

For Information

**LegCo Panel on Administration of Justice and Legal Services
Use of Chinese in Court Proceedings**

Purpose

This paper seeks to provide the relevant information on the use of Chinese in court proceedings as requested by the Panel on Administration of Justice and Legal Services.

The Legal Provisions

The Basic Law

2. Article 9 of the Basic Law stipulates that in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

Official Languages Ordinance, Cap. 5

3. Pursuant to section 3 of Cap. 5, the English and the Chinese languages are declared to be the official languages of Hong Kong. As far as court proceedings are concerned, *a judge, magistrate or other judicial officer* may, pursuant to section 5(1), use either or both of the official languages in any proceedings or a part of any proceedings before him as he thinks fit. Section 5(2) further states that his decision is final.

4. In addition to section 5(1), the following are relevant :

- (a) *a party to or a witness* in any proceedings or a part of any proceedings may (i) use either or both of the official languages; and (ii) address the court or testify in any language under section 5(3); and
- (b) *a legal representative* in any proceedings or a part of any proceedings may use either or both of the official languages under section 5(4).

High Court Civil Procedure (Use of Language) Rules, Cap. 5C
District Court Civil Procedure (General) (Use of Language) Rules, Cap. 5A

5. Cap. 5C and 5A set out the rules governing the use of Chinese in civil proceedings in the High Court and the District Court respectively. Section 4(1) of Cap. 5C and section 3(5) & (6) of Cap. 5A in particular provide that any document to be filed in court or served on any person for the purposes of any civil proceedings may be in either of the official languages.

The Use of Chinese in Court Proceedings

The Policy

6. In Hong Kong, all judges¹ are proficient in using English to conduct proceedings. However, not all judges are proficient in conducting court proceedings in Chinese². To assist judges in the exercise of their discretion on which language to adopt, guidelines were issued in January 1998 regarding the use of Chinese in court proceedings³. In deciding on the choice of official language for the whole or part of the case, the paramount consideration for the judge 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 :

- (a) the language ability of the accused or litigants;
- (b) the language in which the witnesses will testify;
- (c) the wishes of the accused or litigants;
- (d) the right of the accused or litigants to instruct a lawyer of his or their choice;
- (e) the language ability of the lawyers representing the accused or litigants;
- (f) the factual issues in dispute;

¹ The term "judges" is used to include all judges and judicial officers.

² The official language of Chinese in its spoken form usually refers to Cantonese.

³ The guidelines have subsequently been published in Hong Kong Civil Procedure, 2002, Vol. 2 at pp 908 to 910.

- (g) the legal issues in dispute;
- (h) the volume of documents which may be required to be translated into the other official language; and
- (i) the language ability of the judge or judicial officer himself.

7. While a judge may choose to use one of the two official languages in court, it does not mean that any witness or party must use the official language chosen by the judge. Indeed, a witness or party in any court proceedings has always been permitted to use whatever language he/she so wishes. If a witness or party uses a language which is not the official language used by the judge, the assistance of a court interpreter will be made available as appropriate.

8. Similar arrangements apply to legal representatives. In Hong Kong, since all lawyers are trained in English, they should be proficient in English. However, not all lawyers are proficient in Chinese. Where a judge chooses Chinese as the official language and the legal representative(s) is/are not proficient in Chinese, the assistance of a court interpreter will be made available as appropriate. But such situation should be extremely rare in view of the guidelines set out in paragraph 6 above.

The Implementation

9. Both Chinese and English have been the official languages of Hong Kong with effect from 1974. Since then, it has become possible to conduct court proceedings in Chinese in the lower courts, especially in the Magistrates' Courts and the Tribunals. But this was not implemented in the higher courts until 1995. With the enactment of the relevant legislative amendments to the Official Languages Ordinance, Cap. 5 that year, proceedings at all levels of court can now be conducted in either one of the two official languages.

10. The first civil case that was conducted in Chinese in the High Court was heard in December 1995. Since then, the percentages of Chinese hearings keep on increasing. Appendix I shows the distribution of English and Chinese appeal cases, trials and substantive hearings in 1998⁴, 2000, 2005 and 2010 at the various levels of court.

Appendix I

⁴ Year from which figures are available

The Governance

11. A Working Group on the Use of Chinese chaired by the Chief Justice has been set up since July 2003 to consider all policy matters concerning the use of Chinese in the Judiciary. Its membership comprises Court Leaders and judges at different court levels and the Judiciary Administrator.

12. The many initiatives taken by the Working Group to enhance the use of Chinese in court proceedings include the following :

- (a) provision of steer and direction on the various training courses for judges;
- (b) publication of Chinese judgments of jurisprudential value delivered in recent years, together with their English translations;
- (c) uploading of Chinese reasons for sentence onto the Judiciary website;
- (d) preparation of Practice Direction 10.3 on “Citation of judgments written in Chinese at hearings conducted in English”; and
- (e) facilitating the publication of three casebooks containing the Chinese translation of excerpts from leading and commonly cited judgments on Criminal Law, Land Law and Employment Law.

13. Apart from the Working Group, the use of Chinese in court proceedings is also regularly monitored by Court Leaders at all levels as well as various fora/meetings involving court users.

Measures for Developing the Use of Chinese in Courts

14. The Judiciary has taken active measures to facilitate the greater use of Chinese in courts. These are set out in the following paragraphs.

Provision of Bilingual Judges

15. Without compromising judicial and professional quality, the policy of the Judiciary is to strive to increase the number of bilingual judges. As at 31 October 2011, 115 out of 150⁵ judges (i.e. 77%) are fully bilingual. With

⁵ Excluding those on pre-retirement/final leave and Non-Permanent Judges

this number, the Judiciary is confident that it has a sufficient pool of bilingual judges to conduct hearings which are considered suitable to be heard in Chinese.

16. To enhance the Chinese language proficiency of the judges, the following training courses have been organized for the judges in the past :

Courses	Number of Attendees
13 Chinese Judgment Writing Course (9 conducted by the Tsinghua University; 3 by the University of Hong Kong; and 1 by the City University of Hong Kong)	152
18 Putonghua Courses	161
Total : 31	313

Interpreting and Translation Services

17. The Court Interpreter (“CI”) grade of the Judiciary Administration is responsible for supporting the use of Chinese in courts by providing the following services when needed :

- (a) interpreting service in courts, including Putonghua interpreting service and interpreting service for cases heard in Chinese for English-speaking witnesses and/or lawyers;
- (b) translation of, upon judges’ direction, judgments, reasons for sentence as well as other documents filed by litigants; and
- (c) certification service on the translation of documents required for the court proceedings.

18. As at 31 October 2011, the Judiciary had a total of 143 CIs deployed at various offices/levels of court. Among them, 132 officers (i.e. 92%) are qualified interpreters in Putonghua.

19. To strengthen the knowledge and skills of the CIs in using Chinese, Chinese writing and legal translation courses and Putonghua courses have been organized for CIs from time to time. The following courses have been held since 1997 :

Courses	Number of Attendees
52 Putonghua courses	2,230
12 Chinese Writing & Legal Translation courses	776
Total : 64	3,006

Judgment & Legal Reference Database

20. A Judgment & Legal Reference database is available on the Judiciary website which is open for the public to access for their ready reference. Judgments which are of significance on points of law, practice and procedure of the courts from the following courts delivered between 1946 and 1948, and from 1966 onwards are available on this website :

- (a) Court of Final Appeal (since its establishment in 1997);
- (b) Court of Appeal;
- (c) Court of First Instance;
- (d) District Court;
- (e) Family Court; and
- (f) Lands Tribunal.

21. With the increasing use of Chinese in courts, the Judiciary has started in August 2008 to upload onto the Judiciary website Chinese judgments of jurisprudential value handed down since 1995 along with their English translation.

22. Leading judgments written in English are also translated into Chinese as required and uploaded onto the Judiciary website to facilitate the work of the judges and the legal profession to facilitate the use of Chinese in court proceedings.

23. As at 31 October 2011, 17,192 Chinese judgments and 50,872 English judgments have been uploaded onto the Judiciary website.

24. From January 2009, the Judiciary also commenced maintaining a database of reasons for sentence handed down by the High Court and the District Court on the Judiciary website. As at 31 October 2011, 1,761 Chinese reasons for sentence and 3,162 English reasons for sentence have been uploaded onto the website.

25. In addition, the bilingual versions of 93 Practice Directions and one set of Specimen Directions in Jury Trial are made available on the Judiciary website.

Services Available to Unrepresented Litigants

26. During the period between 2008 and 2010, on average, about 42% of the civil trials/appeals in the High Court and about 53% of the civil trials in the

District Court involved unrepresented litigants and the majority of these litigants chose to conduct the action in Chinese. A breakdown of such hearings conducted in Chinese and English is at Appendix II.

27. The Judiciary is aware of the potential difficulties encountered by unrepresented litigants and is committed to providing assistance and facilities to facilitate them to deal with the applicable procedures in the conduct of their cases. The Resource Centre for Unrepresented Litigants (“Resource Centre”) has been in place since December 2003 to provide assistance to unrepresented litigants, who are parties to or about to commence civil proceedings in the High Court or the District Court. Having regard to the fundamental principle that the Judiciary must be and must be seen to be fair and impartial in adjudicating disputes, staff of the Resource Centre would not give legal advice or make any comments on the merits of the case. The assistance provided at the Resource Centre is therefore confined to procedural matters only.

28. To assist the unrepresented litigants in the conduct of the action in Chinese, videos on general court procedures; leaflets introducing common types of civil proceedings in the High Court and the District Court and other general brochures published by the Judiciary; and prescribed court forms and court documents commonly used by litigants in civil proceedings are available in both Chinese and English at the Resource Centre. Besides they are all uploaded on the Judiciary website to facilitate easy reference by parties concerned.

29. Since the implementation of Civil Justice Reform on 2 April 2009, a total of around 148,000 Chinese leaflets on civil proceedings have been distributed through the Resource Centre, District Court, Family Court and Lands Tribunal.

The Way Forward

30. The Judiciary will continue to monitor closely the use of Chinese in courts to ensure the smooth operation of the bilingual court system.

Judiciary Administration
December 2011

**Use of English and Chinese at Appeals, Trials and Substantive Hearings
for Different Court Levels**

Court Level	1998*	2000	2005	2010
<i>Court of Appeal</i>				
<u>Criminal Appeals</u>				
English	90%	79%	75%	50%
Chinese	10%	21%	25%	50%
<u>Civil Appeals</u>				
English	93%	78%	76%	70%
Chinese	7%	22%	24%	30%
<i>Court of First Instance</i>				
<u>Criminal Cases</u>				
English	87%	85%	77%	71%
Chinese	13%	15%	23%	29%
<u>Civil Cases</u>				
English	96%	91%	86%	80%
Chinese	4%	9%	14%	20%
<u>Appeal from Lower Courts</u>				
English	65%	60%	34%	28%
Chinese	35%	40%	66%	72%
<i>District Court</i>				
<u>Criminal Cases</u>				
English	89%	88%	86%	53%
Chinese	11%	12%	14%	47%
<u>Civil Cases</u>				
English	97%	91%	62%	50%
Chinese	3%	9%	38%	50%
<i>Magistrates' Courts</i>				
<u>Charge Cases</u>				
English	-	45%	39%	22%
Chinese	-	55%	61%	78%
<u>Summonses</u>				
English	-	6%	6%	2%
Chinese	-	94%	94%	98%

* 1998 is the year when figures first became available.

Remarks

- (1) Court of Final Appeal has no Chinese appeals as all appeals involved one or more non-Permanent Judges who are monolingual. Thus, Court of Final Appeal is not included in the table.
- (2) Statistics for Family Court are not available.
- (3) Statistics for Tribunals are not available. For the Labour Tribunal and Small Claims Tribunal where legal representation is not allowed, experience tells that normally over 90% to 95% of cases are conducted in Chinese in these two tribunals.

**Percentages of Civil Trials/Appeals involving Unrepresented Litigants*
and with Breakdown on Language Used in the High Court**

Year	2008		2009		2010	
Percentage of hearings involving unrepresented litigants	42%		41%		42%	
With further breakdown on language used	Chinese	English	Chinese	English	Chinese	English
	64%	36%	68%	32%	67%	33%

**Percentages of Civil Trials involving Unrepresented Litigants*
and with Breakdown on Language Used in the District Court**

Year	2008		2009		2010	
Percentage of hearings involving unrepresented litigants	51%		55%		53%	
With further breakdown on language used	Chinese	English	Chinese	English	Chinese	English
	61%	39%	73%	27%	64%	36%

* Any one of the parties not legally represented in the hearing will be counted as hearing involving unrepresented litigants.