

Insights

ELECTRONIC FILING OF COURT DOCUMENTS IN HK – COURT PROCEEDINGS (ELECTRONIC TECHNOLOGY) BILL

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Introduction

The Court Proceedings (Electronic Technology) Bill (the “**Bill**”) made its way through the second and third reading on 17 July 2020, being the last bill passed by LegCo before it was released for summer recess.

One of the objects of the Bill is to provide for the use of technology in relation to court proceedings as an alternative to conventional paper-based methods. Under the proposed legislative framework, the Chief Justice may specify by subsidiary legislation the courts/tribunals in which electronic documents may be used (e-Courts). Detailed court procedures are expected to be set out in court procedural rules (e-Rules), including relevant Practice Directions (e-PDs).

Changes proposed under the Bill

Currently, the Electronic Transactions Ordinance (Cap 553) provides the legal framework for recognition of electronic records and signatures, giving them the same legal status as their paper counterparts. However, as per section 13 of that Ordinance, this does not apply to court or tribunal proceedings unless any rule of law relating to those proceedings provide for their application.

The Bill seeks to provide an alternative option for court users to transact court businesses by electronic means on a voluntary basis.

In summary, the welcomed changes proposed under the Bill are:-

- a. E-filing of court documents – including original or certified documents – electronically to the Court. See Division 2 and Division 5 of the Bill. To do so, court users will be required first to register with the Judiciary Administration, and e-filings will be submitted in accordance with the relevant e-Rules and e-PDs.
- b. The Court may create, issue or send documents to court users in electronic form. See Division 2 of the Bill.

- c. Electronic service of documents between parties. See Division 3 of the Bill. The Judiciary intends to specify in the relevant e-Rules that there must be mutual consent between the parties, and the parties are free to agree on the most appropriate electronic platform for service.
- d. Electronic authentication of documents that are required to be signed, sealed or certified. Traditional manual signatures will not be required, and electronic signatures may be used. See Division 4 of the Bill. The Judiciary intends generally to allow electronic forms of signatures for court-related documents, as long as this is done in accordance with the relevant e-Rules and e-PDs.
- e. Printouts of documents issued or sent by courts in electronic form are to have the same legal effect as the original or a copy of it (as the case requires). See Division 6 of the Bill. In particular, the Judiciary intends to apply an electronic seal onto originating documents, which will fulfil the same purpose of the court's physical seal presently used. This is intended, of course, to instil confidence that the originating document received is genuine.
- f. E-payment of fees for court-related matters.

Background to the Bill

In 2011 to 2012, the Judiciary engaged a consultancy firm to conduct the second Information Systems Strategy Study (the first one was conducted in the 1990s) to form a strategy plan on the use of IT in support of the Judiciary's operations. The Judiciary's Information Technology Strategy Plan, or ITSP, was developed.

The ITSP specifically included a Six-year Action Plan. Phase I of the implementation of an integrated court case management system, or iCMS, was divided into two stages – the first stage from 2013 to 2016 would focus on building up the technical and infrastructure foundation, and implementing an iCMS system in the District Court and the Summons Courts of the Magistrates' Courts. The second stage from 2016 to 2019 would include rolling out the new system to the Court of Final Appeal, the High Court, the Small Claims Tribunal and the non-summons Courts of the Magistrates' Courts. Phase II would be the implementation of the same system for the remaining courts and tribunals, in the seventh to ninth years, i.e. 2019 to 2022.

Back in May 2013, the HK Government's Finance Committee approved funding of HK\$682.43 million for the implementation of Phase I of ITSP. Although the implementation of Phase I of the ITSP is behind the original ambitious schedule, the passing of the Bill is a much awaited and welcomed step in the right direction to modernise the HK Courts, further aligning itself with justice systems around the world in embracing technology. We expect to see the iCMS being rolled out in the District Court and Summons Courts of Magistrates' Courts, as per the first stage of Phase I of the ITSP.

Way forward

In Singapore, its courts introduced the Electronic Filing System since 2000 for court documents to be prepared and filed electronically. In the US, the Supreme Court made electronic filing compulsory since 2017. In the UK courts, electronic filing was rolled out in in the Technology and Construction Court in 2015, and has been compulsory in Business and Property Courts in London since 2017.

The HK justice system must embrace technology and continue to evolve, as other major jurisdictions have done. Although there have been no announcements on when the Bill will take effect, in line with the recent push from the Judiciary on remote hearings and the role of technology in light of the challenges brought about by COVID-19 in the justice system, we hope and expect the Bill will take effect in a relatively speedy timeframe.

Even after the Bill comes into effect in HK, the electronic method probably will remain voluntary in the short term. It will be interesting to see when the HK Courts will make e-filing compulsory, and eventually go truly “paperless”.

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