

Use of Chinese in court proceedings
Guidelines for Judges and Judicial Officers

Some judges and judicial officers have expressed concern with regard to the circumstances in which they would exercise their discretion in deciding when they should conduct hearings in Chinese. These guidelines are issued after consultation with the Chief Justice. They are intended to offer judges and judicial officers assistance in the making of such decisions and are not meant to fetter the exercise of their discretion.

Choice of language

1. It must always be borne in mind that an accused, a litigant and a witness has the right to use whatever language or dialect he wishes in any court hearing with the assistance of interpretation service, if and when this is required. Similarly, a lawyer, whether counsel or solicitor, also has the right to use either Chinese or English in representing his client. Under no circumstance should a judge or judicial officer pressurize or encourage or be seen to pressurize or encourage any person to use a language other than the one that person chooses.

Factors to be considered

2. A judge or judicial officer may use either Chinese or English in conducting any hearing to which the Official Languages Ordinance, Cap.5 extends. In deciding which one of the official languages is to be used by him, the paramount consideration is the just and expeditious disposal of the cause

or matter before him, having regard to all the circumstances of the case. The factors which may be taken into consideration include :

- (1) the language ability of the accused or litigants;
- (2) the language in which the witnesses will testify;
- (3) the wishes of the accused or litigants;
- (4) the right of the accused or litigants to instruct a lawyer of his or their choice;
- (5) the language ability of the lawyers representing the accused or litigants;
- (6) the factual issues in dispute;
- (7) the legal issues in dispute;
- (8) the volume of documents which may be required to be translated into the other official language, and
- (9) the language ability of the judge or judicial officer himself.

Appropriate cases to use Chinese

3. In normal circumstances, the use of Chinese would be considered appropriate if the following factors are present :

- (1) in a criminal case, all the accused and the prosecution agree or have no objection to have the hearing conducted in Chinese;
- (2) in a civil case, all parties agree or have no objection to have the hearing conducted in Chinese;
- (3) all the lawyers agree or have no objection to have the hearing conducted in Chinese;
- (4) all or most of the witnesses will be testifying in Chinese;

- (5) all or most of the documents are in Chinese or there is not much documentation involved in the case; and
- (6) there is little or no difficult issue of law involved or both the lawyers and the judge or judicial officer feel that the legal issues they have to deal with do not present any difficulty to them.

Hearing of appeals

4. In deciding whether to conduct an appeal in Chinese, the following additional factors may be taken into consideration :

- (1) the language in which the hearing in the court below was conducted;
- (2) the amount of transcript or documentation which need to be translated if the appeal is to be conducted in the other official language;
- (3) the urgency of the appeal;
- (4) the appellant is in custody and the length of his sentence;
- (5) the issues of law which may be raised in the appeal; and
- (6) whether the appellant will be legally represented or not.

Matter of discretion

5. If it is an appropriate case in which Chinese can be used for the just and expeditious disposal of the cause or matter, a judge or judicial officer should conduct the hearing in Chinese unless there are reasons for not doing so. However, this is a matter entirely for his own discretion and his decision is final.

Consultation with parties

6. Before commencing to use Chinese at the hearing, a judge or judicial officer should always inform the parties involved in the case of his intention to do so and seek their views on the use of language if this has not been done at an earlier stage.

Record of proceedings

7. All court proceedings conducted in public are now recorded and the tape recording shall be the official record of the hearing. The judge or judicial officer however may like to make such notes (whether in Chinese or English) as he thinks necessary for his own reference.

Writing judgments, etc. in Chinese

8. It is desirable for a judge or judicial officer to give his decision or write his judgment, Reasons for Verdict/Sentence or Statement of Findings in the language in which he conducts the hearing. Judges and judicial officers are encouraged to do so.

9. If a judge or judicial officer conducts a hearing in Chinese but does not feel comfortable in writing his judgment, Reasons for Verdict/Sentence or Statement of Findings in Chinese or the circumstances do not allow him to do so immediately, he may either reserve it or if he feels able to do so, give his decision and state his brief reasons orally and subsequently reduce his reasons into writing at a later stage. If he chooses to adopt the latter course, it is advisable to stand down for a short time so that he can prepare some notes to help him deliver his decision and give his brief

reasons in Chinese. He may also call for the service of an interpreter and deliver his decision and brief reasons in English.

10. If a judge or judicial officer reserves his decision or has to write a judgment, Reasons for Verdict/Sentence or Statement of Findings at a later stage (because for example a party has filed a notice of appeal), he may, if he does not feel comfortable in writing it in Chinese, do so in English first and then have it translated into Chinese. The translation should preferably be approved by him before delivery (or inclusion in the appeal bundle). The judge or judicial officer should allow sufficient time for the translator to do the translation, bearing in mind any statutory time limit for preparing the written judgment, Reasons for Verdict/Sentence or Statement of Findings. However, judges and judicial officers are reminded of the need for confidentiality when giving instructions for the translation.

11. If the Chinese translation of the judgment, Reasons for Verdict/Sentence or Statement of Findings is ready in time for delivery or inclusion in the appeal bundle, the draft English version need not be included in the appeal bundle. If it is not ready, the English version should be used first to be followed by the Chinese translation.

12. If a judge or judicial officer thinks that his Chinese judgment is worth circulating to other judges or judicial officers for reference, he should have it translated into English and approved by him before circulation. All translated judgments should be printed on blue paper and marked at the top right hand corner : "English translation : 英譯本". In any event, he should

send a copy of his Chinese judgment to the High Court Library for record purpose.

Use of both languages at same hearing

13. Where at the outset of a hearing, after taking into account the relevant factors involved, the judge or judicial officer considers that it is appropriate to conduct part of but not the entire hearing in Chinese, he can adopt a pragmatic approach and decide at the outset that part of the hearing would be conducted in Chinese (e.g. the evidence or part of the evidence) and part of it in English (e.g. legal submissions).

14. If a decision was made at the outset to use one official language but during the course of the hearing, if it has become difficult, for whatever reason, for the judge or judicial officer and/or the parties or lawyers to continue the hearing in that official language, the judge or judicial officer should consider a change to the other official language. Before making any change, he should inform the parties and/or lawyers of his intention to do so and seek their views on the proposed change. If any party or lawyer makes a request to change from one official language to the other, the judge or judicial officer should hear representations from all parties and/or lawyers concerned. If there are good reasons to do so, such a change should normally be allowed. The judge or judicial officer should not feel constrained to adhere to one official language. If it is in the interest of justice to do so, he can decide to adopt the approach referred to in paragraph 13 above in the course of the hearing.

15. Where a hearing has been conducted in both official languages, the judge or judicial officer may exercise his discretion in relation to matters such as the language of the judgment, Reasons for Verdict/Sentence or Statement of Findings taking into account all circumstances.

Dated 24 January 1998