

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Administrative Proceedings Rulings  
Release No. 6360 / November 26, 2018

Administrative Proceeding  
File No. 3-18188

In the Matter of  
**Meridian Co., Ltd.**

**Order Finding  
Service by Email**

Because Korea has refused to serve the order instituting this proceeding (OIP) on Respondent Meridian Co., Ltd., under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,<sup>1</sup> the Division of Enforcement has pursued alternate means of service.

The Division's motion to ratify service by email, accompanying declaration, and exhibits, show that in March 2015, the Division of Corporation Finance sent a delinquency letter to the president and director of Meridian. Meridian's response came by fax from Mr. Steven Kim, Meridian's "overseas department manager." Kim acknowledged receipt of the letter and indicated that Meridian had "specific questions" about it and was aware of the seriousness of its delinquency. Kim provided four methods of contacting him: two phone numbers, a Skype username, and an email address.

On November 2, 2018, the Division emailed Korean and English versions of the OIP and other documents to Kim at the email address he provided in his 2015 fax.<sup>2</sup> Kim responded on November 5, 2018, acknowledging receipt on

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<sup>1</sup> *Done* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163.

<sup>2</sup> The Division's declaration states that the email was sent on November 2. The date stamp on the copy of the email below Kim's November 5 reply shows November 3. Given the time difference between the United States and Korea, it is likely that it was November 2 in the United States and November 3 in Korea when the email was sent.

behalf of Meridian and asking several questions about the nature of this proceeding, including whether “we can use the hearing opportunity,” and “what can we do to stop this proceeding for a while.”

The Division requests that I ratify its successful email delivery of the OIP as effective service under Rule of Practice 141(a)(2)(iv)(D), which allows service on persons in foreign countries by any “means not prohibited by international agreement,” as ordered by the Commission or the presiding administrative law judge.<sup>3</sup> The Hague Convention, which dates from the 1960s, does not prohibit sending judicial documents by email.<sup>4</sup> Because there is no indication another international agreement applies,<sup>5</sup> it follows that email service is not prohibited by international agreement.<sup>6</sup> Although Kim may reside in Korea, which objects to Article 10(a) of the Hague Convention permitting service by postal channels, an “objection to service through postal channels does not amount to an express rejection of service via electronic mail.”<sup>7</sup> And as with Federal Rule of Civil Procedure 4(f)(3), nothing in Rule 141(a)(2)(iv)(D) “requires that the alternative service ordered . . . [under] that provision must comply with the law of the foreign state where the service is to be effected.”<sup>8</sup>

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<sup>3</sup> 17 C.F.R. § 201.141(a)(2)(iv)(D).

<sup>4</sup> See *Bazarian Int’l Fin. Assocs., L.L.C. v. Desarrollos Aerohotelco, C.A.*, 168 F. Supp. 3d 1, 17 (D.D.C. 2016); *Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, 295 F.R.D. 259, 261 (S.D. Ohio 2013).

<sup>5</sup> See *D.Light Design, Inc. v. Boxin Solar Co.*, No. 13-cv-5988, 2015 WL 526835, at \*2 (N.D. Cal. Feb. 6, 2015) (stating in regard to a defendant in China that “[a]bsent the application of the Hague Convention, it is not apparent that any international agreement applies in this case”).

<sup>6</sup> See *Advanced Access Content Sys. Licensing Adm’r, LLC v. Shen*, No. 14-cv-1112, 2018 WL 4757939, at \*6 (S.D.N.Y. Sept. 30, 2018) (concerning email service on a defendant in China).

<sup>7</sup> *Gurung v. Malhotra*, 279 F.R.D. 215, 220 (S.D.N.Y. 2011); see *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 332 (S.D.N.Y. 2015) (“China’s objection to service by postal mail does not cover service by email”); *Lexmark*, 295 F.R.D. at 262 (“Email service has been approved even where, as here, the country objects to Article 10 of the Hague Convention.”).

<sup>8</sup> *Strabala v. Zhang*, 318 F.R.D. 81, 115 n.38 (N.D. Ill. 2016); see *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (“service

(continued...)

Although Rule 141(a)(2)(iv)(D) can be read as requiring a predicate order from the Commission or the presiding administrative law judge allowing the alternative means of service before it is undertaken, I construe the rule flexibly to allow ratification of a successful alternative means of service that comports with due process.<sup>9</sup>

In addition to being permitted under the Rules of Practice, email service in these circumstances satisfies due process, which requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>10</sup> Actual notice has been accomplished here, given that receipt of the OIP has been acknowledged by Kim—who holds himself out as agent for Meridian, who has already posed several questions in defense to the Division, and who has personally responded on Meridian’s behalf in response to a prior Commission communication directed to the company president.

Accordingly, Meridian was served by November 3, 2018, making its answer due November 13, 2018.<sup>11</sup> To date, Meridian has not filed an answer.

In accordance with the Commission’s order of August 22, 2018, I had previously directed the parties to submit proposals for the conduct of further proceedings by October 9, 2018.<sup>12</sup> To allow the parties time to confer, I now extend that deadline and the deadline for Meridian’s answer to December 14, 2018. If Meridian fails to file an answer, submit a proposal, or otherwise defend the proceeding, it may be deemed in default and the registrations of its securities may be revoked.<sup>13</sup>

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of process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country”).

<sup>9</sup> Cf. 17 C.F.R. § 201.103 (“The Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.”).

<sup>10</sup> See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

<sup>11</sup> OIP at 2; 17 C.F.R. § 201.220(b).

<sup>12</sup> *Meridian Co.*, Admin. Proc. Rulings Release No. 6020, 2018 SEC LEXIS 2446 (ALJ Sept. 18, 2018); see also *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10536, 2018 SEC LEXIS 2058 (Aug. 22, 2018).

<sup>13</sup> OIP at 2–3; 17 C.F.R. §§ 201.155(a)(2), .220(f); *Pending Admin. Proc.*, 2018 SEC LEXIS 2058, at \*4.

All filings, including any proposal or answer, must be sent to the Commission's Secretary and served upon each party in accordance with Rules of Practice 150 to 153.<sup>14</sup> Also, it would be helpful if a courtesy copy of any filing is emailed to [alj@sec.gov](mailto:alj@sec.gov) in PDF text-searchable format.

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James E. Grimes  
Administrative Law Judge

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<sup>14</sup> 17 C.F.R. §§ 201.150–.153. The Rules of Practice are available at <https://www.sec.gov/about/rules-of-practice-2018.pdf>. Also, instructions for respondents are available at <https://www.sec.gov/alj/alj-instructions-for-respondents.pdf>.