

For information

**PANEL ON ADMINISTRATION OF JUSTICE  
AND LEGAL SERVICES OF THE LEGISLATIVE COUNCIL**

**Arrangement for Mutual Service of Judicial Documents  
in Civil and Commercial Cases  
between the Macao Special Administrative Region  
and the Hong Kong Special Administrative Region**

**Introduction**

This paper informs Members that the Hong Kong Special Administrative Region (HKSAR) will conclude an arrangement with the Macao Special Administrative Region (Macao SAR) for mutual service of judicial documents in civil and commercial cases (the Arrangement).

**Background**

2. At present, the processing of both incoming and outgoing requests for service of judicial documents in civil or commercial cases with the Mainland and places outside Hong Kong is governed by the relevant provisions in the Rules of the High Court (RHC) (Cap. 4A) and the Rules of the District Court (RDC) (Cap. 336H).

**(A) Incoming requests for service of judicial documents**

3. The processing of incoming requests for service of judicial documents in civil or commercial cases is governed by Order 69 of the RHC. Rule 2 of the Order is extracted below –

*“This Order applies to the service on a person in Hong Kong of any process in connection with civil or commercial proceedings in a court or tribunal of a country or place outside Hong Kong where the Registrar receives a written request for service –*

- (a) from the Chief Secretary for Administration with a recommendation by him that service should be effected;*
- (b) where the court or tribunal is in a convention country, from a consular or other authority of that country; or*
- (c) where the court or tribunal is in the Mainland of China, from the judicial authorities of the Mainland of China.”*

4. While the Macao SAR is not part of the “Mainland of China” as such, it falls within the scope of “a place outside Hong Kong”. The wording of Order 69 of the RHC covers requests for service from the Macao SAR and the Chief Secretary for Administration can make a recommendation in writing to the Registrar to effect service. Hence, the HKSAR has no problem with processing incoming requests from the Macao SAR for service of judicial documents in civil or commercial cases. Between 2014 and 2016, the average number of incoming requests from the Macao SAR for service of judicial documents in civil or commercial cases was 12 per year.

**(B) Outgoing requests for service of judicial documents**

5. Outgoing requests for service of judicial documents in civil or commercial cases are governed by Order 11 of the RHC and Order 11 of the RDC. Rules 5A and 6 of Order 11 of the RHC govern outgoing requests for service of judicial documents to the Mainland of China (Rule 5A) or other countries (Rule 6), namely, a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention) (Rule 6(2A)); a country with respect to which a Civil Procedure Convention (other than the Hague Convention) subsists (Rule 6(2)) and a country where there does not subsist a Civil Procedure Convention (Rule 6(3)). Similar provisions are laid down in Order 11 of the RDC.

6. The above-mentioned rules only cover requests for service to the Mainland of China and other countries. As the Macao SAR is neither within the Mainland of China nor a “country”, there is no legal basis for the HKSAR Government to make requests to the Macao SAR for service of judicial documents. Under the existing provisions of these rules, the respective Registrar of the High Court and the District Court does not have the authority to handle applications for such requests.

7. In the absence of an official channel for making outgoing requests for service of judicial documents by the HKSAR to the Macao SAR, currently HKSAR litigants may only arrange service of judicial documents in the Macao SAR through private channels, for example, by engaging lawyers to serve the documents in the Macao SAR, provided that nothing is done contrary to the laws of either jurisdiction.

8. The lack of a formal mechanism governing mutual assistance in service of judicial documents between the two SARs is not satisfactory. The private channels currently used by HKSAR litigants for obtaining service of judicial documents in the Macao SAR may also be subject to legal challenge before the court. Therefore, it is desirable to provide for certainty by way of appropriate amendments to the relevant statutory provisions to enable litigants to use an official judicial procedure for effecting such service.

## **The Arrangement**

9. In view of the above unsatisfactory situation, the HKSAR commenced negotiation with the Macao SAR on an arrangement for service of judicial documents between the two SARs in November 2016. A text for the Arrangement has been agreed by the two SARs.

10. The Arrangement largely follows the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts signed by the Supreme People’s Court and the High Court of Hong Kong in January 1999, which has been working satisfactorily, in terms of its scope and the operational procedures. It seeks to set up a mechanism on mutual assistance

between the two SARs in the service of judicial documents in civil and commercial cases. The Arrangement contains the following key provisions –

- (i) designation of the authorities in the HKSAR and the Macao SAR, i.e. the High Court of the HKSAR and the Tribunal de Última Instância of the Macao SAR, for the transmission and execution of requests;
- (ii) specification on the scope of the Arrangement and types of judicial documents that can be entrusted for service;
- (iii) specification of the information and language required of requests;
- (iv) stipulation of the procedures for execution of requests;
- (v) requirement for timely transmission and execution of requests;
- (vi) requirement for issuing certificate of service and giving of reasons for non-service or refusal;
- (vii) immunity from liability over the contents of and consequences arising from the documents entrusted for service;
- (viii) responsibility for the expenses of service; and
- (ix) the entry into force of the Arrangement.

11. The Arrangement will provide certainty and ensure efficiency in the service of judicial documents in civil and commercial cases between the two SARs. It will remove the existing unsatisfactory situation of requiring litigants in the HKSAR to serve judicial documents to parties in the Macao SAR through private means.

## **Conclusion and Implementation**

12. The Judiciary has been consulted on the Arrangement and has expressed support to the initiative. Apart from informing this Panel of the initiative, we will provide a copy of this paper to the Hong Kong Bar Association and the Law Society of Hong Kong. The Government plans to sign the Arrangement with the Macao SAR in December 2017. Following signing of the Arrangement, a copy of the Arrangement will be put on the website of the Department of Justice.

13. The Arrangement will be implemented by amending the relevant provisions of the RHC and RDC governing service of judicial documents to provide for service of judicial documents in the Macao SAR. The Government will introduce the necessary amendments to the RHC and RDC to the Legislative Council in due course.

Administration Wing  
Chief Secretary for Administration's Office  
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