, the *IBA Rules* are regularly updated, such as in 2020, demonstrating their flexibility and broad acceptance [11]. This adaptability enables the *IBA Rules* to meet the needs of various parties and tribunals in the evolving international arbitration environment.

4.1. The reflection of evidence disclosure, cross-examination, and legal privilege in the *IBA Rules*

In domestic arbitration, the scope of evidence disclosure is relatively narrow. Under China's civil law tradition, arbitrators face certain restrictions when requesting parties to disclose evidence that may be unfavorable to them. Moreover, arbitrators do not have the power to obtain evidence from uncooperative third parties. The *IBA Rules*, however, typically offer a broader scope for evidence disclosure. The *IBA Rules* hold a dominant position in international arbitration, requiring parties to disclose relevant evidence under certain conditions to fully clarify the facts of the case.

In international arbitration, cross-examination is an important procedural stage, helping to uncover the truth and reliability of witness testimony. The *IBA Rules* provide a framework and guidance for cross-examination. First, the *IBA Rules* clearly define the purpose and scope of cross-examination. The main goal is to test the witness's credibility, accuracy, and completeness. Key events, timelines, and relationships mentioned in the witness's testimony may become the focus of cross-examination [12].

Second, the *IBA Rules* outline the procedure and manner of cross-examination. Typically, cross-examination is conducted by one party's lawyer on the witness of the opposing party. The lawyer may use questioning, challenging, and follow-up questions to expose contradictions, gaps, or inconsistencies in the witness's testimony. Procedurally, cross-examination is generally conducted during the hearing, under the supervision and control of the tribunal. The tribunal may decide on the timing, order, and method of cross-examination based on the specifics of the case [13]. Additionally, the *IBA Rules* emphasize fairness and reasonableness in cross-examination. Cross-examination should be conducted on a fair basis, with both parties having an opportunity to cross-examine the witness. Furthermore, the questions posed during cross-examination should be reasonable and relevant, avoiding malicious attacks or unrelated inquiries. If one party believes that the cross-examination is improper, they may raise an objection to the tribunal, which will rule on the matter based on the specific circumstances.

The *IBA Rules* also address legal professional privilege. On one hand, they clarify the scope of legal professional privilege. In general, legal professional privilege applies to communications between a party and their lawyer, legal opinions provided by the lawyer, and work products created by the lawyer in representing the party. These materials are typically protected by law, and the party may refuse to submit them to the tribunal. On the other hand, the *IBA Rules* set out the principles and methods for tribunals when dealing with issues of legal professional privilege. When deciding whether to apply legal professional privilege, the tribunal must consider various factors, such as the importance of the evidence, the party's legitimate interests, and the fairness of the arbitration. If the tribunal deems the importance of the evidence outweighs the protection afforded by legal professional privilege, the party may be required to provide the relevant evidence. However, in such cases, the tribunal will take appropriate measures to safeguard the party's legitimate interests.

4.2. The application of the *IBA Rules* in practice

In an arbitration case under the International Chamber of Commerce (ICC) concerning a cement procurement contract dispute in Country N in South America [14], the legal representative of the country’s international trading company insisted on applying the

Civil Procedure Rules of England and Wales [15] as the evidentiary standard. In contrast, the Chinese medium-sized cement manufacturing company proposed the use of the *IBA Rules on the Taking of Evidence* in International Arbitration. The arbitral tribunal rejected the proposal by the N-country company, reasoning that the *IBA Rules* serve as a set of soft law guidelines issued by the International Bar Association to harmonize evidentiary procedures across diverse legal systems. The tribunal held that applying the civil procedure rules of any single jurisdiction would undermine the international character of the arbitral proceedings.

This case underscores the authority and applicability of the *IBA Rules* in ICC arbitration. The Rules provide clear guidance on evidentiary matters for parties and counsel from different legal backgrounds, thereby ensuring the fairness and efficiency of the arbitration process.

With the development of new technological tools and their increasing use in international arbitration, especially during the COVID-19 pandemic in 2020, which made remote hearings a significant mode of arbitration, the *IBA Rules* have continued to adapt to the demands of the times. On December 17, 2020, the International Bar Association approved an updated version of the *IBA Rules*, responding to changes such as remote hearings. For instance, the new version of the rules accepts the use of remote hearings and enhances cybersecurity to ensure the smooth conduct of arbitration procedures in the new technological environment. Additionally, the *IBA Rules* continue to improve the certainty, universality, and flexibility of the rules, better adapting to the trends in international commercial arbitration.

5. Localization strategies and recommendations for the *IBA Rules on the taking of evidence*

5.1. Establishing clear and uniform disclosure standards and effective sanction mechanisms

The *IBA Rules* clearly define the scope of evidence disclosure, enabling parties to understand which types of evidence they are obligated to disclose. This means that parties cannot selectively disclose only favorable evidence but must present all evidence that could potentially impact the outcome of the case in a comprehensive and objective manner. For example, in arbitration cases involving contract disputes, parties should not only submit the contract documents themselves but also disclose relevant email correspondence, meeting minutes, and other materials related to the signing and execution of the contract. This clarity in defining the scope of disclosure helps improve transparency and predictability in arbitration proceedings. Given the presence of three distinct legal systems in the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland China, Hong Kong, and Macao), differences must be fully considered when formulating disclosure standards. It is recommended that local arbitration institutions, legal experts, and industry representatives collaboratively develop these standards to ensure their rationality and feasibility. For instance, the standards should clearly stipulate the types, scope, and format of evidence to be disclosed, as well as the specific time points for disclosure.

The *IBA Rules* also provide for sanctions when a party fails to fulfill its disclosure obligations. These may include monetary penalties or adverse inferences in the arbitral award. Within the Greater Bay Area, a similar approach should be adopted by first specifying the types of sanctions for non-compliance, such as fines, adverse arbitral decisions, or temporary restrictions on the party's business activities in the region. To enhance deterrence, the cost of non-compliance could be increased—for instance, by raising fines or imposing more severe penalties on repeat offenders. Finally, to ensure that sanctions are effectively enforced, enforcement capacity must be strengthened. A specialized supervisory body could be established to oversee parties' compliance with evidence disclosure requirements.

5.2. Enhancing the professional competence of legal practitioners and promoting communication and coordination among stakeholders

The professional competence of legal practitioners directly impacts the quality of arbitral awards. In January 2024, the High People's Court of Guangdong Province issued the Guidelines on the Coordination of Judicial Rules for Mainland Courts in the Greater Bay Area in the Trial of Commercial Disputes Involving Hong Kong and Macao (II) [16], which, for the first time, explicitly stated that mainland courts in the Greater Bay Area may adopt cross-examination as a method of witness questioning when appropriate. This provision also offers valuable reference for international commercial arbitration. In light of the uneven capabilities of legal practitioners in the Greater Bay Area with respect to cross-examination, it is imperative to organize specialized training programs on cross-examination techniques in international arbitration. The training content should cover the basic procedures of cross-examination, commonly used strategies and techniques, how to deal with different types of witnesses, and how to remain professional and composed during questioning. Additionally, mock arbitral tribunals can be used to allow legal practitioners to experience the cross-examination process firsthand. These courses should be delivered by experienced international arbitration experts, academics, and senior lawyers [17]. Practitioners with extensive experience in international commercial arbitration can be invited to share successful case strategies, enabling attendees to better understand the key elements and practical techniques of cross-examination through case-based learning. Furthermore, legal professionals should be encouraged to participate in continuing education programs and training sessions, both domestically and internationally, to enhance their professional expertise. To incentivize participation, subsidies or awards could be provided to those attending such programs.

International commercial arbitration involves multiple parties, including the arbitral tribunal, litigants, legal counsel, and witnesses. Effective communication and coordination among all parties are essential for the smooth progress of arbitration

proceedings. Each party should have a clear understanding of their roles and responsibilities in the cross-examination process. Arbitrators play a guiding and supervisory role to ensure that the cross-examination is conducted legally and fairly. Parties, witnesses, and lawyers should cooperate actively with the tribunal and conduct the cross-examination in accordance with established procedures [18]. Prior to the commencement of arbitration, a preparatory meeting may be held to discuss specific arrangements and procedures for cross-examination and to clarify each party's rights and obligations. During the process, ongoing communication should be maintained to address and resolve any issues that arise in a timely manner.

5.3. Formulating a unified guideline for legal professional privilege in the Greater Bay Area

In the Greater Bay Area, disparities in the recognition of legal professional privilege under different legal systems may result in divergent judgments for similar cases across jurisdictions. For instance, in a case involving the protection of trade secrets, the admissibility of confidential communications between lawyers and clients may be assessed differently in Guangdong, Hong Kong, and Macao based on their respective legal frameworks governing legal professional privilege. Such inconsistencies can undermine litigants' confidence in the fairness of judicial processes and damage the credibility of the judiciary. Therefore, establishing a unified standard for legal professional privilege is essential to ensure that similar legal facts are treated consistently across the region, thereby upholding the image of judicial fairness. To this end, the categorization of privilege types under the *IBA Rules on the Taking of Evidence* may serve as a reference, combined with the specific circumstances of the Greater Bay Area. It is necessary to define the common categories of protected privileges, such as "attorney-client privilege" and "public interest privilege," and to develop a unified guideline applicable across the region. For example, communications between lawyers and clients during arbitration proceedings and legal opinions involving major national interests could be clearly designated as privileged and therefore inadmissible as evidence. Additionally, the *IBA Rules* emphasize the relevance and materiality of evidence to the issues in dispute. The Greater Bay Area can draw upon this principle by stipulating that privilege protection should only be considered when the legal opinion is closely related to the core dispute and of substantial importance. Lastly, the region may develop a unified procedure for determining privilege, drawing from the procedural framework of the *IBA Rules*. This may include an application by the party asserting privilege, review by the arbitral tribunal, and presentation and cross-examination of related evidence.

5.4. Designing a multi-dimensional oversight model tailored to the Greater Bay Area

Confidentiality is a fundamental principle of commercial arbitration. However, the rise of third-party funding has raised concerns about the disclosure of case details, thereby weakening arbitration confidentiality. This not only jeopardizes the commercial interests of the parties but also affects the credibility of the Greater Bay Area as a center for international commercial arbitration. Drawing on the *IBA Rules*' management approach toward various participants and their confidentiality supervision mechanisms, a regionally appropriate multi-dimensional oversight model can be designed. Integrating the resources and strengths of different legal jurisdictions can better address confidentiality challenges arising from third-party funding, ensuring that the arbitration system in the Greater Bay Area remains efficient, fair, and confidential.

5.4.1. Clarifying disclosure requirements to ensure procedural fairness

The *IBA Rules* emphasize the importance of mandatory disclosure, stipulating that all parties in arbitration must comply. Arbitrators are empowered to decide whether disclosure of the funding agreement is necessary based on objective standards. First, the disclosure obligation should be extended to include the funded party. Since the funded party has the most comprehensive understanding of the funding arrangement, requiring them to disclose relevant information ensures the accuracy of disclosures. Second, parties should be obligated to disclose the existence and identity of any third-party funders. Funders, in pursuit of a favorable outcome, may seek to influence decision-making or exert pressure on the arbitral tribunal. Disclosure of their identity helps to identify and monitor such potential interference, enabling arbitral institutions, other parties, and the public to impose appropriate constraints and safeguard the fairness of the arbitration process. Lastly, arbitrators should weigh the necessity of disclosure against confidentiality requirements on a case-by-case basis. If disclosing the details of the funding agreement could significantly harm a party's commercial secrets or other legitimate interests, the arbitrator may decide not to disclose them. However, in such cases, the arbitrator must explain the rationale for non-disclosure and adopt alternative measures to ensure procedural fairness.

5.4.2. Enhancing arbitrator oversight to safeguard confidentiality

Arbitrators in arbitration proceedings have access to a wide range of sensitive information, including parties' trade secrets, personal data, and specific case details. Enhancing regulatory oversight can help standardize arbitrator conduct, reduce the risk of information leakage, and protect the legitimate rights and interests of the parties. First, a rigorous arbitrator selection system should be established. A comprehensive assessment of the candidate's professional competence, ethical standards, and awareness of confidentiality obligations should be conducted. During the selection process, candidates should be required to truthfully disclose any potential conflicts of interest. Those who conceal or misrepresent such conflicts should be disqualified from selection [19]. A

dedicated Arbitrator Qualification Review Committee can be set up to conduct multidimensional evaluations of individuals applying to serve as arbitrators. Second, arbitrators' duty of confidentiality must be clearly defined. Regular ethics education and training sessions for arbitrators should place special emphasis on the importance of confidentiality, with detailed explanations of the potential confidentiality risks associated with third-party funding, as well as strategies for mitigating such risks. Through case studies and practical examples, arbitrators should be made fully aware of the serious consequences of breaching their confidentiality obligations. A robust disciplinary mechanism must also be implemented. Arbitrators who violate confidentiality requirements should be subject to severe penalties, including, but not limited to, formal warnings, suspension of practice, or revocation of their arbitrator qualifications. Furthermore, collaboration with international arbitration institutions should be strengthened. Joint training programs, seminars, and exchanges with leading international arbitration bodies should be promoted to explore effective responses to confidentiality issues arising from third-party funding.

Within the Greater Bay Area, arbitration institutions should also develop an integrated information-sharing platform to facilitate inter-agency communication on arbitrator-related matters. This platform would allow for real-time access to an arbitrator's professional activities and conflict-of-interest disclosures across different institutions, thereby preventing arbitrators from concealing conflicts of interest when serving in multiple arbitration bodies.

6. Conclusion

As the forefront of China's opening-up policy, the Guangdong–Hong Kong–Macao Greater Bay Area (GBA) has actively integrated into the international economic system amidst the tide of globalization. International commercial arbitration plays a critical role in this process. However, current challenges in the areas of evidence disclosure, cross-examination, and legal professional privilege within the GBA cannot be overlooked. These issues have constrained the further development of international arbitration in the region. Through an in-depth comparative analysis with the *IBA Rules on the Taking of Evidence*, it becomes evident that the IBA framework demonstrates significant advantages in terms of evidence management and adaptability to contemporary legal demands. These aspects offer valuable insights for enhancing the legal system in the GBA. To address the existing challenges, this paper proposes a series of targeted strategies, including the clarification and unification of standards for evidence disclosure, the enhancement of legal professionals' competencies, the formulation of a unified guideline for legal professional privilege, and the design of a diversified regulatory model. The implementation of these measures will contribute to the establishment of a more scientific, efficient, and internationally aligned arbitration legal framework within the GBA.

References

[1] Li, N. (2021). Determination of "concealing evidence" in arbitration procedures—With insights into the construction of China's arbitration evidence disclosure system. *China Applied Jurisprudence,* 06, 202–216.

[2] Kassin, S. M., Williams, L. N., & Saunders, C. L. (2013). Dirty tricks of cross-examination. *Law and Human Behavior,* 4.

[3] Li, K. (2022). Reflections on the practice of cross-examination rules in criminal trials. *Local Legislation Studies,* 7(02), 112–124.

[4] Meng, X. (2017). A study on the rights and responsibilities of third-party funders in Hong Kong arbitration (Master's thesis). Wuhan University.

[5] Carter, L. J., & Wu, X. (2020). An examination of the rational model in business education in the Greater Bay Area (Guangdong, Hong Kong, and Macau) for curriculum revision and development aimed at improving graduates' employability potential. *Asian Journal of University Education,* 16(2), 141.

[6] Jin, T. (2021). A study on the admissibility of illegally obtained evidence in international investment arbitration (Master's thesis). Xiamen University.

[7] HZ Capital International LTD v. China Vocational Education CO., LTD and Others, High Court of the Hong Kong Special Administrative Region, Construction and Arbitration Proceedings, No. 48 of 2016 (2016).

[8] P v. D & Others [2019] EWHC 1277 (Comm) (High Court of Justice, Queen's Bench Division, Commercial Court).

[9] Li, S. (2023). Exploration of coordinated rule of law construction in the Guangdong–Hong Kong–Macao Greater Bay Area. *Cooperative Economy and Science & Technology,* 24, 188–190.

[10] Xia, Z. (2017). A study on immunity in international commercial arbitration (Master's thesis). Xiamen University.

[11] Rekha, R., & Kabir, D. (2021). Different but similar?: Comparing the *IBA Rules on the Taking of Evidence* with the Prague Rules. *Arbitration International,* 37(3), 631–651.

[12] Ye, L., & Sun, Y. (2018). Introduction to the *IBA Rules on the Taking of Evidence* in International Arbitration. *People's Rule of Law,* 23, 9–13.

[13] O'Malley, D. N. (2019). Rules of evidence in international arbitration: An annotated guide. Taylor and Francis.

[14] Huizhou Arbitration Commission. (2019). Be well prepared in substance and procedure to win international arbitration. Retrieved from http://www.huizhou.gov.cn/

[15] The Civil Procedure Rules 1998 (UK). (1998). Statutory Instrument 1998/3132. https://www.legislation.gov.uk/uksi/1998/3132/contents

[16] China News Service. (2024). Guangdong High Court issues trial guidelines to improve the appearance procedure for Hong Kong and Macao witnesses. Retrieved from http://news.sohu.com/

[17] Chen, R. (2020). Comparative study of the Guangdong–Hong Kong–Macao Greater Bay Area and global bay areas. *Modernization of Shopping Mall,* 02, 59–60.

[18] Zhao, L. (2021). Major events in the Guangdong–Hong Kong–Macao Greater Bay Area. *Fangyuan,* 19, 37.

[19] Yang, Y., & Jin, W. (2022). Research on arbitrators' disclosure obligations under the amendment of the Arbitration Law: An empirical study based on the annulment of arbitral awards by Chinese courts. *Beijing Arbitration,* 03, 97–118.