

BRIEF FOR THE LEGISLATIVE COUNCIL

High Court Ordinance (Cap. 4)

Rules of the High Court (Amendment) Rules 1999

INTRODUCTION

The Chief Judge of the High Court signed a memorandum with Mr Yang Runshi, Member of the Judicial Committee and Director General of Research Department of the Supreme People's Court on 14 January 1999, on the re-establishment of reciprocal arrangement for the service of judicial documents in civil and commercial matters between the Mainland and the Hong Kong Special Administrative Region (HKSAR). The Rules Committee of the High Court has made the Rules of the High Court (Amendment) Rules 1999 to give effect to the arrangement (copy at Annex).

BACKGROUND AND ARGUMENT

Background

2 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 However, being an international agreement, the Convention is no longer applicable for the service of judicial documents between the Mainland and the HKSAR after the reunification.

3 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 reciprocal arrangement for the service of judicial documents generally along the lines of the

arrangement prior to the reunification, and which reflects the principles of the Convention. A summary of the arrangement is set out in paragraphs 4 to 7 below.

The Arrangement

A. *Entrusted Parties for the Service of Documents*

4 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 service 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 applications to the respective courts.

B. *Operational Procedures*

5 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.

6 Service will be effected by the court entrusted to serve the documents (i.e. the entrusted party) within two months of receipt of a 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 service of the documents.

C. *Types of Documents*

7 The arrangement sets out the types of judicial documents that can be entrusted for service. These documents include, 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, pleading, affidavit, 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 which are attached to the Memorandum.

THE AMENDMENT RULES

8 Orders 11 and 69 of the Rules of the High Court currently lay down the statutory framework for the service of judicial documents outside and in the HKSAR respectively. We need to suitably amend these two Orders to reflect the arrangement described above. Specifically, -

- (a) Clause 2 of the amendment rules amends Order 11 so as to provide for the service of documents in the Mainland of China. A new Rule 5A and Rule 8A are added to implement the arrangement with the Mainland; and
- (b) Clause 4 of the amendment rules amends Order 69 so as to provide for the service in Hong Kong of judicial documents from the Mainland.

9 Separately, we also take this opportunity to amend some minor drafting irregularities of the Rules. These are reflected in clauses 3, 5 and 6.

BASIC LAW IMPLICATIONS

10 The Department of Justice advises that the arrangement and the amendment rules are consistent with the Basic Law. The arrangement is made pursuant to Article 95 of the Basic Law which 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.

HUMAN RIGHTS IMPLICATIONS

11 The Department of Justice advises that the amendment rules have no human rights implications.

BINDING EFFECT

12 The amendments to the Rules do not affect the binding effect of the High Court Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

13 The High Court of the HKSAR will in the future deal directly with over 30 Higher People's Courts in the Mainland. In addition, recent statistics show that the demand for service of documents to HKSAR has increased by over five-fold compared to that before the reunification. This would increase the workload of the Judiciary in verifying letters of entrustment and in effecting the service of the relevant documents in Hong Kong. The Judiciary Administrator would absorb any additional resources required within her global allocation.

PUBLIC CONSULTATION

14 We briefed the Legislative Council Panel on Administration of Justice and Legal Services on 15 December 1998 on the arrangement. Members generally welcomed it.

ENQUIRIES

15 For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing
Chief Secretary for Administration's Office
January 1999
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RULES OF THE HIGH COURT (AMENDMENT) RULES 1999

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

1. Commencement

Rules 2 and 4 of these Rules shall come into operation on a day to be appointed by the Chief Justice by notice in the Gazette.

2. Service of process, etc., out of the jurisdiction

Order 11 of the Rules of the High Court (Cap. 4 sub. leg.) is amended -

- (a) in rule 5 -
 - (i) in the heading, by repealing “abroad” and substituting **“out of jurisdiction”**;
 - (ii) in paragraph (2) -
 - (A) by repealing “Nothing in this rule or in” and substituting “Nothing in this rule, rule 5A or”;
 - (B) by adding “or place” after “country” where it twice appears;
 - (iii) in paragraph (3) -
 - (A) in subparagraph (a), by adding “or place” after “country”;
 - (B) in subparagraph (b), by adding “rule 5A,” before “rule 6”;
 - (iv) in paragraph (5) -
 - (A) by adding “rule 5A or” before “rule 6”;

(B) by adding “or place” after “country” wherever it appears;

(b) by adding -

“5A. Service of writ in the Mainland of China through judicial authorities (O. 11, r. 5A)

(1) Where in accordance with these rules, a writ is to be served on a person to be served in the Mainland of China, the writ shall be served through the judicial authorities of the Mainland of China.

(2) A person who wishes to serve a writ under paragraph (1) must lodge in the Registry a request for such service, together with 2 copies of the writ and 2 additional copies thereof for the person to be served.

(3) The request lodged under paragraph (2) must contain -

- (a) the full name and address of the person to be served;
- (b) a description of the nature of proceedings; and
- (c) if a particular method of service by the judicial authorities of the Mainland of China is desired by the person making the request, an indication of that particular method.

(4) Every copy of a writ lodged under paragraph (2) must be in Chinese or accompanied by a Chinese translation.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (2) shall be sent by the Registrar to the judicial authorities of the Mainland of China with a request that they arrange for the writ to be served or, where a particular method of service is indicated under paragraph (3)(c), to be served by that method.”;

(c) by adding -

“8A. Undertaking to pay expenses of service by the Registrar

(O. 11, r. 8A)

Every request lodged under rule 5A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Registrar in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.”;

- (d) in rule 9(7), by repealing “5, 6 and 8” and substituting “5, 5A, 6, 8 and 8A”.

3. Appeal from District Court

Order 59, rule 19(3)(a) is amended by repealing “signed, entered” and substituting “sealed”.

4. Service of foreign process

(1) The heading before Order 69 is amended by repealing “FOREIGN PROCEEDINGS” and substituting “PROCEEDINGS OF A COUNTRY OR PLACE OUTSIDE HONG KONG”.

(2) Order 69 is amended -

(a) in the heading, by repealing “FOREIGN PROCESS” and substituting “PROCESS FROM A COUNTRY OR PLACE OUTSIDE HONG KONG”;

(b) in rule 2 -

(i) by repealing “a foreign court or tribunal” and substituting “a court or tribunal of a country or place outside Hong Kong”;

(ii) in subparagraph (a), by repealing “or”;

(iii) in subparagraph (b) -

(A) by repealing “foreign”;

(B) by repealing the full stop and substituting “; or”;

(iv) by adding -

“(c) where the court or tribunal is in the Mainland of China, from the judicial authorities of the Mainland of China.”;

(c) in rule 3 -

(i) by repealing paragraph (1) and substituting -

“(1) If the request is in a language other than either or both of Hong Kong’s official languages, it shall be accompanied by a translation of the request in either of Hong Kong’s official languages, 2 copies of the process and, unless the court or tribunal of a country or place outside Hong Kong certifies that the person to be served understands the language of the process, 2 copies of the translation of the process.”;

(ii) in paragraphs (3) and (5), by repealing “foreign process” wherever it appears and substituting “process from a country or place outside Hong Kong”;

(iii) in paragraph (6), by adding”, the judicial authorities of the Mainland of China” after “or other authority”.

**5. Title, service, etc. of notice
of motion**

Order 106, rule 12(3) is amended by adding “由” before “遭上訴”.

6. Forms

Appendix A is amended in Form No. 99 by repealing “Commissioner of Prisons” and substituting “Commissioner for Correctional Services”.

Made this day of 1999.

Explanatory Note

The purpose of these Rules is to amend the Rules of the High Court (Cap. 4 sub. leg.) so as to provide for -

- (a) the service of writs in the Mainland of China (rule 2);
- (b) the service in Hong Kong of judicial documents from the Mainland of China (rule 4); and
- (c) the rectification of certain minor drafting irregularities of the Rules of the High Court (Cap. 4 sub. leg.) (rules 3, 5 and 6).