

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93516 / November 3, 2021

Admin. Proc. File No. 3-19649

In the Matter of

TOSHOAN HOLDINGS, INC. and
TOA OPTICAL TECH, INC.

ORDER REGARDING SERVICE AS TO TOSHOAN HOLDINGS, INC.

The Securities and Exchange Commission (“Commission”) issued an Order Instituting Proceedings (“OIP”) on January 10, 2020, pursuant to Section 12(j) of the Securities Exchange Act of 1934, against Toshoan Holdings, Inc. (“Respondent”).¹

On February 2, 2021, the Commission issued an order regarding service of the OIP. Specifically, the Commission noted that the Division of Enforcement attempted to serve the OIP on Respondent in Japan via U.S. Priority Mail notwithstanding the Government of Japan's declaration on December 21, 2018 that it would object to service through postal channels pursuant to Article 10(a) of the Hague Service Convention.² Subsequently, the Division stated that it would attempt to serve Respondent by the Central Authority in Japan, pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

On October 19, 2021, the Division filed a status report reflecting an attempt by the Central Authority to deliver the OIP to Toshoan at 1-1-36, Nishiawaji, Higashiyadogawa-ku Osaka, Japan. But the certificate provided by the Central Authority pursuant to Article 6 of the Hague Service Convention stated that the OIP “has not been served, by reason of the following fact(s): The document was sent back labeled the ‘The address could not be found.’” Although the Division relied on an administrative law judge’s order to assert that the “Japanese Ministry’s

¹ *Toshoan Holdings, Inc.*, Exchange Act Release No. 87940, 2020 WL 122746 (Jan. 10, 2020). The OIP also instituted proceedings against TOA Optical Tech, Inc. This order does not apply to TOA Optical Tech, Inc., as to which the Commission has issued an order to show cause.

² *Toshoan Holdings, Inc.*, Exchange Act Release No. 91040, 2021 WL 396764 (Feb. 2, 2021).

attempted Hague Convention service . . . constitutes valid service under Rule 141,” the ALJs’ rulings are not precedential and are not binding on the Commission or on other ALJs.³

On this record, where the Central Authority of the foreign state has expressly certified that the OIP “has not been served,” it is not clear whether the OIP has been served in a manner that complies with Rule of Practice 141(a)(2)(iv)(B).⁴ And it may not be necessary to decide that issue here, where Respondent is, as alleged in the OIP, a forfeited Delaware corporation. Thus, it may be possible to effect service on Respondent via the Delaware Secretary of State.⁵

To assist the Office of the Secretary in maintaining a record of service that establishes that the OIP has been properly served,⁶ IT IS ORDERED that the Division of Enforcement file a status report concerning service of the OIP by December 1, 2021, and every 28 days thereafter until service is accomplished.

The parties’ attention is directed to the most recent amendments to the Commission’s Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.⁷

³ See, e.g., *Sands Bros. Asset Mgmt.*, Advisers Act Release No. 4083, 2015 WL 2229281, at *4 (May 13, 2015); *John Thomas Capital Mgmt. Group LLC*, Exchange Act Release No. 74345, 2015 WL 728006, at *3 & n.20 (Feb. 20, 2015); *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at *8 n.48 (Apr. 4, 2014).

⁴ See, e.g., *Capturion Network, LLC v. Liantronics, LLC*, No. 19-cv-13-KS-MTP, 2021 WL 1083180, at *2 (S.D. Miss. Mar. 18, 2021) (concluding that “[i]t seems reasonable . . . to accept the Central Authority . . . assertion concerning [the recipient’s] address as the controlling word on this issue and find that [its] address is unknown,” such that the Hague Convention is not applicable).

⁵ Del. Code tit. 8 § 321(b); see also *China Health Resource, Inc.*, Exchange Act Release No. 84797, 2018 WL 6520823, at *1 (Dec. 11, 2018). The Hague Service Convention applies only when the method of serving process involves the transmittal of documents abroad; thus, it does not preempt methods of service on domestic agents that are otherwise valid. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988); cf. Rule of Practice 141(a)(2)(iv), 17 C.F.R. § 201.141(a)(2)(iv) (applying only where notice of a proceeding must be transmitted “to a person *in a foreign country*) (emphasis added).

⁶ See Rule of Practice 141(a)(3), 17 C.F.R. § 201.141(a)(3).

⁷ *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission’s Rules of Practice*, 85 Fed. Reg. at 86,465–81.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary