

Insights

HONG KONG COURT APPROVES NOVEL METHOD OF ORDINARY SERVICE IN HWANG JOON SANG & ANOTHER V GOLDEN ELECTRONICS INC. AND ORS [2020] HKCFI 1084

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Two recent Hong Kong judgments demonstrate the continuing (and welcome) embrace of technology by Hong Kong courts.

In the recent decision of *Hwang Joon Sang & another v Golden Electronics Inc. and Ors* [2020] HKCFI 1084, the Court of First Instance granted the plaintiff's application for service by access to a data room. This novel method of ordinary service has not been reported as being used previously in Hong Kong. This decision demonstrates the Hong Kong courts' continued efforts towards incorporating the use of technology in court proceedings.

Background

The case related to the misappropriation of funds through various bank accounts, involving 28 defendants in total, none of whom participated actively in the proceedings and with service out of jurisdiction granted in respect of 16 overseas defendants.

Certain court documents, most notably a writ of summons, require personal service. Others can be served by ordinary service, such as by post or by leaving them at the proper address.

Judgment

Given the large number of defendants and the potential joinder of further defendants to the proceedings, the court found it sensible and appropriate to approve the plaintiff's proposal to serve future documents by access to a data room.

Service by access to a data room previously had been approved by an English court in *CMOC Sales & Marketing Ltd v Persons Unknown and 30 others* [2018] EWHC 2230 (Comm), a case concerning email scams and fraudulent transfer of funds.

Here, in *Hwang Joon*, the following directions were given:

1. the serving party shall create an online data room containing all of the relevant documents;

2. a link to the data room shall be sent to the intended recipient(s) through a previously approved court method; and
3. an access code to the data room and instructions for access to be sent by separate email or post to the recipient(s) to enable access to the data room.

The court in *Hwang Joon* was shown the draft letter to be sent once leave was granted. The draft letter provided clear and pictorial instructions on how to access the data room. The data room would contain all of the evidence adduced up to that point, together with all applications and court orders.

Having considered the facts of the case in light of the underlying objectives underpinning the Rules of the High Court, the court held it was clearly justified to allow this innovative mode of ordinary service and therefore adopted the position in *CMOC*.

This approach is in line with Order 1A, rule 4(2)(k) Rules of the High Court which includes making use of technology to promote active case management. This also would limit the already substantial costs incurred, in relation to the use of time and resources if the use of hardcopies continued.

In interpreting “in such manner as the court may direct” in Order 65, rule 5(1)(d) Rules of the High Court, the court was satisfied that service by access to a data room would be efficient and cost-effective. As a matter of practicality, the court noted that this method would not be appropriate for individuals for whom technology would be a hurdle rather than an aid.

In a subsequent judgment in the same case, *Hwang Joon Sang & another v Golden Electronics Inc. and Ors [2020] HKCFI 1233*, Coleman J considered that courts actively should approve and adopt this method of service in appropriate cases, for example in fraud cases such as this where ‘non-cause of action defendants’ e.g. banks were joined for the purposes of supplying information.

Key takeaways

Although the courts in recent years have become more open to the use of modern technology in legal proceedings, the court in *Hwang Joon* also stressed that there is no “one size fits all” approach to the use of technology for alternative modes of service. The party making an application will need to satisfy the court that the proposed method is justified and that good service still will be effected.

The two judgments in the *Hwang Joon* case are welcomed as further examples of the adoption of an innovative yet appropriate method of service. However, this remains the exception and should not be regarded as the default option. For the time being at least, it remains important that the first occasion of service is done via another court-approved method and other methods of service must be authorised on a case by case basis.

This article was co-written with Trainee Solicitor Jane Lui.

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