



Pinged Across Borders: WhatsApp as a Medium of Service to Foreign Jurisdictions

I. Introduction

Most of us use WhatsApp daily to stay connected. But what if it became the platform through which you were notified of a lawsuit? While this may seem unconventional, courts around the world are beginning to explore social media and messaging apps as alternatives to traditional methods of serving legal documents.

In Malaysia, this development took shape with the 2020 amendments to the Rules of Court 2012. These changes formalised the use of technology in judicial proceedings and introduced the possibility of serving documents via “electronic communication.” The term, however, remains undefined, leaving open the question of whether WhatsApp could fall within the scope, especially when service of documents extends across borders.

II. Why Serving Papers Matters and Why It's Challenging Abroad

The service of documents is not a mere formality; it ensures fairness

and transparency in judicial proceedings, as the essence of service lies in informing the concerned party of their legal obligations and the actions being taken against them.

Complications may arise when Defendants reside overseas, cannot be located, or deliberately evade service. In such circumstances, Plaintiffs may seek an order for substituted service, which allows for alternative methods such as publishing notices in newspapers, leaving documents at the last known address, or using digital platforms when appropriate.

III. WhatsApp as a Tool for Legal Service

With over three billion users worldwide, WhatsApp has emerged as a practical instrument for substituted service. Its delivery and read receipts (the familiar grey and blue ticks) offers reassurance that messages have been both delivered and read by the intended recipient.

Courts, however, remain cautious. Plaintiffs must first demonstrate that all reasonable efforts at traditional service have been exhausted and provide evidence that the Defendant actively uses the WhatsApp account. Only then may the Court accept WhatsApp as an effective alternative.

IV. Developments in Foreign Jurisdictions

Several jurisdictions have already moved toward recognising WhatsApp and similar platforms:

- **Singapore:** In *David Ian Andrew Storey v Planet Arkadia Pte Ltd* [2016] SGHCR, the High Court permitted electronic service through email, Skype, Facebook, and message boards. In its decision, the Court acknowledged that WhatsApp is an acceptable medium for substituted service if the Defendant's activity on the platform is proven.
- **United Kingdom:** In *Gray v Hurley* [2020] 1 FLR 864, the High

Court allowed a woman to serve her ex-partner in New Zealand via WhatsApp in a dispute over assets worth more than £20 million. The ruling highlighted WhatsApp's viability even in high-stakes cases.

- **United States:** In *Jonathan Schwartz v Sensei, LLC*, after multiple failed attempts at personal service, the Court authorised service through WhatsApp and Twitter. The decision underscored the need to exhaust traditional methods before turning to digital ones.

V. The Position in Malaysia

In Malaysia, courts have begun cautiously embracing this trend. For example, In *30 Maple Sdn Bhd v Noor Farah Kamilah Binti Che Ibrahim* (Kuala Lumpur High Court Suit No: WA-22IP-50-12/2017) and *HAT v PAT* [2024] MLJU 2730, judges allowed service via WhatsApp (alongside email) after diligent attempts at personal service had failed. Interestingly, in *HAT v PAT*, the Respondent later confirmed they received the documents, proving the method worked.

VI. The Road Ahead

Will WhatsApp soon become a standard method for serving documents in Malaysia? Perhaps not immediately. Courts still lean towards email, given its established formality. Even so, recent cases recognising WhatsApp as a tool for substituted service indicate that it is gaining traction as a fallback option.

The bottom line? If you intend to serve documents abroad via WhatsApp, you must:

1. Apply for leave to serve abroad and first attempt service through traditional means; and
2. If those attempts fail, apply for substituted service via WhatsApp, supported by evidence that the Defendant actively uses the account.