For discussion on
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Legislative Council Panel on
Administration of Justice and Legal Services

Improving the Mechanism for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong

Purpose

This paper briefs Members on the discussions between the Hong Kong Special Administrative Region ("**HKSAR**") Government and the Supreme People's Court ("**SPC**") on improving the mechanism for mutual service of judicial documents in civil and commercial proceedings between the Mainland and Hong Kong, and the next stage of work.

Background

2. Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other. With the strong support of the Central Government, Hong Kong and the Mainland have so far concluded nine arrangements on mutual legal assistance in civil and commercial matters, including the first one signed in January 1999 and commenced in March the same year, namely the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts ("**Service Arrangement**").

3. Since the commencement of the Service Arrangement, requests for mutual service of judicial documents between the courts of the two places have surged. According to the SPC's statistics, during a period of over 20 years, the number of requests for mutual service of judicial documents between the two places increased more than sixfold, from 359 in 1999 to 2,233 in 2022, with a cumulative total of over 35,000, indicating the growing importance of the Service Arrangement in the resolution of cross-boundary disputes.

4. Meanwhile, we notice that there is room for improvement in the success rate of service of judicial documents by the courts of the two places under the Service Arrangement. Common reasons for failure to effect service in the two places include no such recipient being at the given address, unclear address, the whereabouts of the recipient being unknown, etc. In recent years, the Department of Justice ("**DoJ**") has also received feedback from the legal sector, statutory bodies and members of the public on the issue of "difficulty in effecting service". In particular, in the event judicial documents could not be delivered through the existing modes of service, the parties often cannot proceed further with their cases, thereby affecting their legitimate rights and interests. As the Service Arrangement was signed years ago, we agree that it is necessary to improve the mechanism for mutual service of judicial documents in civil and commercial proceedings between the two places, in order to accommodate the increasingly close social and economic ties between the two places and provide better protection to the rights and interests of parties of the two places.

5. To improve the mechanism for mutual service of judicial documents in civil and commercial proceedings between the Mainland and Hong Kong, the DoJ, together with the Judiciary, has been pursuing discussions with the SPC, with a view to increasing possible modes of service of judicial documents and enhancing efficiency. To this end, in addition to taking into consideration feedback from the legal sector, statutory bodies and members of the public, the DoJ has also consulted relevant legal departments of the HKSAR Government, and met with representatives from various civil law committees of The Law Society of Hong Kong in December 2021, in order to have a better grasp of the implementation of the Service Arrangement and actual needs of the users.

Features of the new mechanism

(a) Increasing modes of service

6. At present, the Mainland courts may serve judicial documents on recipients in Hong Kong by entrusting the Hong Kong court, by post or electronic means, etc. pursuant to the Service Arrangement and the Several Provisions on the Issues concerning the Service of Judicial Documents of Hong Kong- and Macao-related Civil and Commercial Cases ("**Service Provisions**") promulgated by the SPC in 2009. On the other hand, as service of judicial documents in the Mainland is effected by the Mainland courts, parties in Hong Kong civil and commercial proceedings ("**Hong Kong parties**") serving judicial documents in the Mainland must do so by entrusting

the Mainland courts through the Hong Kong court pursuant to the requirements of Order 11, rule 5A of the Rules of the High Court (Cap. 4A) or Rules of the District Court (Cap. 336H)[1].

7. With regard to increasing modes of service, taking into account that the Mainland courts may serve judicial documents on Hong Kong recipients by post, facsimile or electronic mail pursuant to the Service Provisions, the two sides discussed a new mechanism which would permit Hong Kong parties to, with the relevant leave of the court, serve judicial documents on Mainland recipients by post or electronic means. Valid service would be determined based on the recipient's actual receipt (such as signature of the acknowledgement of service or receipt for postal delivery, acknowledgement receipt shown in an electronic system, and other situations where service can be ascertained). We believe that increasing modes of service will suit modern communication practice, reduce obstacles caused by unclear or remote addresses and enhance the efficiency of service.

8. As regards the predicament where Hong Kong parties often cannot proceed further with their cases in the event judicial documents could not be served through the existing modes of service, it is understood that the Hong Kong courts in practice had not granted leave for substituted service by way of public announcement[2] in the Mainland[3]. Similarly, there are no instances where the Mainland courts have assisted Hong Kong parties to effect service by public announcement in the implementation of the Service Arrangement. To address the pressing needs of Hong Kong parties, the two sides discussed that the new mechanism would expressly permit Hong Kong parties to apply to the Hong Kong court to entrust the Mainland courts to assist in effecting service by public announcement in cases where judicial documents cannot be served after exhausting all other possible modes of service, and would

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1 See *Deutsche Bank AG, Hong Kong Branch v Zhang Hong Li (張紅力)* [2016] 3 HKLRD 303, paragraph 54.

2 According to article 95 of the Civil Procedure Law of the People's Republic of China (《中華人民共和國民事訴訟法》), service by public announcement is applicable in cases where the whereabouts of the recipient are unknown or service cannot be effected through other prescribed means. According to article 138 of the Interpretation of the SPC on the Application of the Civil Procedure Law of the People's Republic of China (《最高人民法院關於適用〈中華人民共和國民事訴訟法〉的解釋》), for service by public announcement in the Mainland, an announcement may be posted on the bulletin board of the court or at the domicile of the recipient. The announcement may also be published in newspaper, internet and other media. The date of announcement shall be the last posting or publication date. If there are special requirements for the service by public announcement, the announcement shall be made in the required manner. After the expiration of the term of announcement, the process shall be deemed served.

3 In *Su Xin and Another v Qian Xiaochun* [2022] HKDC 156, the District Court of Hong Kong refused to grant leave for substituted service by public announcement in the Mainland on the grounds that, among others, the Service Arrangement contains no express provision on service by public announcement.

stipulate that the documents are deemed served after a specified period from the date of announcement, with a view to better protecting the interests of the parties concerned.

9. Besides, apart from retaining the requests for mutual service between the courts of the two places under the Service Arrangement, the two sides discussed that the new mechanism would permit parties in both places to directly serve judicial documents on the recipient through a designated third party (such as a law firm) in the place in which the recipient is situated, providing the parties with a more flexible and convenient alternative to the requests for service between the courts of the two places.

(b) Efficiency enhancement measures

10. According to the Service Arrangement, requests for mutual service of judicial documents are only allowed between the High People's Courts and the SPC in the Mainland and the High Court of Hong Kong[4]. Requests from the People's Courts at various other levels shall be transmitted level by level to the High People's Courts which will entrust the High Court of Hong Kong with the service, and vice versa, thus the process is rather time-consuming. To enhance efficiency, the two sides discussed that under the new mechanism the SPC might, after consultation with the High Court of Hong Kong, authorise requests for mutual service between certain Intermediate People's Courts and Primary People's Courts and the High Court of Hong Kong, thereby saving transmission time. Further, the courts of the two places will explore electronic transmission of judicial documents between each other.

(c) Leave of Hong Kong courts

11. For clarity, the two sides discussed that the new mechanism would stipulate clearly that where the laws of Hong Kong provide that the service of judicial documents in the Mainland or the adoption of a mode of service by the Hong Kong parties shall be subject to leave of the Hong Kong courts, the parties must first obtain such leave.

Next stage of work

[4] Article 2 of the Service Arrangement provides that "[requests] for service of judicial documents shall be made through the various Higher People's Courts in the Mainland and the High Court of the HKSAR. The Supreme People's Court may make direct requests to the High Court of HKSAR for service of judicial documents."

12. The DoJ strives to meet its indicator on improving the mechanism for mutual service between the two places set out in the 2023 Policy Address (see Paper No. CB(4)924/2023(02), paragraph 31) by concluding the discussions with the support of the Judiciary within this year and having the new service arrangement signed after the SPC has obtained the relevant approval. The new arrangement will come into effect after the completion of respective internal procedures in Hong Kong and the Mainland.

13. After the new arrangement is signed, the DoJ will publish its text and, together with the Judiciary, actively take forward the implementation work of the new arrangement, including amendments to the relevant provisions of the Rules of the High Court and Rules of the District Court, and relevant publicity work.

Department of Justice
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