

For discussion on
15 December 1998

**Panel on Administration of Justice and Legal Services of
the Legislative Council**

**Service of Judicial Documents in Civil and Commercial Matters
between the Mainland and the HKSAR**

Purpose

This paper informs Members of the reciprocal arrangement to be set up for the service through official channels of judicial documents in civil and commercial matters between the Mainland and the Hong Kong Special Administrative Region (HKSAR).

Background

2. Efficient arrangements for serving in one jurisdiction judicial documents issued in another jurisdiction is important. It facilitates the conduct of judicial proceedings which involve parties situated in two different jurisdictions. Litigation may not commence or proceed smoothly unless documents can be served on the opposite party in a manner that is considered acceptable to the judicial authorities concerned.

3. Before the reunification, service of judicial documents between the Mainland and Hong Kong was governed by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on 15 November 1965 (the Convention). The Convention continues to apply to the HKSAR as part of the People's Republic of China after 30 June 1997. However, being an international agreement, the Convention is no longer applicable for the service of judicial documents between the Mainland and the HKSAR after the reunification. Separately, the arrangement between the then Supreme Court of Hong Kong and the Guangdong Higher People's Court was also suspended in October 1997, pending the establishment of a mechanism for the servicing of judicial documents between the Mainland and the HKSAR.

4. Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with judicial organs in other parts of China, and they may render assistance to each other. We have been discussing with the Central People's

Government regarding the re-establishment of arrangement for the reciprocal service of judicial documents generally along the lines of the arrangement prior to the reunification, and which reflects the principles of the Convention. The arrangement worked out is set out in paragraphs 5 to 8 below.

The Arrangement

A. Entrusted Parties for the Service of Documents

5. The Supreme People's Court of the Mainland and the HKSAR High Court will oversee the operation of the mechanism for the service of judicial documents. The two bodies will meet and consult if problems or disputes arise from the implementation of the arrangement, or if there is a need to review the arrangement. Actual servicing of documents will be conducted between the relevant Higher People's Courts in the various provinces and cities in the Mainland and the High Court in the HKSAR. Individuals who wish to serve judicial documents through this official channel will forward their submission to the respective courts.

B. Operational Procedures

6. Under the arrangement, the court making the request (i.e. the entrusting party) will ensure that the request includes the name of the entrusting party, the full name and address of the person to be served and the nature of the proceedings involved. The information must be provided in Chinese or be accompanied with a Chinese translation. The entrusting party will produce a letter of entrustment duly sealed with its official seal when requesting service of judicial documents.

7. Service will be effected by the court entrusted to serve the documents (i.e. the entrusted party) within two months of receipt of letter of entrustment and in accordance with the relevant local legislation. The entrusted party will provide a certificate of service (or non-service) after the documents have been successfully (or unsuccessfully) served. In cases of non-service, the reasons for failing to effect the service will be given. Neither party will charge for the service except where the entrusting party requests a special mode of delivery of the documents.

C. Types of Documents

8. The arrangement sets out the types of judicial documents that can be entrusted for service. These documents are, for the Mainland, copy

of originating process, copy of motion of appeal, letter of authorisation or entrustment, summons, judgment, mediation decision, ruling, decision, notice, certificate, and return form on service; and for the HKSAR, copy of originating process, copy of notice of appeal, summons, judgment, decision or ruling, notice, court order, and certificate of service or non-service. These documents shall conform to the samples exchanged by the Supreme People's Court and the High Court of HKSAR before the commencement of the arrangement.

Way Forward

9. The HKSAR hopes to sign the memorandum of understanding on the details of the arrangement with the Mainland shortly. We shall thereafter introduce necessary amendments to the Rules of the High Court (subsidiary legislation of the High Court Ordinance, Cap. 4) to give effect to the arrangement. We expect to implement the arrangement within the first quarter of 1999.

Administration Wing
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