



By email (thomashli@judiciary.hk)

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Our Ref.: C/RIF, M140125

Judiciary Administration
The Judiciary
38, Queensway
Hong Kong

Dear Sirs,

[The Judiciary's Information Technology Strategy Plan: Consultation Paper on the Proposed Legislation and Practice Direction for the Implementation of the Integrated Court Case Management System in Civil Proceedings of the High Court](#)

Thank you for inviting comments from the Hong Kong Institute of Certified Public Accountants (“**the Institute**”) on the subject consultation paper about the implementation of the integrated Court Case Management System (“**iCMS**”). We referred the consultation paper to the committees overseeing our Restructuring and Insolvency Faculty and our Forensic Accounting Interest Group for their consideration.

The Institute is fully supportive of the general direction to implement the iCMS, which is a key initiative taken by the Judiciary to harness the power of technology for more efficient case processing. The move is in line with developments in other jurisdictions in the region and elsewhere, including Singapore, where the push for digitalization started in “technology courts” in the 2000s, and with the use of technology in courts in the Mainland. This being the case, generally, we trust that the Judiciary will take note of other comparable overseas examples already in operation, and what works well and what does not, in designing the system for Hong Kong. It would be useful to know, for example, how other jurisdictions deal with matters such the provisions under the Rule 9 of the Court Proceedings (Electronic Technology) (High Court Civil Proceedings) Rules, whereby a document sent by means of an e-system and given an *initial receipt*, may not be taken as having been received by the Court until the physical registry of the High Court is open to the public or for the processing of specific documents; similarly also, for Rule 39 relating to when a payment is taken to have been received by the Court, which may not be when the transaction payment is completed in all cases.

The current consultation focuses on proposed legislative and practice directional changes for the transition to the iCMS, of specified types of civil cases in the Court of First Instance and Court of Appeal, under Stage 2 Phase I of the project. While the Institute agrees that the changes are likely to significantly streamline court proceedings through digitalization and, all other things being equal, lead to shorter average case processing time, we have noted some issues which may warrant further consideration. We set out below our comments on those issues, using the following abbreviations:



- the Court Proceedings (Electronic Technology) (High Court Civil Proceedings) Rules (“**HC Civil e-Rules**”)
- the Court Proceedings (Electronic Technology) (High Court) (Electronic Fees) Rules (“**HC e-Fees Rules**”)
- the High Court Fees (Amendment) Rules 2024 (“**HC Fees (A) Rules**”)
- the Rules of the High Court (Amendment) Rules 2024 (“**RHC (A) Rules**”)
- the Practice Directions for civil proceedings of the High Court (“**HC Civil e-PD**”)

Our comments

Rule 2 and Rule 8 of HC Civil e-Rules

Rule 2 defines an Organization User account holder, in relation to a registered user, as “*an individual who, under any administrative instructions, may send (either in the individual’s own name or in the individual’s capacity as an officer in the registered user) a document to the Court by means of an e-system using the same account as the registered user.*”

Rule 8 provides that “*Only a registered user or an Organization User account holder may send a document to the Court by means of an e-system.*”

Rules 2 and 8, taken together, would allow individuals to send, in their own name, a document to the Court by means of an e-system using the account of a registered user that is an “Organization User account”. It would appear that the individual is expected to do this under the authority of the “organization”, as Rule 2 also refers alternatively to the individual sending the document in their “capacity as an officer in the registered user”. For more clarity, we suggest Rule 2 be slightly amended to define an Organization User account holder, in relation to a registered user, as “*an individual who, under any administrative instructions, may send (either in the individual’s own name under the registered user’s authority, or in the individual’s capacity as an officer in the registered user) a document to the Court by means of an e-system using the same account as the registered user.*”

Rule 9 of HC Civil e-Rules

This proposed rule does not make the relationship between *initial receipt* and *system confirmation* entirely clear. Although *initial receipt* is defined as *the acknowledgement by the e-system of the initial receipt of the whole document immediately before system confirmation*, under subrule (2), it would appear that a document will not be treated as having been received until the document it is given *system confirmation*, and then the time of receipt of the document will revert to the time of *initial receipt*. It is unclear from the rule, firstly, what *system confirmation* actually means. Does it mean, for example, that the document has been deemed to meet all the necessary requirements, or something else? Could a document still be rejected after have received *system confirmation*, or does the confirmation constitute definitive evidence that the document is in order? Secondly, there is no indication how long after *initial receipt*, the sender can expect to wait for *system confirmation*, other than that, in the definition of *initial receipt*, it is indicated that this step occurs *immediately before system confirmation.*” If this is the case, it may, in fact, suggest that *system confirmation* is more of a purely procedural step rather than a qualitative acknowledgement that the document meets all the necessary requirements. This



would also seem to be confirmed by paragraph 23 of the **HC Civil e-PD**.

The matter is further complicated by subrule (3), which indicates that, under certain circumstances, and despite the definition of the term, *initial receipt* itself may not provide *acknowledgement by the e-system of the initial receipt of the whole document*. This is because under subrule 3, *initial receipt* will not take place until:

whichever is the earlier of the following times— (a) the time when the Registry is next normally open to the public; (b) the time when the Registry is next open for the proceeding to which the document relates.

It would be helpful if this proposed rule could be reviewed and the above issues clarified. Further guidance may need to be given to stakeholders as to the meaning and implications for users of the two terms, *initial receipt* and *system confirmation*, and how they are interrelated.

Rule 10 of HC Civil e-Rules

Under rule 10, a document as specified under that rule *is taken to have been issued out of the Court at the time it was given initial receipt* by the Court. Prima facie, this may be inconsistent with section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to computation of time under which, if a party is required to take certain action within a period of time of receipt of the document, the date of receipt is not counted. While the proposed rule 10, as specific legislation should override section 71 of Cap. 1 which is general legislation, rule 10 may be prejudicial to the receiving party if the document is “issued” out of court at, say, one minute before the close of business on a particular day, especially in cases where time is of the essence in relation to a document.

There also appears to be a slight inconsistency between subrule (2) and the definition of *initial receipt*. The former states that a relevant document *is taken to have been issued out of the Court at the time it was given initial receipt*. However, *initial receipt* is defined as meaning *the acknowledgement by the e-system of the initial receipt of the whole document immediately before the issue of the document out of the Court* [underlining added], which suggests that these are two different points in time.

Rule 19 of HC Civil e-Rules

In relation to subrule (4), it is not clear whether *the day of posting the notice* is the same day as the date that it is stamped, or, if the notice is delivered to the post office or dropped into a letter box after the last delivery time of the day, that day. This may need to be clarified.

Rule 25(2) of HC Civil e-Rules

Rule 25(2) provides: *If, after judgment has been entered by the serving person against the receiving person, the serving person becomes aware that the copy of the writ was not sent successfully, the serving person must, before taking any step in the action or the enforcement of the judgment, either –*

- (a) make a request for the judgment to be set aside on the ground that the writ has not been fully served; or*
- (b) apply to the Court for directions.*



For more disciplined case management, we suggest placing a time limit for the serving person to lodge the applications to the Court per (a) or (b) above, e.g., no later than 14 days after their becoming aware that the copy of the writ was not sent successfully. Setting such a time limit would be reasonable in light of the more expedient channel for filing documents afforded by the iCMS.

Rules 26 and 32 of HC Civil e-Rules

The term *scanned electronic signature* could be confusing, even though the conditions that need to be satisfied for purpose of the definition in Rule 26 are set out in Rule 32. What is described in Rule 32 appears to be a scanned copy of an original signature, forming part of the electronic image of an original document that has been manually signed, rather than a scanned electronic signature. An *electronic signature* in common parlance would often refer to an original signature that has already been scanned/ digitalized, which can be used to substitute for an original signature in some circumstances. The term *scanned electronic signature* might, therefore, be read as meaning a scanned version of an e-signature.

System security and data integrity

We believe the Judiciary would have addressed in detail the relevant aspects of system security and data integrity in implementing the iCMS. Nevertheless, we would set out our views on the following matters after reviewing the consultation paper:

- Transfer of proceedings

Part 8 (rules 35 to 38) of the HC Civil e-Rules deals with transfers of proceedings within Court and between Court and non-e-Court, and the need in those instances to convert paper documents to electronic documents or vice versa. We suggest proper procedures be implemented to ensure the completeness and accuracy of the document conversions carried out. As an added measure, we suggest that paper documents and electronic documents that are converted to their respective alternative forms be retained as back up, at least in the initial operating period of the iCMS during which system “bugs” are more likely to be present.

- Retention of paper copies of documents submitted

It is the Judiciary’s plan to mandate the use of the iCMS for legally represented litigants starting from 2026 (see Q1 and A1 of Frequently Asked Questions and Answers regarding the iCMS (“FAQs”)). This being the case, we suggest that directions be given to these litigants or their legal representatives to retain all paper documents submitted in electronic form, until completion of the relevant Court proceedings.

Paragraph 7 of HC Civil e-PD

7. *A party who sends a document to the Court by electronic transmission must ensure that the document satisfies the technical requirements² set out in the administrative instruction.*



In the context of implementing the above direction, we suggest that, for any non-compliance with the technical requirements, an online alert together with a link to the technical requirements be sent to users within a reasonable time (say, within 24 hours of the transmission of documents), so that any issues could be addressed promptly. We note Q13 & A13 which state that: *If a document is rejected for submission, the user will receive a message in his/her message box informing him/her of the reason for rejection. The user may have to take appropriate remedial steps including re-transmitting the document to the Court via the iCMS.* It may already be intended, therefore, that this matter will be addressed by the system and we hope that this is the case.

In this connection, we note that the link to the technical requirements currently appearing in footnote 2 to paragraph 7 (www.judiciary.hk/doc/en/e_courts/Al_TechReq_iCMS_e.pdf) is not valid, and that the problem can be fixed by removing the space before “e_courts”. However, the reference in Q4 & A4 of the FAQs is correct.

Paragraphs 16 and 19 of HC Civil e-PD

16. The sender of a document rejected for transmission via the e-system for whatever reason is required to take appropriate remedial steps to re-send the document to the Court, including making a re-transmission via the e-system. In the event a document is accepted for submission in a subsequent transaction, the submission time as confirmed by the system will be that of the subsequent transaction and not that of the previous failed transaction(s). Court users should take into account the processing time that may be involved when making an electronic transmission via the e-system and should avoid making last minute submission of documents.

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19. It is the responsibility of a party to ensure that an electronic transmission via the e-system is received by the Court within the applicable time limit, taking into account factors such as the e-system may be busy at certain time of the day, pre-announced maintenance of electronic communication and information systems and possible technical failure. Court users should avoid making last minute submission of documents.

In the context of implementing these directions, information about the state of use (and remaining capacity available) of the e-system at any given point of time could help users manage their submissions of documents efficiently. We suggest that, if practicable, the following information be displayed in the system, on a real time basis, throughout each day for users to see:

- expected peak hour(s)
- number of active users
- current data uploading speed
- expected time for uploading a document of a stated size (e.g. a 100-page pdf document of A-4 size without graphics)

We also have some reservations about asking users to take into account *possible technical failures* and to, in effect, treat a failure of an electronic submission to be received by the Court within the applicable time limit due to a system failure, as a fault or responsibility of the user. While system failures are always a possibility, it is difficult



for a user to be able to estimate when such failures may occur and, when they do, how long they will last and the impact of them on the system. Referring back our comments at the beginning of this submission, it would be useful to know how other jurisdictions which have introduced digitalized services in the judiciaries deal with such matters. That said, it is reasonable to advise users, generally, to avoid making last minute submission of documents.

Paragraph 20 of HC Civil e-PD

20. A party who has successfully sent a document to the Court via the e-system must not send a hard copy of the document to the Court unless otherwise directed by the Court or required by law or a practice direction. In case of duplicate submission, the hard copy will be disregarded and only the document sent electronically will be accepted and processed.

The direction does not appear to cater for the amendment, cancellation and/or re-submission of documents that have been submitted electronically and are subsequently found to contain errors. We suggest directions be added (with corresponding features incorporated in the system, where appropriate) to give effect to:

- the amendment, cancellation and/or resubmission of documents that have been submitted and are subsequently found to contain errors; or alternatively
- the replacement of soft copies of erroneous documents submitted with hard copies of rectified documents submitted to the Court.

24. An originating process or an application may be rejected for electronic transmission via the e-system if it appears to be made by a person who is subject to a restricted application order ("RAO") and/or restricted proceedings order ("RPO") within the meaning of Practice Direction 11.3. In the event the name of the party making the submission is the same as that of someone subject to an RAO or RPO, the submitting party should file the originating process or application in the conventional mode whereupon the Court registry may require proof or information for identity verification to be produced.

Presumably, the direction that *a submitting party should file the originating process or application in the conventional mode* applies, generally, when an originating process or an application has already been rejected on the above grounds, because a submitting party may not know that the name on the application appears to be the same as the name of a person subject to an RAO or RPO. If that is the case, perhaps this could be made clearer in paragraph 24.

Application for extension of time

An applicant may submit a written application setting out an application for extension of time via the iCMS, and no fee will be charged for filing by way of a written application (see Q14 & A14 of the FAQs). As system problems within the iCMS may have sometimes caused the delay that necessitates a time extension application, we suggest that there be directions/ guidance on using alternative channels to submit the application in those situations, such as submitting the application by email or in person.



Refunds for submissions rejected by iCMS

Currently, refunds for online payments by credit card or PPSB are made by crossed cheques sent by post (see Q23 & A23 of the FAQs). We suggest that relevant payment service providers be enabled to make the refunds through the original payment method used by a party when submitting the documents, such as credit card or PPSB.

Extension of the iCMS to cover Companies Winding-up Proceedings

It appears that there is no proposed timetable to extend the iCMS to cases conducted under the Companies (Winding-up) Rules (i.e., “HCCW” cases). Given the long-established statutory framework for windings up in Hong Kong and liquidators’ frequent interactions with the Court in compulsory windings up, we advocate extending the iCMS to cover “HCCW” cases, and facilitating liquidators to be able to make relevant filings to the Court via iCMS, particularly taxation applications for liquidators’ and agents’ bills. The current arrangements limit the filing of taxation applications to mornings only and these paper-based applications are often voluminous.

We hope you find the above views and observations to be helpful and constructive. Should you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084 or at peter@hkicpa.org.hk.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

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