

# **A comparative study of the eligibility and the forms in the legal aid system in the Greater Bay Area**

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# Part I

# Legal aid system

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Macau SAR

Hong Kong SAR

Mainland China

# Legal Aid System In Macau

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## ➤ Constitutional Basis:

- Article 36 of The Basic Law of the Macau SAR
- "Under the Basic Law of Macau, Macau residents shall have the right to resort to the law, to the court, by the help of a lawyer to protect their legitimate rights and interests, and access to judicial remedies."

## ➤ Law:

- Article 6 of Law No.4/2019
- "to ensure the right of any person to have access to the courts to safeguard his rights and interests protected by the law; justice must not be denied by his lack of economic capacity."

# Legal Aid System In Macau

## —— General Legal Aid Scheme

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### ➤ Eligibility

- Subjects (Article 7 of the General Framework )
  - Nature persons
  - Legal Persons : Portugal's current August 28 Law 47/2007

### ➤ Application Procedures

- The applicant + family members (Article 10 of the General Framework )
- Disposable Property (Article 9 of the General Framework )
  - Income ,assets and expenditure
  - \$320,000 Macanese Patacas
  - Documents

### ➤ Service Scope

- The forms of legal aid
- Withdrawal or reclamation
- The return obligation (Article 15.3 of the General Framework )

# Legal Aid System In Macau

## —— Judicial Aid for Civil Servants

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➤ Law :

- Law No. 13/2010 Judicial Aid for Performing Public Duties in 2010

➤ Subject:

- Macau SAR's public sector workers + those employed through private labor contracts

➤ The forms of legal aid (Article 2 of Law No.13/2010)

- Waiver of litigation costs
- Advance payment
- The payment of legal representation fees in Macau's courts

# Legal Aid System in Hong Kong SAR

- Legal aid Schemes from the Legal Aid Department
  - The Ordinary Legal Aid scheme
    - The means test : \$420,400
    - The merits test :  
A reasonable claim or defense
  - The Supplementary Legal Aid Scheme
    - financial resources exceed \$420,400 but under \$ 2,102,000
    - Limited scope of cases
    - the claim of cases that exceeded \$75,000
  - The forms of services
    - The financial aids
    - Legal services

- The Duty Lawyer Services
  - the Duty Lawyer Scheme (which is available in the Magistrates' Court for criminal cases)
  - Free Legal Advice Service
  - Tel-law Scheme
  - Legal Assistance Scheme for Non-refoulement Claimants.

# Legal Aid System in Mainland China

## —— Shenzhen

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### ➤ Law :

- National Legal Aid Regulation,
- The provincial Legal Aid Regulation of Guangdong
- The Legal Aid Regulation of Shenzhen

### ➤ Eligibility

#### ➤ free legal aid

- financial difficulty standard
- 50% of the average monthly disposable income of the households in Shenzhen
- six months

#### ➤ partial legal aid.

- partially covers the legal costs involved in the applicant's case

### ➤ Scope of Service :

The socially vulnerable

### ➤ The forms of services

- legal counseling
- litigation representation
- criminal defense
- **New : expansion of legal providers**



Part II

Comparison of eligibility

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	Macau	Hong Kong	Mainland China
Status	<ul style="list-style-type: none"> <li>Limited</li> <li>Residents involved non-profit corporations, refugees (government recognized) , foreign workers and students with stay visas.</li> </ul>	any person	<ul style="list-style-type: none"> <li>Limited</li> <li>not automatically extend to foreign citizens unless they are from a country with which China has signed a treaty</li> </ul>
The means test	<ul style="list-style-type: none"> <li>The applicant +family members</li> <li>Set a restriction on living expense</li> <li>certify necessary expenditure over 5,000 MOP</li> </ul>	<ul style="list-style-type: none"> <li>The applicant +spouse</li> <li>Statutory exemption on expenses for the care of dependants</li> <li>Deducting related costs of the principal residence, mandatory provident fund, previous year payroll tax, and alimony (for non-dependants)</li> </ul>	<ul style="list-style-type: none"> <li>The applicant +family members</li> <li>Regions' level of economic development</li> <li>Economic hardship</li> </ul>
The merits test	X	Reasonable	X

# Part III

## Comparison of the forms of legal aid

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	Macau	Hong Kong	Mainland China
Decision	The Judicial Aid Committee offer advice. Final decision needs the Chief Executive of Macau signed and agreed.	<ul style="list-style-type: none"> <li>The Hong Kong Legal Aid Department</li> <li>Regulations (Criminal cases)</li> </ul>	The local legal aid agency is set by the local government's judicial affairs bureau (responsible for the application, approval, delivery, and supervision of legal aid services)
Legal Services	<ul style="list-style-type: none"> <li>The Macao Legal Aid Commission does not provide lawyer services</li> <li>Legal aid becomes lawyers' obligation</li> <li>Funding for legal aid comes from government</li> </ul>	<ul style="list-style-type: none"> <li>The Lawyers of the Legal Aid Department</li> <li>The other is to select lawyers on the legal aid register with the help of the Legal Aid Department</li> <li>Funding for legal aid comes from government</li> </ul>	<ul style="list-style-type: none"> <li>Legal aid providers encompass licensed lawyers, professors engaged in legal research or teaching, law students, and community volunteers</li> <li>Funding for legal aid comes primarily from the government, and the society could also donate to the Legal Aid Foundation.</li> </ul>
Supervision	Not have a systematic supervision system for lawyers	<ul style="list-style-type: none"> <li>Draw up clear guidelines for the work of the assigned lawyers</li> <li>Report on cases regularly</li> <li>Set up a committee to supervise the work of lawyers</li> </ul>	The local legal aid agency is set by the local government's judicial affairs bureau

# Part IV

## Conclusion

- Lower the criteria for determining financial difficulties
- Improving the duty lawyer system, learn from the Mainland and HK
- Relaxing the eligibility of legal aid providers

As a member of the Greater Bay Area, Macao should learn from each other's development and jointly improve the overall legal aid system in the Greater Bay Area in terms of legislative level and implementation effectiveness.



Q&A

