

For information

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

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

**Introduction**

This paper informs Members that in order to implement the *Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the Hong Kong Special Administrative Region and the Macao Special Administrative Region* (《香港特別行政區與澳門特別行政區對民商事案件相互委托送達司法文書的安排》) (the Arrangement), the Government will introduce necessary amendments to the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H) at the Legislative Council (LegCo) in due course.

**Background**

2. Vide the Information Note (CB(4)44/17-18(01)) issued to this Panel in October 2017, the Government has informed Members of the background and key features of the Arrangement and its plan to sign the Arrangement with the Macao Special Administrative Region (Macao SAR) in December 2017. A copy of the Information Note is at **Annex A**. The Government subsequently signed the Arrangement with the Macao SAR on 5 December 2017. A copy of the Arrangement is at **Annex B**.

3. To recapitulate, the Arrangement serves to address the current absence of an official channel for making outgoing request for service of judicial documents in civil or commercial cases by the Hong Kong Special Administrative Region (HKSAR) to the Macao SAR (collectively the “two SARs”) and provide for a mechanism of service of judicial documents between the two SARs, with key provisions setting out direct transmission of requests between the courts of the two SARs, specification of various procedural requirements for making requests and stipulation of the detailed procedures. We expect that the Arrangement,

once implemented, will provide certainty and ensure efficiency in the service of judicial documents between the two SARs in civil and commercial cases.

4. In order to implement the Arrangement, amendments to the relevant provisions governing incoming and outgoing requests for service of judicial documents in the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H) (hereafter, the Amendment Rules) are required.

### **Latest Position**

5. The drafting of the Amendment Rules is now underway. Pursuant to section 54 of the High Court Ordinance (Cap. 4) and section 72 of the District Court Ordinance (Cap. 336), the Government will invite the High Court Rules Committee and the District Court Rules Committee to make the Amendment Rules for implementing the Arrangement.

6. Subject to the making of the Amendment Rules by the relevant Rules Committees in time, the Amendment Rules may be tabled before LegCo in the second half of the 2018-2019 legislative session for negative vetting, with a view to implementing the Arrangement within 2019.

### **Advice Sought**

7. Members are invited to note the content of this Information Note.

Administration Wing  
Chief Secretary for Administration's Office  
January 2019

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  
October 2017

(Courtesy Translation)

**ARRANGEMENT FOR MUTUAL SERVICE OF JUDICIAL DOCUMENTS  
IN CIVIL AND COMMERCIAL CASES  
BETWEEN  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
AND  
THE MACAO SPECIAL ADMINISTRATIVE REGION**

Pursuant to the provisions of Article 95 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) and Article 93 of the Basic Law of the Macao Special Administrative Region (Macao SAR) of the PRC, and through consultation between the HKSAR and the Macao SAR, the following Arrangement is hereby made for mutual service of judicial documents in civil and commercial cases between the HKSAR and the Macao SAR courts:

**Article 1**

1. The Macao SAR and the HKSAR courts may entrust to each other for the service of judicial documents in civil and commercial proceedings.
2. For the avoidance of doubt, civil and commercial cases include civil labour cases with respect to the Macao SAR and claims under the jurisdiction of the Labour Tribunal with respect to the HKSAR.

**Article 2**

Judicial documents mentioned in this Arrangement include but not limited to: with respect to the Macao SAR, duplicate copies of originating process, answer, counterclaim and notice of motion of appeal, statement, defence, declaration of objections, statement of objections, application, withdrawal of action, admission of claim, settlement, inventory of property, list of property division, proposal for settlement, creditor agreement, summons, notice, judge's instructions, court order, court's leave, judgment, ruling of full bench,

certificate of service, as well as other judicial documents and their relevant attachments; with respect to the HKSAR, duplicate copies of originating process and notice of appeal, summons, pleading, affidavit, judgment, decision, ruling, notice, court order, certificate of service, as well as other judicial documents and their relevant attachments.

### **Article 3**

Requests for service of judicial documents shall be made through the Court of Final Appeal of the Macao SAR and the High Court of the HKSAR. Such requests to the Macao SAR shall be executed by the Court of First Instance.

### **Article 4**

1. When requesting service of judicial documents, the requesting party shall produce a letter of request duly affixed with its official seal. The letter of request shall set out the title of the requesting party, the name or title of the party to be served, his or its detailed address and the nature of the case involved.

2. Any particular method of service required by the requesting party or matters requiring special attention shall be noted in the letter of request.

### **Article 5**

1. The letter of request shall be in the Chinese language and shall set out the types of judicial documents attached to it.

2. If the judicial documents attached are not in the Chinese language, they shall be accompanied by a Chinese translation.

3. The aforesaid documents shall be prepared in duplicate. Where more than one party are to be served, an additional set in duplicate must be lodged for every one of them.

## **Article 6**

The requested party shall receive and effect service of judicial documents in accordance with the law of its jurisdiction.

## **Article 7**

The requested party may carry out the particular method of service required by the requesting party should it consider it not in breach of the law of its jurisdiction.

## **Article 8**

In the event that the requested party considers the letter of request inconsistent with this Arrangement, it shall notify the requesting party of the same and state the reasons for its objection promptly. Where necessary, the requested party may ask the requesting party to provide supplementary information.

## **Article 9**

The court of the requested party shall serve the judicial documents of the requesting party, regardless of whether or not the date for appearance in court or the time limit specified in the document has expired.

## **Article 10**

1. The requesting party shall make the request for service within a reasonable time to ensure that the requested party may timely complete the requested matter upon receipt of the letter of request.

2. The court of the requested party shall endeavor to complete the requested matter within two months from the date of receipt of the letter of request.

### **Article 11**

After effecting service of the judicial documents, the court of the requested party shall issue a certificate of service duly affixed with its official seal specifying the method, place and date of service, and the identity of the person who accepted the service.

### **Article 12**

In the event service cannot be effected, the requested party shall state on the certificate of service the reason(s) for non-service, or, where acceptance of service is refused, the reason(s) and the date of refusal. The letter of request and all the attached documents shall be returned to the requesting party promptly.

### **Article 13**

The requested party shall have no legal responsibility over the contents of and any consequences arising from the judicial documents requested to be served.

### **Article 14**

The requesting party shall not be required to pay for the expenses of service of judicial documents incurred by the requested party. However, the requested party is entitled to request payment from the requesting party for the charges and expenses on the particular method of service required by the requesting party in the letter of request in accordance with Article 4.

### **Article 15**

Any issues arising from the implementation of this Arrangement shall be resolved through consultation.

## Article 16

This Arrangement shall become effective thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the coming into force of this Arrangement have been complied with.

This Arrangement is signed in duplicate in Chinese in the Macao SAR this 5th day of December 2017.

-----

Cheung Kin Chung

Chief Secretary for Administration

Hong Kong Special Administrative Region

of the People's Republic of China

-----

Chan Hoi Fan

Secretary for Administration and Justice

Macao Special Administrative Region

of the People's Republic of China