

L.N. 79 of 2021

Court Proceedings (Electronic Technology) (District Court Criminal Proceedings) Rules

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Court Proceedings (Electronic Technology) (District Court Criminal Proceedings) Rules

(Made by the Chief Justice under section 26 of the Court Proceedings (Electronic Technology) Ordinance (Cap. 638))

Part 1

Preliminary

1. Commencement

These Rules come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Interpretation

In these Rules—

administrative instructions (行政指示) means instructions issued under section 33(1) of the Ordinance;

closure time (暫停辦公時間), in relation to a court office, means—

- (a) any time on a weekday (other than a Saturday) during which the office is normally closed to the public;
- (b) any time on a Saturday or general holiday; or
- (c) any time during which the office is closed to the public for—
 - (i) a gale warning as defined by section 2 of the Judicial Proceedings (Adjournment During Gale Warnings) Ordinance (Cap. 62); or

- (ii) a black rainstorm warning as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

Court (法院) means the District Court, a judge, a judicial officer or a court office;

court office (法院辦事處) means the registry of the District Court or an office of the District Court;

direction of the Court (法院指示) means a direction given by the District Court, a judge or a judicial officer;

e-practice direction (電子實務指示) has the meaning given by section 9 of the Ordinance;

judge (法官) means a judge of the District Court or a deputy District Judge;

judicial officer (司法人員) means—

- (a) a master of the District Court;
- (b) the Registrar of the District Court;
- (c) a Deputy Registrar of the District Court; or
- (d) an Assistant Registrar of the District Court;

Organization User account holder (機構用戶帳戶持有人), in relation to a registered user, means an individual who, under any administrative instructions, may send (either in the individual's own name or in the individual's capacity as an officer in the registered user) a document to the Court by means of an e-system using the same account as the registered user;

registered user (註冊用戶) means a person who is registered as a user of an e-system under any administrative instructions;

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written law (成文法律) has the meaning given by section 9 of the Ordinance.

Part 2

Authorization for Use of e-system and Application

3. Authorization for use of e-system

The use of an e-system is authorized for all proceedings to which these Rules apply.

4. Application

- (1) These Rules apply to a proceeding in the Court—
 - (a) specified in subrule (2); and
 - (b) for which the use of electronic technology has been implemented under an implementation notice.
- (2) The proceeding is—
 - (a) a criminal proceeding in relation to—
 - (i) a charge or complaint that is transferred to the Court under section 88 of the Magistrates Ordinance (Cap. 227); or
 - (ii) an indictment, the proceedings on which are transferred to the Court under section 65F of the Criminal Procedure Ordinance (Cap. 221); or
 - (b) a proceeding for taxation of costs or review of taxation of costs of—
 - (i) a criminal proceeding in the Court; or
 - (ii) a criminal proceeding in the Magistrates' Court.
- (3) However, these Rules do not apply to a proceeding (other than a proceeding specified in subrule (2)(b)) in relation to which the Rules of the District Court (Cap. 336 sub. leg. H) have effect.

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(4) In subrule (2)—

Magistrates' Court (裁判法院) has the meaning given by rule 2 of the Court Proceedings (Electronic Technology) (Magistrates' Court) Rules.

Part 3

Documents Sent to Court by Means of e-system

5. Who may send documents to Court by means of e-system

Only a registered user or an Organization User account holder may send a document to the Court by means of an e-system.

6. Receiving time of documents sent to Court by means of e-system

- (1) This rule applies to a document sent to the Court by means of an e-system other than a document sent for issue by the Court.
- (2) When the document is given system confirmation, the document is taken to have been received by the Court at the time it was given initial receipt.
- (3) However, if the time at which the document is given initial receipt is a time specified in subrule (4) (*specified time*), the document is taken to have been received by the Court at whichever is the earlier of the following times—
 - (a) the time when the Registry is next normally open to the public;
 - (b) the time when the Registry is next open for the proceeding to which the document relates.
- (4) The specified time—
 - (a) is a closure time of the Registry; and
 - (b) is not a time during which the Registry is open for the proceeding to which the document relates.
- (5) In this rule—

initial receipt (初步收據), in relation to a document sent under this rule, means the acknowledgement by the e-system of the initial receipt of the whole document immediately before system confirmation;

Registry (登記處) means the registry of the District Court;

system confirmation (系統確認), in relation to a document sent under this rule, means confirmation by the e-system of the acceptance of the document.

Part 4

Conversion of Form of Documents by Court

7. Court may convert document from one form into another

- (1) If a document is sent by or to the Court in paper form, the Court may convert the document into electronic form for one or more of the purposes specified in subrule (3).
- (2) If a document is sent by or to the Court in electronic form, the Court may convert the document into paper form for one or more of the purposes specified in subrule (3).
- (3) The purposes are—
 - (a) compiling a case file for the proceeding to which the document relates;
 - (b) transferring the proceeding to which the document relates between 2 relevant courts;
 - (c) providing a copy of the document under section 79 of the Criminal Procedure Ordinance (Cap. 221);
 - (d) any other purpose the Court considers appropriate.
- (4) In this rule—

relevant court (有關法院) means a court as defined by section 2 of the Ordinance;

send (送交), in relation to a document, means file, lodge, give, notify, serve, deliver, submit, furnish or any other expression that signifies or suggests conveying the document.

Part 5

Electronic Service of Documents

8. Interpretation of Part 5

In this Part—

designated system (指定系統) means the information system (other than an e-system) designated by a receiving person;

receiving person (接收人), in relation to a document, means the person on whom the document is to be served;

serving person (送達人), in relation to a document, means the person who is to serve the document.

9. Application of Part 5

- (1) This Part applies if a provision of written law or a direction of the Court requires or permits a document to be served on or by a person by personal service or by post (whether registered or not).
- (2) However, this Part does not apply to the service of a document if—
 - (a) a provision of written law or a direction of the Court specifies in relation to the document personal service or delivery by hand as the only mode of service; or
 - (b) the document falls within a type or description of documents excluded by e-practice directions from the application of this Part.
- (3) This Part applies in relation to a document served on or by a person whether the provision of written law or direction of the Court—

- (a) uses “serve”, “send”, “give”, “deliver”, “furnish” (including grammatical variations and cognate expressions) or any other expression that signifies service; or
- (b) otherwise suggests the service of a document by a person on another person.

10. Sending documents by electronic transmission

For the purposes of this Part, a document is sent by electronic transmission if it is sent in the form of an electronic record to an information system.

11. Electronic service of documents

If the condition specified in rule 12(1) is satisfied, a document may be served by a serving person on a receiving person by sending the document to a designated system by electronic transmission.

12. Consent to acceptance of service by electronic transmission

- (1) For the purposes of rule 11, the condition is that the receiving person has given a notice—
 - (a) notifying the serving person that the receiving person consents to accept service of the document by electronic transmission; and
 - (b) notifying the serving person of the designated system for receiving the document.
- (2) The notice may be given in any way the receiving person considers appropriate, except orally.
- (3) The consent takes effect at the time when the receiving person gives the notice.

- (4) If the notice is given by post (whether registered or not), the notice is taken to have been given on the day of posting the notice.

13. Withdrawal of consent to acceptance of service by electronic transmission

- (1) The receiving person of a document may file and serve on the serving person of the document a notice to withdraw the consent to the acceptance of service by electronic transmission.
- (2) The notice must be in the form specified in e-practice directions.

14. Change of designated system for receiving documents

- (1) The receiving person of a document may file and serve on the serving person of the document a notice to change the designated system.
- (2) The notice must be in the form specified in e-practice directions.

15. Service of notice under rule 13(1) or 14(1)

A notice specified in rule 13(1) or 14(1) may be served by the receiving person of a document on the serving person of the document—

- (a) in any way the document may be served under a provision of written law or a direction of the Court;
or
- (b) if the serving person has notified the receiving person that the serving person consents to accept service by electronic transmission—by sending the notice to the information system designated by the serving person by electronic transmission.

16. When electronic service is effected

(1) If a document is served under rule 11 or 15(b), the document is, unless the contrary is shown, taken to have been served on the business day following the day on which the document is sent by electronic transmission.

(2) In subrule (1)—

business day (工作天) means a day other than a general holiday.

Part 6

Electronic Authentication of Documents

Division 1—Interpretation

17. Interpretation of Part 6

In this Part—

digital signature (數碼簽署) means a digital signature within the meaning of section 2(1) of the ETO that satisfies the requirements specified in rule 25;

electronic signature (電子簽署) has the meaning given by section 2(1) of the ETO;

ETO (《電子交易條例》) means the Electronic Transactions Ordinance (Cap. 553);

ordinary electronic signature (一般電子簽署) means an electronic signature that complies with the conditions specified in rule 24;

scanned electronic signature (經掃描電子簽署) means an electronic signature that complies with the conditions specified in rule 23;

signer (簽署人) means a person referred to in rule 19(a).

Division 2—Authentication of Documents Sent by Court

18. Authentication of documents sent by Court

(1) Subrule (2) applies to a document that—

- (a) is required or permitted to be signed or certified by a person specified in subrule (3) under a provision of written law or a direction of the Court; and

- (b) is in electronic form.
- (2) The document must be authenticated—
 - (a) by the signature of the person in the form of—
 - (i) a scanned electronic signature;
 - (ii) an ordinary electronic signature; or
 - (iii) a digital signature; or
 - (b) in any other way prescribed by e-practice directions.
- (3) The person is—
 - (a) a judge;
 - (b) a judicial officer; or
 - (c) any other officer appointed or attached to the District Court under section 14(1) of the District Court Ordinance (Cap. 336).
- (4) Subrule (5) applies to a document that—
 - (a) is required or permitted to be sealed by the Court under a provision of written law or a direction of the Court; and
 - (b) is in electronic form.
- (5) The document must be sealed in a way prescribed by e-practice directions.

Division 3—Authentication of Documents Sent to Court by Means of e-system

19. Application of Division 3

This Division applies to a document that—

- (a) is required or permitted to be signed by a person under a provision of written law or a direction of the Court; and

(b) is sent to the Court by means of an e-system.

20. Authentication of affidavits etc. sent to Court

- (1) This rule applies if the document is—
 - (a) an affidavit; or
 - (b) any other document made on oath and filed in support of an application.
- (2) The document must be authenticated—
 - (a) by the signature of the signer in the form of a scanned electronic signature; or
 - (b) in any other way prescribed by e-practice directions.

21. Authentication of other documents sent to Court

- (1) A document that is not a document specified in rule 20(1) must be authenticated—
 - (a) by the signature of the signer in the form of—
 - (i) a scanned electronic signature;
 - (ii) an ordinary electronic signature; or
 - (iii) a digital signature; or
 - (b) in any other way prescribed by e-practice directions.
- (2) Without limiting subrule (1), if the signer of the document is the submitter of the document, the document may be authenticated—
 - (a) if the submitter is a registered user—by inputting the signer’s name at a place where the signature of the signer would otherwise appear on the document; and
 - (b) if the submitter is an Organization User account holder—by inputting the signer’s name and, if

applicable, the post title with the registered user concerned, at a place where the signature of the signer would otherwise appear on the document.

(3) In subrule (2)—

submitter (呈交人), in relation to a document, means a registered user or an Organization User account holder, who sends the document to the Court by means of an e-system.

Division 4—Authentication of Documents Served on or by Parties in Electronic Form

22. Authentication of documents served on or by parties

(1) This rule applies to a document that—

- (a) is served in electronic form by a serving person on a receiving person;
- (b) is required or permitted to be signed by the serving person under a provision of written law or a direction of the Court; and
- (c) is not sent to the Court.

(2) The document may be authenticated—

- (a) by the signature of the serving person in the form of—
 - (i) a scanned electronic signature;
 - (ii) an ordinary electronic signature; or
 - (iii) a digital signature; or
- (b) in any other way agreed by the serving person and receiving person.

(3) In this rule—

receiving person (接收人), in relation to a document, means the person on whom the document is to be served;

serving person (送達人), in relation to a document, means the person who is to serve the document.

Division 5—Conditions and Requirements for Using Electronic Signature and Digital Signature

23. Conditions for using scanned electronic signature

The conditions specified for the purposes of the definition of *scanned electronic signature* are that—

- (a) the signer manually signs the original paper document; and
- (b) a true and complete electronic image of the original paper document containing the signature of the signer is created in the form of an electronic record.

24. Conditions for using ordinary electronic signature

The conditions specified for the purposes of the definition of *ordinary electronic signature* are that—

- (a) the document is in the form of an electronic record;
- (b) the signer uses a method to attach the electronic signature to the electronic record or to logically associate that signature with the electronic record for the purposes of—
 - (i) identifying the signer as the person who signed the document; and
 - (ii) indicating that the information contained in the document is authenticated or approved by the signer; and

- (c) having regard to all the relevant circumstances, the method is reliable, and is appropriate, for the purpose for which the information contained in the document is communicated.

25. Requirements for using digital signature

(1) The requirements specified for the purposes of the definition of *digital signature* are that—

- (a) the digital signature is supported by a recognized certificate;
- (b) the digital signature is generated within the validity of the certificate; and
- (c) the digital signature is used in accordance with the terms of that certificate.

(2) In this rule—

certification authority (核證機關) has the meaning given by section 2(1) of the ETO;

recognized certificate (認可證書) has the meaning given by section 2(1) of the ETO;

recognized certification authority (認可核證機關) has the meaning given by section 2(1) of the ETO;

within the validity of the certificate (在該證書的有效期內) means that at the time the digital signature is generated—

- (a) the certificate that supports it has not been revoked or suspended by the certification authority that issued the certificate;
- (b) the recognition of the certificate has not been revoked or suspended by the Government Chief Information Officer;

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- (c) if it is a certificate designated as a recognized certificate issued by the recognized certification authority referred to in section 34 of the ETO—the designation has not been withdrawn by the certification authority;
 - (d) if the Government Chief Information Officer has specified a period of validity for the recognition of the certificate—the certificate is within that period; and
 - (e) if the recognized certification authority has specified a period of validity for the certificate—the certificate is within that period.
-

Part 7

Electronic Payments

26. Electronic payment of fees, fines, etc.

- (1) This rule applies to a payment that is made by means of an e-system for a purpose specified in the administrative instructions for the purposes of this rule.
- (2) The payment is taken to have been received by the Court at the time when the payment transaction is completed (*completion time*).
- (3) However, if the completion time is a time specified in subrule (4) (*specified time*), the payment is taken to have been received by the Court at whichever is the earlier of the following times—
 - (a) the time when the accounts office of the Court is next normally open to the public;
 - (b) the time when the accounts office is next open for the proceeding to which the payment relates.
- (4) The specified time—
 - (a) is a closure time of the accounts office of the Court; and
 - (b) is not a time during which the accounts office is open for the proceeding to which the payment relates.

Andrew CHEUNG
Chief Justice

25 May 2021

Explanatory Note

Under section 26 of the Court Proceedings (Electronic Technology) Ordinance (Cap. 638) (**Ordinance**), the Chief Justice is empowered to make rules to, among other purposes—

- (a) prescribe the practice and procedure for using electronic technology for the matters set out in Part 5 of the Ordinance; and
 - (b) authorize the use of an e-system for a specified type or description of proceeding that is within the jurisdiction of an e-Court.
2. Under the Court Proceedings (Electronic Technology) (Specification of e-Courts) Rules, the District Court (**Court**) is specified as an e-Court.
 3. These Rules authorize the use of an e-system for certain proceedings in the Court (Part 2).
 4. These Rules also prescribe the practice and procedure for using electronic technology for the following matters—
 - (a) documents that are sent to the Court in electronic form by means of an e-system (Part 3);
 - (b) conversion of documents by the Court from paper form into electronic form, or vice versa (Part 4);
 - (c) electronic service of documents (Part 5);
 - (d) electronic authentication of documents (Part 6);
 - (e) electronic payment of fees, fines, etc. (Part 7).