

For information
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**Legislative Council Panel on
Administration of Justice and Legal Services**

Drafting of Legislation in Chinese

Objective

This paper aims to discuss the reasons why the Chinese text of legislation is considered not easy to read, and the measures taken by the Law Drafting Division of the Department of Justice to improve readability.

Why Chinese legislation is not easy to read

2. We believe the following factors contribute to Chinese legislation being not easy to read.

(a) The nature of legislative language

Accuracy remains the primary requirement of legislative language. Legislative provisions often have to cover various or alternative situations, and lengthy qualifiers may be required to demarcate the scope of the provisions. These contribute to an impression that legislative language is difficult to read, be it Chinese or English. The same also applies to other legal documents (such as contracts and prospectuses).

(b) The unique nature of the Chinese language

In English, each word is distinct and two words are separated by a space. In Chinese, on the other hand, a word is made up of a character or characters, and a compound is made up of words. Characters and words in a sentence are not separated by any space. Reading Chinese therefore involves a more complicated mental process – the reader is constantly required to figure out the relationship between characters and words to understand the meaning of a sentence. For example, in the expressions “應該申請作出命令” and “可以該條規定的方式”, “應該” and “可以” may result in the reader failing to get the intended meaning.

In Chinese legislation, the difficulty in comprehending a sentence increases exponentially with its length. However, in order to be accurate and grammatical, long sentences cannot be shortened arbitrarily.

(c) The history of legislating in Chinese

The Hong Kong Government announced the bilingual laws programme in 1985. The first Ordinance with an authentic Chinese text was enacted in April 1989 by the Legislative Council, which is only 22 years ago. A large number of Chinese legal terms remain unfamiliar to the general public and, as in the case of technical terms in all fields, readers who are not legally trained are unable to grasp the meaning of legal technical terms. Readers thus consider legislative provisions difficult and far from straightforward, but this is a problem common to all legislative language and not just Chinese.

(d) Early Chinese legislative drafting: insufficient experience

Of the numerous jurisdictions that practise common law, Hong Kong is the only Chinese speaking community. There is therefore no precedent from which we can learn, and the drafting team did not have sufficient experience. Further, the then Legal Department was deeply affected by the wastage rate of local counsel; there was difficulty in recruiting bilingual counsel, not to mention counsel with desirable Chinese skills and willing to work in legislative drafting.

Hong Kong legislation that was enacted before April 1989 had only English texts. The daunting task of preparing the Chinese texts for more than 500 English Ordinances of some 20,000 pages had to be completed before the establishment of the Hong Kong SAR in July 1997. Despite the benefit of the incessant involvement of the Bilingual Laws Advisory Committee and the Legal Service Division of the Legislative Council Secretariat, pursuing such an enormous project with limited manpower and experience under time pressure resulted in quite a number of the Chinese provisions not being perfect.

Among the legislation with Chinese texts prepared under the Law Translation Programme, original English texts drafted in archaic legal language, with long sentences, complicated structures, and sentences that ran into several hundred words without any break into paragraphs were far from few. Also, due to the long lapse of time it was not easy at all to ascertain the original policy intent from looking through drafting files. Therefore, when preparing the Chinese texts, the structures of the original English texts were followed, adding to the difficulties in achieving clarity and conciseness.

(e) Work procedures

English is still the primary language used at work within the Government. Policy bureaux invariably issue drafting instructions to the Law Drafting Division in English. The officers involved in the drafting process are often not used to reading Chinese provisions, and some of them may not even understand Chinese. Therefore, legislative drafts for review and discussion are almost all in English, and similarly are the amendments, in order to enable the bureaux and department officers involved in the drafting process to understand the contents of the provisions readily. Drafting of the Chinese text has to wait till the completion of the corresponding English draft, the time stress making the task of refining the Chinese text even more difficult.

Measures taken by the Law Drafting Division

3. We fully understand the expectation of the general public that Chinese legislation should be clear and easy to read, and have accordingly adopted various approaches to improve it.

(a) Switching to plain language drafting of English texts

Over the past 20 or 30 years, common law jurisdictions have switched from drafting legislative instruments in archaic language to drafting in plain language style. This practice has been widely accepted. We have also been gradually moving to drafting the English texts of legislation in modern style. This greatly assists in Chinese legislation becoming clear and concise.

(b) Drafting instead of translating

English and Chinese are two very different languages. If one takes a translation approach when preparing the Chinese text, the person will be constrained by the syntax of the English text and a rigid translation will be produced, which may often be unnatural or not grammatical. We are making an effort to change, requiring drafters to focus on the meaning rather than to translate word for word, so as to improve the flow of the Chinese text.

Take the Fisheries Protection (Specification of Apparatus) (Amendment) Notice 2011 (L.N. 45 of 2011) as an example. Section 3 of the English text of the Notice contains the expression “capture fish by straining them from the water”. If the production of the Chinese text is seen as translation, then something such as “以將魚類撈出水面方式，捕捉魚

類” may result. The Chinese drafter however adopted the expression “捕撈魚類” which, with only four characters, was concise.

(c) Recruitment of counsel

If there is any vacancy for a counsel position in the Law Drafting Division, the recruitment is performed by a unified exercise conducted by the Department of Justice. In addition to the recruitment interviews conducted jointly by the Divisions of the Department of Justice, the Law Drafting Division sets a written test for the candidates showing interest and potential in legislative drafting, to ensure new joiners to the Law Drafting Division have the required Chinese skills.

(d) Language flow

We strive to avoid long sentences and to be flexible in the positioning of elements, in order to reflect the policy intent clearly. However, ensuring no discrepancy in meaning between the Chinese and English texts remains our primary concern, and secondly we have to make sure both texts comply with their respective grammatical rules. The drafting of the Chinese text in a concise manner is carried out under these two overarching principles.

The attitudes of policy bureaux and the Legislative Council have a huge impact on our efforts. If, when reviewing the draft provisions, the bilingual texts are not treated as having equal status but a higher standing is given to the English text, demanding us to ensure that the structure of the Chinese provisions does not “depart” from the English text will become a constraining factor.

The difficulties encountered by drafters may well be exemplified by the experience that we had during the scrutiny process of the Buildings (Amendment) Bill 2010. Clause 19 of the Bill proposes the addition of a provision, the English text of which is as follows:

(6) *Without limiting subsections (3) and (4), if a signboard is erected on a building, the Building Authority may by notice in writing served on –*

- (a) *the person for whom the signboard is erected;*
- (b) *if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the*

person who is receiving such rent or money consideration; or

- (c) *if the persons referred to in paragraphs (a) and (b) cannot be found, the owner of the **premises in the building on which the signboard is erected,***

require a prescribed inspection and, if necessary, prescribed repair in respect of the signboard to be carried out within a specified time.

In paragraph (c) of this provision, the phrase “premises in the building on which the signboard is erected” cannot be easily expressed in Chinese. Given that the signboard must be erected on certain premises, the drafter, in the Chinese text, relocated the element “premises (處所)” to the first part of the sentence. The Chinese text was as follows:

(6) 在不局限第(3)及(4)款的原則下，如有招牌豎設在建築物[內][的]某處所上，建築事務監督可藉向以下人士送達書面通知 —

- (a) (如該招牌為某人而豎設)該人；
- (b) (如不能尋獲該人)在該招牌出租的情況下會收取任何租金或其他金錢代價的人，或正收取該等租金或代價的人；或
- (c) (如不能尋獲(a)及(b)段所提述的人)該處所的擁有人，

規定在指明的限期內，對該招牌進行訂明檢驗及(如有需要)訂明修葺。

Although the Chinese text and the English text are couched differently, it is beyond doubt that their legal effect is the same. However, a person of substantial influence in the scrutinizing process said that in the first part of the Chinese text, there was an extra element of “premises” that was absent in the English text. Although no alternative version that would comply with Chinese grammar was offered, there were repeated requests for amendments to be made to the Chinese text. The path for us to draft clear and concise Chinese legislation will certainly be much smoothed if all concerned could abandon the attitude that “English comes first and then Chinese second” and support Chinese drafters in taking a flexible approach. This will of course be subject to the overriding principle that there is no discrepancy in meaning between the two texts.

(e) Enhancing on-the-job training

Since few local lawyers have any experience in legislative drafting before joining the Law Drafting Division, we spare no effort in the training of drafters. Except for the simplest items, drafts prepared by drafters are subject to two-level clearance by directorate officers, by means of which drafters draw experience from their seniors and accumulate skills. Apart from providing on-the-job training, we hold internal seminars, for which we also invite external experts to be speakers. We are currently conducting a pilot scheme under which the texts in Chinese of legislation of the Mainland, Taiwan and Macau are studied, so as to find out whether the Chinese drafting skills of these three places are of any referential value. That said, we adopt a prudent approach in taking on the experience of those three places, as all of them practise civil law, whose sources of law are entirely different from those of Hong Kong.

Improving old Chinese legislation

4. Certain Chinese legal terms used in early days have become inadequate and should be replaced with new terms. Section 4D of the Official Languages Ordinance (Cap. 5) confers upon the Secretary of Justice power to amend the texts of legislation prepared in early days to achieve consistency in wording with new legislation. In the Legislation Publication Bill, which is currently being scrutinized by the Legislative Council, we seek similar power to replace obsolete Chinese legal terms at an appropriate time.

5. In the process of amending legislation, while we are amending the Chinese provisions to reflect changes in policy, we will also, where appropriate in the circumstances, take the opportunity to make textual improvements to existing provisions.

6. We have from time to time received comments from enthusiastic members of the public, legal practitioners and colleagues from government departments on possible improvements of the Chinese texts, in aspects including language flow and difference in meaning from the English text. We will consider these comments thoroughly. The provisions that need to be amended will be kept in specific records and the amendments will, when the opportunity arises, be made through legislation.

Looking forward

7. With the accumulation of experience, the legislative drafting team have become more proficient as far as Chinese drafting skills are concerned. The Chinese legislation drafted by us in recent years has shown improvement in accuracy and

conciseness when compared with the older ones. Yet we fully appreciate the high expectations of the Legislative Council, the community and the legal profession on the standard of legislative drafting. We remain vigilant and endeavour to improve.

Law Drafting Division
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