



錦天城(香港)律師事務所 有限法律責任合夥

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2023 Dispute Resolution in the Digital Economy Forum: Asia and Beyond

Serving Electronic Documents in Arbitration

-- Hong Kong Perspective

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Part 01

Electronic Service in Hong Kong Court Action



Service in Hong Kong

Order 10 rule 1 of Rules of High Court (Cap 4A)

Order 10

Service of Originating Process: General Provisions

1. General provisions (O. 10, r.1)

- (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served –
 - (a) By sending a copy of the writ by registered post to the defendant at his usual or last known address, or
 - (b) If there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant. (*L.N. 404 of 1991*)

Paper-based



(1) Service by hand



(2) Service by post

Substituted Service in Hong Kong

Order 65 rule 4 of Rules of High Court (Cap 4A)

4. Substituted service (O.65, r. 4)

- (1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally or in the case of a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.
- (2) Any application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.
- (3) Substituted service of a document, in relation to which an order it made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

Substituted Service if:

- (1) Impracticable to serve paper documents by personal service;
- (2) Exhausted all reasonable means to personally serve; and
- (3) Substituted service can reasonably bring notice of the proceedings to the Defendant.



Electronic Service in Hong Kong

Permitted Method	Document Served	Case Name	Court	Briefing
Social Media Facebook Messenger	Injunction Order	<i>Zhuhai Gotech Intelligent Technology Co Ltd v Persons Unknown</i> (HCZZ 10/2020)	Court of First Instance	... L. Wong J in making the order accepted Order 65, r.4(3), Rules of the High Court (“RHC”) could be construed as providing the Court with jurisdiction to make an order of substituted service by electronic means , even in the absence of express wording ...
QR Code Poster at Public Area	Interim Injunction Order	<i>Airport Authority v Persons Unlawfully and Wilfully Obstructing or Interfering with the Proper Use of the Hong Kong International Airport</i> [2020] HKCFI 2743	Court of First Instance	Mr Justice Coleman opined that in an appropriate case, <u>the use of QR code as a means of effecting substituted service of court documents can be an effective and proportionate way of</u> achieving the aim of likely bringing the documents to the attention of those to whom attention is to be drawn. In particular, this method may seem particularly suited to (1) cases with large numbers of defendants or potential defendants , or (2) where there is a significant volume of documents to be served .
Data Room	Documents including SOC, Affidavits, Exhibits etc.	<i>Hwang Joon Sang & Anor v. Golden Electronics Inc. & Ors</i> (HCA 1529/2019; [2020] HKCFI 1084)	Court of First Instance	The Court decided to <u>allow service by online data room</u> as there were numerous Defendants in the action and further Defendants were likely to be added as a result of the Plaintiffs’ tracing of assets, and there was a substantial body of material in the form of affidavits, exhibits and previous court orders and there would likely be more added.

Part .02

Electronic Service in Other Jurisdictions





Electronic Service in Other Jurisdictions

Permitted Method	Document Served	Case Name	Court	Briefing
Text message	Injunction Order	<i>NPV v QEL and Anor</i> [2018] EWHC 703 (QB)	High Court of England and Wales	... Mr Justice Nicklin permitted the service of the injunction through text message on the grounds that the claimant only had D's phone number and it was <u>the 'only practical alternative means presently available'</u> in which NPV would be able to serve D if said meeting set for the next day did not take place. ...
Facebook Message	Default Judgment	<i>MKM Capital Property Limited v Corbo and Poyser</i> , No. SC 608 of 2008	Australian Capital Territory Supreme Court	... The court was provided with a printout of the Facebook page of D, wherein the judge determined <u>reasonable to alert the defendants</u> and ordered substituted service to be done by way of a private message via said Facebook pages to inform the first and second defendants of the entry and terms of the default judgement ...
Twitter	Injunction	<i>Blaney v Persons Unknown</i> (October 2009)	Chancery Division of English Courts	... Mr Justice Lewison granted the injunction sought and permitted the substituted service via Twitter on the ground that the defendant was anonymous and difficult to identify ; the offending Twitter page through which service was to be effected belonged to and was regularly visited by the defendant; and it was possible to monitor on Twitter whether the defendant had received the injunction.

Part .03

New Mode of Electronic Service



New Mode of Electronic Service

Permitted Method	Document Served	Case Name	Court	Briefing
Non-Fungible Tokens (NFTs)	Service of Process	<i>D' Aloia v Persons Unknown & Others</i> [2022] EWHC 1723 (Ch)	High Court of England and Wales	<p>The court found that:</p> <ul style="list-style-type: none"> the defendants were outside the court's jurisdiction (Thailand, the Cayman Islands, Panama, and Seychelles) the defendant was most likely outside the jurisdiction of the court as they were anonymous creators of website <p>The court found that <u>it was only apt to allow for service by way of NFT</u>, as 'the difficulties that would otherwise arise and the complexities in relation to service on the first defendant mean that good reason has been shown.'</p>

Part .04

Practical Considerations in the Context of Arbitration



Practical considerations in the context of Arbitration

2018 HKIAC Administered Arbitration Rules

Article 3 – Written Communications and Calculation of Time Limits

3.1 Any written communication pursuant to these Rules shall be deemed to be received by a party, arbitrator, emergency arbitrator or HKIAC if:

- (a) Communicated to the address, facsimile number and/or email address communicated by the addressee or its representative in the arbitration; or
- (b) In the absence of (a), communicated to the address, facsimile number and/or email address specified in any applicable agreement between the parties; or
- (c) In the absence of (a) and (b), communicated to any address, facsimile number and/or email address which the addressee holds out to the world at the time of such communication; or
- (d) In the absence of (a), (b) and (c), communicated to any last known address, facsimile number and/or email address of the addressee; or

Permitted methods of service

- Post;
- Fax; and
- Email address.

Practical considerations in the context of Arbitration

Advantages

- Cost-effective and efficient method
- Dealing with individuals who want to evade arbitral proceedings
- Enhancing access to the arbitration process by ensuring notice
- Overcoming limitations of traditional means of service

Practical considerations in the context of Arbitration

Issues to consider – dealing with a party who does not participate

- Whether electronic service is embedded in the parties' agreement?
 - Whether institutional rules provide for this?
- Evidence of delivery of service – tracking mail 'read' or 'delivered'
 - What if bounce back or undelivered?
 - What if "unread"?
- Service via mobile app or portal – e-commerce platform
 - ensure the terms and conditions provide for this – check parties' agreement
- Service via social media platform - authenticity and ownership Verification
 - How to verify the social media account is legitimate

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