

Insights

## SUBSTITUTED SERVICE OF HK JUDICIAL DOCUMENTS IN MAINLAND CHINA

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### SUMMARY

Given Hong Kong's status as a special administration region of China, there are in place special arrangements for the mutual service of judicial documents between the two jurisdictions.

The Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts (the "**Arrangement**") provides a formal mechanism governing service in Hong Kong of any process in connection with civil and commercial proceedings in a court or tribunal in Mainland China, and vice versa. However, there is no mention of substituted service in the Arrangement.

So, is substituted service a possibility?

In *Su Xin and Another v Qian Xiaochun* ([2021] HKDC 1056, DCCJ 5882/2019, 3 September 2021), the HK District Court granted leave to the Plaintiffs to make substituted service on the Defendant in Mainland China by way of public announcement (公告送達) to be done through proper procedures under the Arrangement.

### BRIEF FACTS

The Plaintiffs alleged that they had been victims of a telephone fraud scheme, pursuant to which the Plaintiffs made two transfers to the Defendant's HK bank account.

The Hong Kong police's investigation found the Defendant to be a Mainland China resident whose whereabouts were unknown. However, the Defendant's last known address was in Mainland China.

On 11 May 2020, the Plaintiffs requested the HK High Court for service of the Concurrent Amended Writ (the "**Writ**") on the Defendant out of jurisdiction to Mainland China.

On 21 October 2020, the HK High Court sent a letter to the Plaintiff, enclosing the Return Form (协助送达文书回覆书) from the Higher People's Court of Jiangsu Province (江苏省高级人民法院), which

stated that personal service on the Defendant had failed with documents returned.

Subsequently, the Plaintiffs applied for leave to make substituted service of the Writ on the Defendant in Mainland China by way of public announcement.

On 26 April 2021, the Master refused to grant leave. The Plaintiffs appealed against the Master's decision.

## DOCUMENTS BEFORE THE COURT

When considering this appeal, the Court had the benefit of reading a letter from the Supreme People's Court ("**SPC**") of the People's Republic of China ("**PRC**") dated May 2014, in which SPC stated that:

- Substituted service by newspaper advertisement was not advisable as it was inconsistent with PRC law.
- Although the Arrangement does not provide specifically for public announcement as an accepted mode of service, Article 6 of the Arrangement provides that "*[s]ervice of judicial documents shall be effected in accordance with the law of the place in which the entrusted party is situated*".
- It is clear that under the PRC Civil Procedure Law, public announcement is a prescribed mode of effecting service. Therefore, if such service is specified by the HK High Court in its requests pursuant to the Arrangement, then it seems that service by public announcement is something to which the Mainland courts can consider acceding.
- Issues on technicalities and practicalities could be sorted out by the courts in the two jurisdictions through consultation under Article 10 of the Arrangement.

A PRC lawyer made an affirmation. His opinion was that public announcement is an appropriate method which would be permitted under PRC Civil Procedure law in the present case for the purpose of effecting substituted service on the Defendant.

The Court also relied on an article published by the SPC entitled 'Interpretation and application of the "Arrangement of the Supreme People's Court on Mutual Entrustment in Service of Judicial Documents in Civil and commercial Matters between the Courts of the Mainland and the Hong Kong Special Administrative Region"', which stated that "*[i]n practice, if service cannot be effected through the Arrangement or by other means, then in order to protect the rights of the party situated in Hong Kong Special Administration Region, service by way of public announcement should be made, as a final means to confirm service of proceedings*".

## DECISION

The HK Court was satisfied that public announcement is a prescribed mode of service in Mainland China and is not excluded by the Arrangement. Further, by its letter dated May 2014, the SPC gave its view on the acceptability of service by public announcement and suggested that issues in practicalities, if any, could be resolved by consultation between the courts in the two jurisdictions.

The Court also was satisfied that attempts had been made to serve the Writ to the Defendant's last known address in Mainland China but to no avail.

The Deputy District Judge Tracy Chan allowed the appeal, and ordered service of the Writ and all subsequent documents in the action on the Defendant be by way of substituted service, by posting a notice of these proceedings once with copies of the same documents as a public announcement on the bulletin board of the People's Court Tianning, Changzhou, Jiangsu, PRC. Such service must be done through proper procedures as set out under the Arrangement, e.g. service shall be effected within two months from the date the letter of entrustment is received, and after effecting service, a return form on the service shall be issued by the relevant Mainland People's Court.

## OUR COMMENTS

This decision brings helpful and welcome clarity about available modes of service in Mainland China under the Agreement. It is now clear that, if service of HK judicial documents cannot be effected through the Arrangement or by other means, service by way of public announcement in Mainland China may be acceptable. Hopefully, this will assist in preventing parties in Mainland China from evading service of legal papers of HK proceedings.

## RELATED PRACTICE AREAS

- Litigation & Dispute Resolution

## MEET THE TEAM



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