

Insights

HK AND MACAO PUT IN PLACE AND ACTIVATE THEIR ARRANGEMENT FOR MUTUAL SERVICE OF JUDICIAL DOCUMENTS IN CIVIL AND COMMERCIAL CASES

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SUMMARY

The Hong Kong-Macao Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases (the **Arrangement**) came into force on 1 August 2020. The Arrangement provides a formal mechanism governing service in Macao of any process in connection with civil and commercial proceedings in a court or tribunal in Hong Kong, and vice versa.

This Q&A outlines some of the key features of the Arrangement.

1. What is the significance of the Arrangement?

After the reunification of Hong Kong with China, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters ceased to apply to service of judicial documents between Hong Kong and the rest of China, including Macao. The unsatisfactory situation partially was remedied by the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between Mainland and Hong Kong Courts in 1999. However, the 1999 Arrangement did not cover Macao which reunified with China later that year.

As a result, Hong Kong litigants had to rely on private channels to effect service of judicial documents in Macao. Such private methods of services potentially were subject to legal challenges.

The Arrangement provides an official channel for service of judicial documents between the two special administrative regions of China.

2. What are the types of cases covered by the Arrangement?

The Arrangement applies to civil and commercial cases, including cases within the jurisdiction of the Labour Tribunal in Hong Kong.

3. What are the types of documents covered by the Arrangement?

Hong Kong judicial documents covered by the Arrangement include: duplicate copies of originating process and notices of appeals, summonses, pleadings, affidavits, judgments, decisions, rulings, notices, court orders, certificates of service and their relevant attachments.

4. What are the requirements under the Arrangement?

Existing mechanisms under the *Rules of High Court* (Cap. 4A) and *Rules of District Court* (Cap. 336H) for outgoing and incoming requests for service of judicial documents were extended to cover requests made or received by the Hong Kong Courts under the Arrangement. For instance, the amended *Rules of High Court O 11 r 5A* (service of writ in the Mainland and Macao) will apply to Hong Kong litigants who wish to serve judicial documents in Macao through judicial authorities. Likewise, the revised *O 69* (provisions as to proceedings of a country or place outside Hong Kong) will apply to incoming requests from judicial authorities in Macao.

Hong Kong litigants seeking to rely on the Arrangement should apply to the Hong Kong Courts as follows:

- (a) Lodge a request for such service at the relevant Registry. The request should contain (i) the full name and address of the person to be served, (ii) a description of the nature of proceedings, and (iii) an indication of any particular method of service desired by the Hong Kong litigant.
- (b) If the judicial documents are not in Chinese, they must be accompanied by certified Chinese translations. There is no requirement to provide translations in Portuguese, the other official language of Macao.
- (c) All documents must be lodged in duplicate. An additional set of duplicates must be lodged for each additional party to be served.

5. What are the steps under the Arrangement?

The Hong Kong Court will send the documents to the relevant judicial authority in Macao under a letter of request. Under the Arrangement, the letter of request will be in Chinese.

The judiciary authorities in Macao will effect service in accordance with the laws of Macao, and may take into account any particular method of service or matters requiring special attention stated in the letter of request issued by the Hong Kong Court. A Hong Kong litigant who requests for a particular method of service may be required to bear any special or additional charges and expenses of that method of service.

The judiciary authorities in Macao will issue a certificate of service, stating whether the judicial documents have been served. If service is successful, the method, place and date of service, and the identity of the person who accepted the service will be stated in the certificate. If service is unsuccessful, the certificate will state the reason for non-service or refusal, and the date of refusal (if applicable).

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