

# A Comparative Study of Labor Dispute Arbitration Systems in Mainland China and Hong Kong

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**Abstract**

Owing to their distinct legal systems, the labor dispute arbitration systems of Mainland China and Hong Kong differ significantly. By comparing the historical evolution, current status, and procedural characteristics of labor dispute arbitration systems in the two regions, this paper focuses on analyzing specific differences in aspects such as the establishment of arbitration institutions, pre-arbitration procedures, restrictions on lawyer representation, remedies for arbitration awards, and the investigative powers of arbitration institutions. Through comparative research, it proposes suggestions for mutual learning and bidirectional optimization between the two regions, and explores ideas for constructing a collaborative mechanism for cross-border labor dispute arbitration in the Guangdong-Hong Kong-Macau Greater Bay Area, aiming to address cross-border labor disputes in the Greater Bay Area and promote the alignment of rules and coordinated development of laws.

## 1. Introduction

Due to differences in legal systems, there are significant disparities in judicial frameworks between Mainland China and the Hong Kong Special Administrative Region (HKSAR). According to the Constitution, the National People's Congress established the Basic Law, which stipulates that the state maintains a policy of essentially preserving Hong Kong's existing laws to implement the principle of "one country, two systems".<sup>3</sup> Provisions regarding socialist systems and policies in China's Constitution are not practiced in Hong Kong. Both Hong Kong's legislative and judicial systems are based on the Basic Law while maintaining autonomous practices, resulting in substantial differences in labor dispute resolution mechanisms: On one hand, both regions apply different substantive labor law provisions; on the other hand, there are notable variations in mechanisms such as dispute resolution institutions and coordination between labor arbitration, mediation, and adjudication processes.<sup>4</sup>

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<sup>3</sup> Constitution of the People's Republic of China, Chapter 2, Article 31, (2018); Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Chapter 1, Article 11, (1997).

<sup>4</sup> Li Mengyun, Exploring the Path of Labor Dispute Resolution Procedure Integration in Guangdong-Hong Kong-Macau Greater Bay Area, *Macau Law Review*, 2024(03), p. 160.



This paper aims to conduct a comparative study of labor dispute resolution systems between Mainland China and Hong Kong, exploring both their differences and commonalities in arbitration mechanisms. The research seeks to provide insights for establishing cross-border labor dispute arbitration collaboration mechanisms, promote legal system integration between the two regions, and contribute to advancing coordinated legal development in the Greater Bay Area's labor dispute field.

## 2. Overview of the Labor Dispute Arbitration Systems in Mainland China and Hong Kong

### 2.1 The Historical Evolution and Present Situation of Hong Kong Labor Dispute Arbitration System

In terms of labor legislation, before the 1960s, the Hong Kong government adopted a non-interventionist labor policy, adopting a laissez-faire attitude toward free labor market activities and neglecting labor legislation.<sup>5</sup> With the development of Hong Kong's industry and economy, workers' status gradually improved, while labor-capital conflicts intensified. To better protect workers' rights, ease disputes, and build a harmonious labor-capital relationship, the government began to strengthen legislative intervention in the labor market and gradually establish a comprehensive labor law system that includes the basic law on labor relations, the labor relations coordination mechanisms, and supporting relevant labor regulations.<sup>6</sup> Currently, Hong Kong's primary legal framework for resolving labor disputes is the Labor Relations Ordinance(1975), which defines the scope of cases: "Trade dispute means any dispute or difference between employers and employees, or between employees and employees, connected with the employment or non-employment, or the terms of employment, or with the conditions of or affecting employment, of any person."<sup>7</sup> The procedural laws governing labor dispute arbitration are mainly the Labor Tribunal Ordinance (1973) and Minor Employment Claims Adjudication Board Ordinance (1994), both designating the Labor Tribunal and Minor Claims Board as specialized arbitration bodies with limited judicial jurisdiction, to resolve this unique type of labor disputes.<sup>8</sup>

### 2.2 The History of Moral Damages in International Law

In terms of the historical development of labor legislation in Mainland China, during the early years after the founding of the People's Republic of China, regulations such as the *Rules on the Organizational Work of Municipal Labor Dispute Arbitration Committees and the Measures on the Procedures for Settling Labor Disputes* were enacted, initially establishing a labor dispute resolution system that includes negotiation, mediation, arbitration, and trial.<sup>9</sup> During the era of planned economy dominance, labor relations became increasingly unitary, and labor disputes decreased year by year. Coupled with the lack of a correct understanding of the socialist legal system at that time, the original regulations ceased to be enforced automatically after July 1955. From then on, the work of handling labor disputes was undertaken by complaints and proposals departments.<sup>10</sup> It was not until the restoration of the labor system in 1987 that arbitration-related systems and legislation developed rapidly. Currently, the laws and legal documents applicable in Mainland China concerning labor dispute arbitration include: *the Labor Law (1994)* as the fundamental law in the field of labor, has a dedicated chapter stipulating the handling of

<sup>5</sup> Wang Quanxing, *Labor Law (4th Edition)*, Law Press China, p. 15 (2017).

<sup>6</sup> Ibid.

<sup>7</sup> Labour Relations Ordinance, Part 1, Section 2, (2013).

<sup>8</sup> Labour Tribunal Ordinance, (2025); Minor Employment Claims Adjudication Board Ordinance, (2021).

<sup>9</sup> Wang Quanxing, *supra* note 3, p. 467.

<sup>10</sup> Ibid.

labor disputes;<sup>11</sup> The *Labor Dispute Mediation and Arbitration Law*(2007) specifically regulates mediation and arbitration procedures; The *Rules on the Organization of Labor and Personnel Dispute Arbitrations*(2017) and the *Rules on the Handling of Labor and Personnel Dispute Arbitration Cases*(2017) stipulate the operational rules of arbitration organizations and the procedural rules for handling cases; and the *Interpretation (I) of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases*(2021) further clarifies case such as the scope of labor dispute cases and the connection between labor dispute arbitration and litigation. According to the provisions of the *Labor Law* and the *Labor Dispute Mediation and Arbitration Law*, labor dispute arbitration institutions (i.e., labor arbitration committees) apply the "tripartite mechanism" to resolve labor disputes, whereby representatives of labor administrative departments, representatives of trade unions at the corresponding level, and representatives of employers jointly participate in the labor dispute arbitration process.<sup>12</sup>

### 3. Characteristics and Differences of Labor Arbitration Procedures in Mainland China and Hong Kong

The differences in labor dispute resolution systems between Mainland China and Hong Kong essentially stem from systemic differences between civil law system and common law system.<sup>13</sup> Such differences are reflected in various aspects such as institutional setup, procedural flexibility, and concepts of remedy. Meanwhile, due to the independence of the legal systems under the "One Country, Two Systems" principle, parallel and non-conflicting labor dispute resolution systems have been formed. Some scholars have summarized that the procedure for handling labor disputes in Hong Kong is "one mediation, one arbitration (or first trial), review, and three trials", while the procedure for handling labor disputes in Mainland China is "one arbitration, two trials, and retrial".<sup>14</sup> Although both Mainland China and the Hong Kong region have established special arbitration procedures to resolve labor disputes, due to factors such as history and their affiliation to different legal systems, there are many differences between the two regions in terms of specific provisions and operational procedures regarding labor arbitration.

#### 3.1 The Establishment of Labor Dispute Arbitration Mechanism

Due to the differences in the positioning of dispute resolution subjects between their respective legal systems, the labor dispute arbitration mechanisms in Mainland China and Hong Kong present different setup logics.<sup>15</sup>

##### 3.1.1 The Situation in Hong Kong

In Hong Kong, the Labour Department is established by the administrative authorities, and its subordinate Labour Relations Division conducts pre-arbitration mediation of labor disputes.

Labor dispute arbitration in Hong Kong is divided into arbitration by the Labour Tribunal and the Minor Employment Claims Adjudication Board based on the amount involved in the dispute. Both the Minor Employment Claims Adjudication Board and the Labour Tribunal are labor dispute arbitration institutions with

<sup>11</sup> Labor Law, Chapter 10, (2018).

<sup>12</sup> Labor Law, Article 81, (2018); Labor Dispute Mediation and Arbitration Law, Article 19, (2008).

<sup>13</sup> Wang Quanxing, *supra* note 3, p. 18.

<sup>14</sup> Sun Xiaoping & Zhang Shengjun, *A Comparative Study on Labor Dispute Resolution Mechanisms in Mainland China and Hong Kong*, Journal of Guangdong University of Foreign Studies, 2012(5), p. 82.

<sup>15</sup> Labor Relations Ordinance, Part 1, Section 2, (2013).

limited jurisdiction. The Minor Employment Claims Adjudication Board is under the jurisdiction of the Labour Department, while the Labour Tribunal is affiliated to the judiciary.<sup>16</sup> According to relevant regulations in Hong Kong, cases involving no more than 10 claimants with each claimant's claim amount not exceeding HK\$15,000 shall be handled by the Minor Claims Board,<sup>17</sup> while large-value disputes shall be heard by the Labour Tribunal.<sup>18</sup>

For parties dissatisfied with the arbitration award, there are two remedies available: one is to apply for a review, the other is to file an appeal with the Court of First Instance of the High Court on issues concerning the application of law and procedures.<sup>19</sup> If there are still objections afterwards, the parties may continue to appeal until the Court of Final Appeal renders a final ruling.<sup>20</sup>

In short, the procedural stages related to labor dispute arbitration in Hong Kong, China, are respectively: mediation led by the Labour Department, arbitration of labor disputes conducted by the Minor Employment Claims Adjudication Board and the Labour Tribunal; and hearings by the High Court and the Court of Final Appeal on applications for leave to appeal and appellate decisions.<sup>21</sup>

### 3.1.2 The Situation in Mainland China

The establishment of labor dispute resolution institutions in Mainland China constitutes a hierarchical system consisting of mediation organizations (enterprise/community mediation committee), labor and personnel dispute arbitration committee, and courts (civil court), which emphasizes the diversified settlement mechanism under administrative leadership.<sup>22</sup>

When a labor dispute arises, the parties may apply to a mediation organization for mediation. If they are unwilling to mediate, the mediation fails, or a mediation agreement is reached but a party fails to fulfill the terms, they may apply for arbitration in accordance with the law.<sup>23</sup>

During the labor arbitration stage, labor and personnel dispute arbitration committees are responsible for handling labor dispute cases. These committees are established by people's governments and composed of representatives from labor administrative departments, trade unions, and enterprise sectors.<sup>24</sup> Labor dispute arbitration committees adopt the arbitration tribunal system for adjudicating labor dispute cases. An arbitration tribunal generally consists of three arbitrators, while simple labor dispute cases may be arbitrated by a single arbitrator alone.<sup>25</sup>

If a party disagrees with an arbitration award, they may file a lawsuit with the people's court within 15 days of receiving the award. If no lawsuit is filed by the deadline, the award shall become legally effective.<sup>26</sup> During

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<sup>16</sup> Labour Tribunal Ordinance, Part 2, Section 3, (2025).

<sup>17</sup> Minor Employment Claims Adjudication Board Ordinance, Part 3, Section 5, (2021).

<sup>18</sup> Labour Tribunal Ordinance, Part 3, Section 7, (2025).

<sup>19</sup> Labour Tribunal Ordinance, Part 6, (2025); Minor Employment Claims Adjudication Board Ordinance, Part 6, (2021).

<sup>20</sup> Hong Kong Court of Final Appeal Ordinance, Part II, Division 2, (2025).

<sup>21</sup> Li Mengyun, *supra* note 2, p.163.

<sup>22</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 10, (2008).

<sup>23</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 5, (2008).

<sup>24</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 19, (2008).

<sup>25</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 31, (2008).

<sup>26</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 50, (2008).

litigation: the courts accepting the cases generally do not have specialized labor tribunals for labor dispute cases; instead, such cases are usually heard by civil tribunals in accordance with ordinary civil litigation procedures.<sup>27</sup>

### 3.2 Pre-requirements for Arbitration

#### 3.2.1 In Hong Kong

Hong Kong law explicitly stipulates that mediation procedures are mandatory pre-arbitration procedure for the Minor Claims Board and the Labour Relations Tribunal. Arbitration applications filed directly without prior mediation by the Labour Relations Division will not be accepted by either tribunal.<sup>28</sup> The Labour Relations Division of the Labour Department is the core mediation body, organizing mediation work upon receiving applications from parties. If mediation fails, mediators may directly refer cases to the Minor Claims Board or Labour Relations Tribunal without requiring parties to resubmit materials.<sup>29</sup> During arbitration proceedings, the Minor Claims Board or the tribunal may still, with consent, notify the Labour Department for mediation. Any agreement reached through mediation by the Labour Department shall be deemed an award of the Minor Claims Board or the tribunal, which has direct enforceability. It can be registered as a judgment with the District Court, and if it is not fulfilled within the time limit, an application for court enforcement may be made in accordance with the law.<sup>30</sup>

#### 3.2.2 In the Mainland

According to the Labor Dispute Mediation and Arbitration Law in Mainland China, parties are free to choose whether to apply for mediation, and mediation is not a mandatory procedure for arbitration or litigation. The institutions responsible for mediation include enterprise labor dispute mediation committees (within employers), grassroots people's mediation committees, and labor dispute mediation organizations at townships/towns or sub-district levels. Mediators are mostly staff from labor administrative departments or trade unions.<sup>31</sup> Settlement agreements reached by both parties in labor mediation is only contractual in nature. If one party repudiates the agreement after it is reached, the other party may apply to the arbitration commission for arbitration, and the arbitration committee shall re-examine the dispute.<sup>32</sup> Parties to a labor dispute may also apply for arbitration directly without going through the mediation procedure.<sup>33</sup>

### 3.3 Whether There Are Restrictions on Lawyers' Involvement in Arbitration Proceedings

#### 3.3.1 In Hong Kong

To reduce labor rights protection costs, improve procedural efficiency, and simplify labor arbitration procedures, the right of legal representation by lawyers is strictly restricted in Hong Kong's labor dispute arbitration proceedings. To reduce the cost of labor rights protection for workers, improve procedural efficiency, and simplify

<sup>27</sup> Civil Procedure Law Chapter 1, Article 3, (2023); Provisions on the Causes of Civil Cases, Part 6, (2020).

<sup>28</sup> Minor Employment Claims Adjudication Board Ordinance, Part 4, Section 14, (2021); Labour Tribunal Ordinance, Part 4, Section 15, (2025).

<sup>29</sup> Conciliation Service of the Labour Relations Division, Labour Department, [www.labour.gov.hk/tc/labour/content1.htm](http://www.labour.gov.hk/tc/labour/content1.htm), (Jul.25, 2025).

<sup>30</sup> Minor Employment Claims Adjudication Board Ordinance, Part 4, Section 14, (2021); Labour Tribunal Ordinance, Part 4, Section 15, (2025).

<sup>31</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 10, (2008).

<sup>32</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 15, (2008).

<sup>33</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 5, (2008).

labor arbitration procedures, the right of legal representation by lawyers is strictly restricted in Hong Kong's labor dispute arbitration proceedings. Firstly, compared with employers, workers are often in a disadvantaged position. For example, they may be unable to afford high legal fees, and lawyers hired by employers with economic advantages may exert professional pressure on workers. Secondly, most labor disputes involve claims such as wage recovery, allowances, and economic compensation. The involvement of lawyers may prolong the resolution cycle due to increased procedural antagonism, thereby adding to the financial burden on workers.<sup>34</sup> The Minor Employment Claims Adjudication Board Ordinance explicitly states: "No barrister or solicitor, including a barrister or solicitor who is a public officer, whether or not qualified to practice in a court in Hong Kong, shall have a right of audience before the Board unless he is acting on his own behalf as a party."<sup>35</sup> The Labour Tribunal Ordinance similarly establishes the principle of "barrier to lawyer representation", permitting only lawyers themselves as claimants or respondents, or in exceptional circumstances, to make court appearances.<sup>36</sup>

### 3.3.2 In the Mainland

Labor dispute resolution in Mainland China includes negotiation, mediation, arbitration, and litigation, with no restrictions on lawyers' involvement in any of these stages. Parties may entrust lawyers to act as agents at any time. Whether in the mediation, arbitration, or litigation stage, lawyers can participate throughout the process, providing legal opinions, preparing materials, appearing in court, and so on.<sup>37</sup> This provision protects the right to legal remedies of the parties, especially that of workers. With lawyers' assistance, workers can more fully claim their rights and safeguard their own legitimate rights and interests.<sup>38</sup>

## 3.4 Remedies for Arbitration Results

### 3.4.1 In Hong Kong

The *Minor Employment Claims Adjudication Board Ordinance* stipulate: "Any party who is aggrieved by a decision of the Board—(a) on any ground involving a question of law alone; or (b) on the ground that the claim was outside the jurisdiction of the Board, may, with leave to appeal granted by the Court of First Instance upon application, appeal to the Court of First Instance."<sup>39</sup> The *Labour Tribunal Ordinance* further specifies: "determination by the tribunal on the grounds that the award, order or determination is— (a) erroneous in point of law; or (b) outside the jurisdiction of the tribunal, such party may, within 7 days after the date on which the award, order or determination was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause, apply to the Court of First Instance for leave to appeal and the Court of First Instance may grant such leave."<sup>40</sup>

This demonstrates that Hong Kong's labor dispute arbitration strictly implements a limited appeal system. Moreover, according to regulations, if the Court of Appeal confirms that an appealed case indeed contains errors,

<sup>34</sup> Wang Guoshe, *A Comparative Study on the Labor Dispute Arbitration Systems in Mainland China and Hong Kong*, Modern Law, 2004(3), p. 70.

<sup>35</sup> Minor Employment Claims Adjudication Board Ordinance, Part 5, Section 22, (2021).

<sup>36</sup> Labour Tribunal Ordinance, Part 5, Section 23, (2025).

<sup>37</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 24, (2008); Law of the People's Republic of China on Lawyers, Chapter 4, Article 28, (2017).

<sup>38</sup> Law of the People's Republic of China on Lawyers. Chapter 1, Article 2, (2017).

<sup>39</sup> Minor Employment Claims Adjudication Board Ordinance, Part 6, Section 31, (2021).

<sup>40</sup> Labour Tribunal Ordinance, Part 6, Section 32, (2025).

it must remand the case back to the original arbitration institution for retrial rather than conducting a direct retrial itself.<sup>41</sup> Prior to 1976, appeals in labor dispute arbitrations were unrestricted. However, after several years of implementation, it was found that lack of restrictions on appeals procedural delays and a surge in costs would occur, which ran counter to the core objectives of labor arbitration—being expeditious, informal, and low-cost. Consequently, Hong Kong amended its laws in 1976, and the amendment still in effect today.<sup>42</sup> From 2021 to 2023, arbitration institutions handled 4,000-5,000 cases each year (Table 1),<sup>43</sup> while the High Court received only about 20-30 appeal cases each year (Table 2).<sup>44</sup> This shows that the implementation of the appeal restriction principle has resulted in extremely few appeals filed after arbitration, thereby alleviating court caseload pressure and achieving the arbitration goal of timely resolution of labor disputes.

| Arbitral Body                                 | Number of Claims Filed |      |      |
|-----------------------------------------------|------------------------|------|------|
|                                               | In 2021                | 2022 | 2023 |
| Labour tribunal                               | 4278                   | 3378 | 4348 |
| Minor Employment Claims<br>Adjudication Board | 506                    | 838  | 1068 |
| Amount to                                     | 4784                   | 4216 | 5416 |
| Table 1                                       |                        |      |      |

| Case on Appeal                                                   | The Number of Cases in the High Court |      |      |
|------------------------------------------------------------------|---------------------------------------|------|------|
|                                                                  | In 2021                               | 2022 | 2023 |
| Not satisfied with the Labour tribunal                           | 18                                    | 18   | 32   |
| Not satisfied with Minor Employment<br>Claims Adjudication Board | 0                                     | 4    | 1    |
| Amount to                                                        | 18                                    | 23   | 33   |
| Table 2                                                          |                                       |      |      |

### 3.4.2 In the Mainland

The labor dispute handling procedures in the Mainland set almost no thresholds for appealing arbitration awards (only a small number of cases are subject to the principle of "final and binding"). According to the Labor Dispute Mediation and Arbitration Law, except for "final and binding" cases, parties dissatisfied with labor arbitration awards may file lawsuits with people's courts within 15 days of receiving the award document without requiring any appeal authorization, and courts must accept such cases.<sup>45</sup> Cases subject to the "final and binding" rule only include small-value disputes and disputes arising from the implementation of national labor standards (e.g.,

<sup>41</sup> Minor Employment Claims Adjudication Board Ordinance, Part 6, Section 34, (2021); Labour Tribunal Ordinance, Part 6, Section 35B, (2025).

<sup>42</sup> Wang Guoshe, *supra* note 32, p. 71.

<sup>43</sup> *Annual Report*, Labour Department, [www.labour.gov.hk/tc/public/AnnualReport.htm](http://www.labour.gov.hk/tc/public/AnnualReport.htm), (Jul.25, 2025).

<sup>44</sup> *Judiciary Annual Report*, The Judiciary, [www.judiciary.hk/zh\\_cn/publications/publications.html](http://www.judiciary.hk/zh_cn/publications/publications.html), (Jul.25, 2025).

<sup>45</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 48, (2008).

working hours and rest/leave). Moreover, this rule only imposes restrictions on employers—workers may still file a lawsuit within 15 days. In other words, workers' right to sue is not affected by the "final award after one arbitration" rule; the restriction applies only to employers' repeated remedies.<sup>46</sup> Once a labor arbitration case enters the judicial process, it shall be governed by the ordinary civil litigation procedure, i.e., the first-instance procedure. For labor dispute cases that meet the conditions for prosecution, the people's court shall file the case within 7 days and generally conclude the trial within 6 months from the date of filing.<sup>47</sup> Parties dissatisfied with first-instance judgments have the right to appeal to higher courts within 15 days of receiving the judgment document, initiating second-instance proceedings. Second-instance courts shall conclude appellate cases within 3 months of case registration, with their rulings being final.<sup>48</sup> Parties may apply for retrial of effective first-instance or second-instance judgments and mediation agreements. Whether to grant retrials is determined by courts, which shall review applications within 3 months of receipt. Retrial cases under trial supervision procedures will follow timelines and procedures specified by the court that issued the legally binding judgment or ruling.<sup>49</sup>

### 3.5 The Investigation Power of the Arbitration Institution

#### 3.5.1 In Hong Kong

According to the provisions of the *Minor Employment Claims Adjudication Board Ordinance and the Labour Tribunal Ordinance*, both the Minor Claims Board and the Labour Tribunal may on their own initiative and ex officio, conduct investigations into any matter deemed relevant to cases, regardless of whether parties request them.<sup>50</sup> In Tribunal proceedings, the Chief Executive may appoint a tribunal officer responsible for evidence collection and witness interviews to prepare factual summaries as adjudication bases.<sup>51</sup> Proactive investigation by these offices enables swift fact-finding, reducing unfairness caused by disparities in evidentiary capabilities. Particularly concerning wage payment records, attendance logs, employee files, and work arrangement documents—materials typically controlled by employers—this mechanism safeguards workers' vulnerable position in evidence acquisition. By having professional institutions proactively investigate disputed facts, rulings are grounded in objective evidence.<sup>52</sup>

#### 3.5.2 In the Mainland

Labor dispute arbitration procedures in Mainland China operate on the principle of evidence submission by the parties, with court investigations serving as exceptions. The initiation and scope of investigative powers are subject to strict restrictions.<sup>53</sup> Mainland China's labor dispute resolution framework recognizes that imposing excessive evidentiary burdens on workers could lead to prolonged litigation due to difficulties in evidence collection, increasing costs and reducing efficiency. After comprehensive consideration, to conserve judicial resources and reduce time and effort costs for both parties, the evidence rules for labor disputes do not follow the "he who asserts must prove" principle. Instead, they adopt a reversed burden of proof system where employers bear the

<sup>46</sup> Labor Dispute Mediation and Arbitration Law, Chapter 3, Article 47, (2008).

<sup>47</sup> Civil Procedure Law, Chapter 12, Article 152, (2023).

<sup>48</sup> Civil Procedure Law, Chapter 14, Article 171, (2023).

<sup>49</sup> Civil Procedure Law, Chapter 16, Article 209, (2023).

<sup>50</sup> Minor Employment Claims Adjudication Board Ordinance, Part 5, Section 17, (2021); Labour Tribunal Ordinance, Part 5, Section 20, (2025).

<sup>51</sup> Labour Tribunal Ordinance, Part 2, Section 5&Part 4, Section 14, (2025).

<sup>52</sup> Yang Yonghong, *Flexible, Simple and Quick Labor Arbitration Procedure in Hong Kong*, Beijing Court Website, bjgy.bjcourt.gov.cn/article/detail/2013/11/id/1123841.shtml (Jul.25, 2025).

burden of proof, rather than the usual requirement for workers to provide evidence.<sup>54</sup> Under this reversed burden of proof rule, employers will promptly submit relevant evidence to avoid adverse consequences from failure to prove, thereby accelerating case clarification and improving dispute resolution efficiency.<sup>55</sup> According to the *Labor Dispute Mediation and Arbitration Law and the Rules for Handling Labor and Personnel Dispute Arbitrations*, the arbitration tribunal may only initiate investigations under two circumstances: when parties request it and the court deems necessary (due to objective reasons preventing self-collection), or when the court deems it necessary ex officio (such as facts involving national interests, public welfare, or facts that may affect impartial adjudication).<sup>56</sup> To maintain neutrality, the arbitration tribunal initiating proactive investigation procedures must conduct rigorous reviews under legally prescribed constraints.

#### 4. Comparative References and Suggestions

A systematic comparison of labor dispute resolution arbitration systems between the Mainland and Hong Kong reveals significant differences arising from distinct legal systems attributes, value orientations, and practical needs. However, through mutual learning, these systems can achieve complementary integration and convergence. Drawing on practical experiences from both regions, the author proposes the following optimization approaches:

##### 4.1 The Inspiration of Hong Kong System to the Mainland

After conducting in-depth research on Hong Kong's system, numerous scholars have proposed suggestions for optimizing the Mainland's labor system. For instance, some propose implementing a "mediation shall be a precondition" for minor labor disputes<sup>57</sup> and establishing a "limited appeal principle" for arbitration results.<sup>58</sup> While these studies provide concrete measures for Mainland China to adopt Hong Kong's "informal, flexible, and simplified" principles in labor dispute resolution, this paper argues that there remains room for further standardization and optimization.

###### 4.1.1 Prioritize mediation procedures to enhance effectiveness.

Mainland China could adopt Hong Kong's mandatory pre-litigation mediation framework, implementing compulsory mediation for small claims disputes. The threshold would be disputes involving labor compensation claims, work-related injury medical expenses, economic compensation, or damages not exceeding twelve times the local monthly minimum wage. Meanwhile, drawing on Hong Kong's mechanism where mediation agreements registered with the Labour Department are recognized as District Court judgments, the Mainland may endow mediation agreements with direct enforceability, eliminating the need for further confirmation through arbitration or litigation to enhance procedural efficiency. To ensure professional standards, a certification system for labor mediators can be established, incorporating professionals such as retired judges and senior human resources (HR) personnel, so as to address the current issue of insufficient legal literacy among grass-roots mediators.

<sup>53</sup> Rules on Handling Labor and Personnel Dispute Arbitration, Chapter 2, Article 16, (2017).

<sup>54</sup> Labor Dispute Mediation and Arbitration Law, Chapter 2, Article 39, (2008).

<sup>55</sup> Rules on Handling Labor and Personnel Dispute Arbitration, Chapter 2, Article 13, (2017).

<sup>56</sup> Rules on Handling Labor and Personnel Dispute Arbitration, Chapter 2, Article 16, (2017); Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, Chapter 4, Article 94, (2022).

<sup>57</sup> Lin Liyu, *A Comparative Study on the Labor Dispute Handling System in Mainland China and Hong Kong — From the Perspective of the New Labor Dispute Mediation and Arbitration Law*, Legal System and Society, 2008.11 (Part 1), p. 60.

<sup>58</sup> Wang Guoshe Wang, *supra* note 32, p.75.

#### 4.1.2 Enhance arbitration efficiency and expand finality.

The scope of "final and binding arbitration awards" should be broadened to include more dispute types (such as overtime pay and economic compensation with clear facts), so as to restrict employers from abusing their right to litigation. Meanwhile, drawing on Hong Kong's "limited appeal principle", a prosecution authorization review should be added for non-final rulings (e.g., litigation is only allowed when there are errors in the application of law or gross procedural violations). Additionally, the litigation procedures for labor dispute cases and ordinary civil cases could be differentiated: after both the arbitration commission and the court of first instance have rendered awards and judgments on both law and facts, the court of second instance, for appeals against first-instance judgments, only needs to conduct legal review without re-examining the facts.

### 4.2 References of the Mainland System to Hong Kong

The Mainland's system can also provide useful references for Hong Kong:

#### 4.2.1 Balanced design of lawyers' agency rights.

Hong Kong may partially open up lawyers' agency rights in some complex cases, referring to the Mainland's permission for lawyers to act in the whole process of a case, while providing fee reductions or legal aid for workers.

#### 4.2.2 Strengthen supervision and effectiveness of the proactive investigation system.

At the legislative level, it can learn from the Mainland by clarifying the inversion of burden of proof for disputes such as overtime work and dismissal. Simultaneously, a supervision mechanism can be established, for example, the actions of tribunal officers are subject to the constraints of adjudicators and judicial review, so as to ensure that proactive investigations are not rendered ineffective.

### 4.3 Explore Cross-regional Cooperation Mechanisms

The Third Plenary Session of the 20th CPC Central Committee explicitly proposed to "deepen cooperation in the Guangdong-Hong Kong-Macau Greater Bay Area, and strengthen the alignment of rules and connection of mechanisms." In recent years, the Mainland has continuously explored ways to align with the rule systems of Hong Kong and Macau, and to build a regional labor arbitration framework for advancing the Guangdong-Hong Kong-Macau Greater Bay Area.<sup>59</sup> From the establishment of the Guangzhou (Pazhou) Fast Mediation and Arbitration Service Station of the Guangdong-Hong Kong-Macau Greater Bay Area Labor Dispute Joint Mediation Center in Guangzhou, which provides one-stop dispute prevention and resolution services for enterprises and workers from Hong Kong and Macau, to Shenzhen Longgang District Human Resources Bureau's vigorous implementation of an integrated "mediation, assistance, adjudication, and litigation" mechanism for labor disputes, these initiatives vividly demonstrate the Mainland's active exploration in effectively resolving labor disputes involving Hong Kong and Macau.

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<sup>59</sup> *Build a system highland with coherent rules. — The Guangdong-Hong Kong-Macau Greater Bay Area is anchored in "One Point, Two Places" to promote comprehensive deepening of reform*, the Chinese government website, [www.gov.cn/lianbo/difang/202412/content\\_6995132.htm](http://www.gov.cn/lianbo/difang/202412/content_6995132.htm), (Jul.25, 2025).

The differences in the nature and procedural rules of labor dispute resolution mechanisms between mainland China and Hong Kong have constrained cross-border collaboration in resolving such disputes. By studying arbitration rules from both regions, we can promote better integration and establish a regional coordination platform. Strengthening labor arbitration cooperation, formulating special evidentiary rules, and improving procedures for enforcing cross-border labor rulings are key challenges that need to be addressed in the future.

## 5. Conclusion

The fundamental differences in labor dispute arbitration systems between the Mainland and Hong Kong stem from distinct legal system approaches. Hong Kong's "efficiency-first" principles (e.g., excluding lawyers, limiting appeals) can address the Mainland's procedural delays; while the Mainland's "substantive fairness" approach (e.g., inverted burden of proof) compensates for insufficient protection of vulnerable workers in Hong Kong. Both systems have their merits and shortcomings. Building on its institutional strengths, the Mainland could reasonably adopt Hong Kong's procedural design expertise to achieve a balance between enhancing labor dispute resolution efficiency and safeguarding rights protection.

A comparative study of labor dispute arbitration systems between the two regions will undoubtedly facilitate the exploration of coordination mechanisms for labor dispute arbitration. This research will also contribute to establishing a unified Greater Bay Area collaborative platform for labor dispute resolution, advancing the enforcement of cross-border arbitration awards, and effectively resolving institutional conflicts arising from the "one country, two systems" framework across different jurisdictions.