

## LEGISLATIVE COUNCIL BRIEF

High Court Ordinance (Cap. 4)  
District Court Ordinance (Cap. 336)

### **RULES OF THE HIGH COURT (AMENDMENT) RULES 2020 RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2020**

#### INTRODUCTION

This note sets out the following proposed legislative amendments for providing an official channel for the Hong Kong Special Administrative Region (HKSAR) to make outgoing requests to the Macao Special Administrative Region (Macao SAR) for service of judicial documents in civil or commercial cases –

- A
- (a) Rules of the High Court (Amendment) Rules 2020 (“RHC Amendment Rules”) (**Annex A**); and
- B
- (b) Rules of the District Court (Amendment) Rules 2020 (“RDC Amendment Rules”) (**Annex B**).

#### JUSTIFICATIONS

**Lack of an official channel under the existing legal regime for HKSAR to make outgoing requests to Macao SAR for service of judicial documents in civil or commercial cases**

2. At present, the processing of both incoming and outgoing requests for service of judicial documents in civil or commercial cases from and to countries or 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 RHC.

According to rule 2 of Order 69, the High Court can process 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 of the High Court receives a written request for service –

- (a) from the Chief Secretary for Administration (CS) 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 RHC covers requests for service from the Macao SAR and CS can make a recommendation in writing to the Registrar to effect service. Hence, the HKSAR can process **incoming requests** from the Macao SAR for service of judicial documents in civil or commercial cases in the HKSAR. Between 2014 and 2019, the average number of incoming requests from the Macao SAR to the HKSAR 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 RHC and Order 11 of RDC. Specifically, Order 11 of RHC governs outgoing requests for service of judicial documents to the Mainland of China (rule 5A) or other countries (rule 6). Similar provisions are laid down in Order 11 of RDC.

6. 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 High Court and the District Court do 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 in civil or commercial cases by the HKSAR to the Macao SAR, 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 formal mechanism governing mutual assistance in service of judicial documents in civil or commercial cases between the two SARs is not satisfactory. The private channels currently used by HKSAR litigants for effecting service of judicial documents in the Macao SAR may also be subject to legal challenge before the court.

**Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the HKSAR and the Macao SAR (“the Arrangement”)**

9. To address the above unsatisfactory situation, the HKSAR and the Macao SAR concluded the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the HKSAR and the Macao SAR on 5 December 2017 (the Arrangement) (**Annex C**) to establish a mechanism on mutual assistance between the two SARs in the service of judicial documents in civil and commercial cases.

C

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. The Arrangement contains the following key provisions –

- (a) designation of the authorities in the HKSAR and the Macao SAR, i.e. the High Court of the HKSAR and the Court of Final Appeal of the Macao SAR, for the transmission and execution of requests (Article 3);
- (b) specification on the scope of the Arrangement and types of judicial documents that can be entrusted for service (Articles 1 and 2);
- (c) specification of the information and language required of requests (Articles 4 and 5);

- (d) stipulation of the procedures for execution of requests (Articles 6, 7, 8 and 9);
- (e) requirement for timely transmission and execution of requests (Article 10);
- (f) requirement for issuing certificate of service and giving of reasons for non-service or refusal (Articles 11 and 12);
- (g) immunity from liability over the contents of and consequences arising from the documents entrusted for service (Article 13);
- (h) responsibility for the expenses of service (Article 14); and
- (i) the entry into force of the Arrangement (Article 16).

11. We understand that the Macao SAR has completed its internal procedures for the coming into force of the Arrangement, and will notify the HKSAR in accordance with Article 16 of the Arrangement. For implementing the Arrangement in the HKSAR, amendments to the relevant provisions in RHC and RDC are required.

12. The Arrangement, once implemented, 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.

## **THE AMENDMENT RULES**

13. To implement the Arrangement, the RHC Amendment Rules and the RDC Amendment Rules were respectively made by the High Court Rules Committee<sup>1</sup> under Section 54 of the High Court Ordinance

---

<sup>1</sup> The High Court Rules Committee is established under section 55 of the High Court Ordinance to make rules of court regulating and prescribing the procedure and practice to be followed in the High Court (including the procedure and practice to be followed in the Registries of the High Court). The Committee is chaired by the Chief Judge of the High Court and comprises, among others, two barristers nominated by the Hong Kong Bar Association and two solicitors nominated by the Law Society of Hong Kong.

(Cap.4) and the District Court Rules Committee<sup>2</sup> under section 72 of the District Court Ordinance (Cap. 336) on 13 March 2020. These Amendment Rules are subsidiary legislation subject to the scrutiny of the Legislative Council (LegCo) by negative vetting.

14. As stated in paragraphs 3 to 6 above, Order 11 of RHC and Order 11 of RDC govern outgoing requests for service of judicial documents, while Order 69 of RHC governs incoming requests respectively. These Orders have been amended to implement the Arrangement as follows –

- (a) Clause 3 of the RHC Amendment Rules and Clause 3 of the RDC Amendment Rules have amended Order 11, rule 5A of RHC and RDC respectively so as to provide for the service of judicial documents in the Macao SAR from the HKSAR; and
- (b) Clause 7 of the RHC Amendment Rules has amended Order 69, rule 2 of RHC so as to provide for the service of judicial documents in the HKSAR from the Macao SAR.

15. The term “Mainland” (instead of “Mainland of China”) is adopted in Orders 71A and 71B of RHC and Order 42 of RDC with its definition provided in section 2 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597)<sup>3</sup>. For the sake of consistency, references to “Mainland of China” in Orders 11 and 69 of RHC and Order 11 of RDC have been amended as “Mainland”; and the term “Mainland” is defined as “any part of China other than Hong Kong, Macao and Taiwan”. This is reflected in Clauses 3 and 6 of the RHC Amendment Rules and Clause 3 of the RDC Amendment Rules respectively.

---

<sup>2</sup> The District Court Rules Committee is established under section 17 of the District Court Ordinance to make rules of court regulating and prescribing the procedure and practice to be followed in the District Court (including the procedure and practice to be followed in the Registries of the District Court). The Committee is chaired by the Chief Judge of the High Court and comprises, among others, a barrister nominated by the Hong Kong Bar Association and a solicitor nominated by the Law Society of Hong Kong.

<sup>3</sup> According to section 2 of Cap. 597, “Mainland” (內地) means “any part of China other than Hong Kong, Macau and Taiwan”.

16. We have also taken the opportunity to rectify some minor errors of RHC and RDC. These are reflected in Clauses 4, 5, 8 and 9 of the RHC Amendment Rules and Clause 4 of the RDC Amendment Rules.

## **LEGISLATIVE TIMETABLE**

17. The legislative timetable is as follows –

Publication in the Gazette	20 March 2020
Tabling in the LegCo (for negative vetting)	25 March 2020
Commencement	1 August 2020

## **IMPLICATIONS OF THE PROPOSAL**

18. Given that the number of incoming and outgoing requests for service of judicial documents in civil or commercial cases from or to the Macao SAR is relatively limited, the implementation of the Arrangement is not expected to cause an immediate sudden surge in the number of such requests. The RHC Amendment Rules and the RDC Amendment Rules are in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the High Court Ordinance and the District Court Ordinance. They have no economic, environmental, sustainability, family or gender implications.

## **PUBLIC CONSULTATION**

19. On 21 January 2019, we issued an information paper to the LegCo Panel on Administration of Justice and Legal Services with regard to the proposed legislative amendments to implement the Arrangement. The Panel raised no comments at its meeting on 28 January 2019.

## **PUBLICITY**

20. A press release will be issued and a spokesperson will be available for answering media enquiries.

## **ENQUIRIES**

21. Any enquiries on this brief should be directed to Mr Nicholas Chan, Assistant Director of Administration, at 3509 8119.

**Administration Wing**  
**Chief Secretary for Administration's Office**  
**18 March 2020**

## Rules of the High Court (Amendment) Rules 2020

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

### 1. Commencement

These Rules come into operation on 1 August 2020.

### 2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rules 3 to 9.

### 3. Order 11, rule 5A amended (service of writ in the Mainland of China through judicial authorities)

(1) Order 11, rule 5A, heading—

#### Repeal

“of China”

#### Substitute

“or Macao”.

(2) Order 11, rule 5A(1)—

#### Repeal

everything after “on a person”

#### Substitute

“in the Mainland or Macao, the writ must be served through the judicial authorities of the Mainland or Macao, as the case may be.”.

(3) Order 11, rule 5A(3)(c)—

#### Repeal

“judicial authorities of the Mainland of China”

#### Substitute

“relevant judicial authorities”.

(4) Order 11, rule 5A(6)—

#### Repeal

“judicial authorities of the Mainland of China”

#### Substitute

“relevant judicial authorities”.

(5) Order 11, after rule 5A(6)—

#### Add

“(7) In this rule—

*Mainland* (內地) means any part of China other than Hong Kong, Macao and Taiwan.”.

### 4. Cross-heading before Order 69 amended (provisions as to proceedings of a country or place outside Hong Kong)

Cross-heading before Order 69, Chinese text—

#### Repeal

“香港以外的國家或”

#### Substitute

“某國家或香港以外”.

### 5. Order 69 heading amended (service of process from a country or place outside Hong Kong)

Order 69, Chinese text, heading—

#### Repeal

“香港以外的國家或”

#### Substitute



“某國家或香港以外”。

**6. Order 69, rule 1 amended (definitions)**

Order 69, rule 1—

**Add in alphabetical order**

“*Mainland* (內地) means any part of China other than Hong Kong, Macao and Taiwan;”.

**7. Order 69, rule 2 substituted**

Order 69—

**Repeal rule 2**

**Substitute**

**“2. Applications (O. 69, r. 2)**

This Order applies to the service on a person in Hong Kong of any process related to civil or commercial proceedings in a court or tribunal of a country or place outside Hong Kong if the Registrar receives a written request for service—

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

**8. Order 69, rule 3 amended (service of process)**

(1) Order 69, Chinese text, rule 3(1)—

**Repeal**

“香港以外的國家或”

**Substitute**

“，某國家或香港以外”。

(2) Order 69, Chinese text, rule 3(3)—

**Repeal**

“香港以外的國家或”

**Substitute**

“某國家或香港以外”。

(3) Order 69, Chinese text, rule 3(5)—

**Repeal**

“香港以外的國家或” (wherever appearing)

**Substitute**

“某國家或香港以外”。

(4) Order 69, rule 3(6)—

**Repeal**

“of the Mainland of China”.

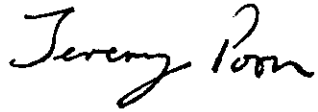
**9. Order 88, rule 5A amended (action for the enforcement of charging order by sale)**

Order 88, rule 5A(2)(a), after “charging”—

**Add**

“order”.

Made this 13th day of March 2020.




The Hon. Mr. Justice Jeremy POON  
Chief Judge of the High Court



The Hon. Mr. Justice Anderson CHOW



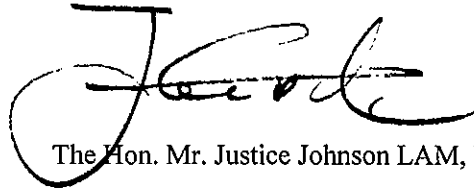
Paul T.K. LAM, S.C.



Amirali NASIR



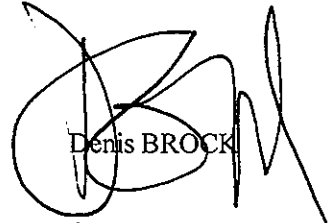
Simon KWANG  
Registrar, High Court



The Hon. Mr. Justice Johnson LAM, V.P.



José Antonio MAURELLET, S.C.



Denis BROCK



Phyllis WONG

**Explanatory Note**

These Rules amend the Rules of the High Court (Cap. 4 sub. leg. A) (*principal Rules*) to—

- (a) provide for the service of judicial documents in Macao and the service in Hong Kong of judicial documents from Macao;
- (b) provide for the definition of *Mainland*; and
- (c) rectify some minor errors in the principal Rules.

## Rules of the District Court (Amendment) Rules 2020

(Made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336))

1. **Commencement**  
These Rules come into operation on 1 August 2020.
2. **Rules of the District Court amended**  
The Rules of the District Court (Cap. 336 sub. leg. H) are amended as set out in rules 3 and 4.
3. **Order 11, rule 5A amended (service of writ in the Mainland of China through judicial authorities)**
  - (1) Order 11, rule 5A, heading—  
**Repeal**  
“of China”  
**Substitute**  
“or Macao”.
  - (2) Order 11, rule 5A(1)—  
**Repeal**  
everything after “on a person”  
**Substitute**  
“in the Mainland or Macao, the writ must be served through the judicial authorities of the Mainland or Macao, as the case may be.”.
  - (3) Order 11, rule 5A(3)(c)—  
**Repeal**

“judicial authorities of the Mainland of China”

**Substitute**

“relevant judicial authorities”.

- (4) Order 11, rule 5A(6)—

**Repeal**

“judicial authorities of the Mainland of China”

**Substitute**

“relevant judicial authorities”.

- (5) Order 11, after rule 5A(6)—

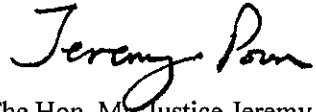
**Add**

“(7) In this rule—

*Mainland* (內地) means any part of China other than Hong Kong, Macao and Taiwan.”.

4. **Order 88, rule 5A amended (action for the enforcement of charging order by sale)**  
Order 88, rule 5A(2)(a), after “charging”—  
**Add**  
“order”.

Made this 13<sup>th</sup> day of March 2020.



The Hon. Mr. Justice Jeremy POON  
Chief Judge of the High Court



H.H. Judge Justin KO  
Chief District Judge



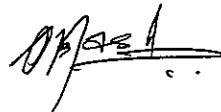
H.H. Judge LEUNG



H.H. Judge Kent YEE



Hugh KAM



Amirali NASIR



Jenny FUNG



Simon LUI  
Temporary Registrar, District Court

**Explanatory Note**

These Rules amend the Rules of the District Court (Cap. 336 sub. leg. H) (*principal Rules*) to—

- (a) provide for the service of judicial documents in Macao;
- (b) provide for the definition of *Mainland*; and
- (c) rectify a minor error in the principal Rules.

(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