

For information

Panel on Administration of Justice and Legal Services

Use of Chinese in Court Proceedings

Background

At the request of the Panel on Administration of Justice and Legal Services (“the Panel”)¹, this paper provides information on the initiatives taken by the Department of Justice (“DoJ”) in enhancing the development of a bilingual legal system and in nurturing bilingual legal talents.

Initiatives taken by DoJ to enhance bilingual legal system

Use of Chinese in drafting court documents

2. Most of the officers in the Civil Litigation Unit and Planning, Environment, Lands and Housing Unit (Litigation Team) of the Civil Division of DoJ are able to draft court documents, correspondence and other documents in Chinese. The Debt Collection Unit (“DCU”) has undertaken to use Chinese in their drafting of all correspondence and documentation involved in legal proceedings or when corresponding with the public, unless the other party is a foreigner or limited company, or has requested that English be used instead. In line with the Small Claims Tribunal’s practice of using Chinese in its documentation and at hearings, more than 90% of the Tribunal’s proceedings handled by DCU are proceeded with entirely in Chinese.² Para-legals in DCU are able to draft daily correspondence and legal documents in Chinese as well as to conduct hearings in Chinese effectively.

3. The Law Translation Officers are responsible for preparing bilingual court documents for criminal proceedings. The court documents translated include indictments, charge sheets, consents to prosecution, immunities from prosecution, summaries of facts, legal submissions and judgments.

¹ See the letter from the Clerk to the Panel to the Secretary for Justice dated 14 November 2011.

² DCU has compiled a set of Chinese reference precedents of commonly used court documents such as pleadings, affirmations and witness statements, to enable para-legal staff to draft such documents in Chinese without having to spend time translating such documents.

Hearing of civil and criminal cases in Chinese

4. In suitable cases or where the other party to the proceedings is unrepresented, DoJ officers in the Civil Litigation Unit and Planning, Environment, Lands and Housing Unit (Litigation Team) will assist in providing court documents in Chinese and conducting the cases in Chinese as far as possible. From 2009 to 31 October 2011, apart from debt collection cases, some 570 cases were conducted in Chinese in civil proceedings involving Government.

5. So far as criminal prosecution is concerned, the percentage of criminal cases heard in Chinese are as follows³:

Levels of Court	2009	2010
Court of Appeal	32.5%	41.8%
Court of First Instance (Magistracy Appeals)	73.7%	67.1%
Court of First Instance (Trials)	26.1%	25.5%
District Court	55.5%	46.2%
Magistrates' Courts	84.5%	80.9%

Publication of Glossaries of Legal Terms

6. The Law Drafting Division was responsible for the publication of the English-Chinese Glossary of Legal Terms and the Chinese-English Glossary of Legal Terms. The Chinese-English Glossary was published in 1999. The English-Chinese Glossary was last updated in 2004. We believe that the launch of these Glossaries aided greatly the development of a bilingual legal system as they provide handy reference tools for locating bilingual legal terms in our legislation.

7. The Law Drafting Division is intending to prepare an update of the English-Chinese Glossary in 2012 and, subject to the availability of resources, will arrange for the publication of a new edition.

Access to Chinese Judgments and Reference Materials

8. Officers in the Civil Division have ready access on a daily basis to the Chinese judgments. In addition to the Chinese dictionaries, encyclopaedias,

³ All the Magistracy Appeals and Court of Appeal cases heard in Chinese in 2009 and 2010 were conducted by Government Counsel in the DoJ.

legal journals, glossaries and various other reference materials available for use in the DoJ main library, there are over 30 Chinese reference books and various English-Chinese legal dictionaries and glossaries in the Civil Division's mini-library. The Civil Division mini-library also maintains a set of Chinese templates of commonly used court documents and litigation precedents. Apart from the hard copies, these templates have been uploaded onto the common server for reference by DoJ's officers.

9. A database is maintained by the Civil Division whereby precedents on Chinese documents can be shared. Copies of correspondence and court documents, including those drafted in the Chinese language are circulated internally within each team in the Division on a daily basis.

10. A set of specimen charges has been prepared in Chinese and English to assist counsel in the Prosecutions Division in drafting charges.

Initiatives taken by DoJ to nurture bilingual legal talents

Training courses on writing submissions in Chinese and other Chinese language writing courses

11. With a view to enhancing the skills of counsel in preparing written submissions in Chinese, a five days course on writing submissions in Chinese was arranged by the Sun Yat-sen University (the then Zhongshan University) for DoJ Counsel in November 2003.⁴ A total of 7 classes were held between November 2003 and September 2005 in which 119 DoJ Counsel completed the course. The course focused on the use of Chinese language in legal proceedings in civil and criminal matters. Apart from lectures and class discussions, counsel also had the opportunity to practise drafting of pleadings such as statement of claim and defence, as well as opening / closing submissions, charge sheet and summary of facts. With more knowledge and expertise in the subject developed in the Department, the above course in Sun Yat-sen University was replaced by some in-house workshops such as making submissions in Chinese and presenting and improving legal submissions in Chinese, etc. In addition, Counsel and para-legals also from time to time attended the Chinese writing or languages workshops organised by the Civil Service Training and Development Institute (CSTDI) and the Official Languages Division of the Civil Service Bureau to brush up their skills in Chinese writing.

⁴ The duration of the course was extended to six days since January 2005.

12. The officers in the Civil Division, whether counsel or non-counsel grade, are encouraged to enrol in various Chinese language writing courses either organised internally by DoJ or by other government organisations such as the Civil Service Training and Development Institute.

13. To facilitate the development of a bilingual legal system, lectures on the topic of drafting court documents in Chinese will be arranged for counsel and para-legals in the Prosecutions Division. Lectures on making appeal submissions in Chinese will also be organized for government counsel in the Division.

14. In addition, the Department is exploring whether local universities could provide a tailor-made course on writing submissions in Chinese for newly recruited Government Counsel.

Mock Hearings in Chinese

15. To enhance the advocacy skills of legal trainees and newly recruited counsel, mock hearings conducted in the Chinese language are held regularly by the Civil Division. Four mock hearings in civil proceedings were conducted in 2010 and six hearings would have been held by the end of 2011. These mock hearings involve the perusal and analysis of Chinese documents and evidence, drafting of skeleton arguments in Chinese and the use of Chinese in making oral submissions. Legal trainees have the opportunity to act as advocates where more senior government counsel will assume the role of judges or adjudicators.

16. Mock trials have also been arranged by the Prosecutions Division to facilitate the prosecution of criminal cases in Chinese.

Training on drafting legislation in Chinese

17. New recruits to the Law Drafting Division receive progressive on-the-job training on Chinese drafting assignments. All Chinese drafts prepared by Government Counsel and Senior Government Counsel have to be cleared with directorate counsel. Seminars and workshops on legislative drafting in Chinese are conducted from time to time for all bilingual counsel of the Division.

Training courses on Chinese Law with Chinese as a medium of instruction and communication

18. In view of the increased interaction between Hong Kong and the Mainland on legal matters, DoJ has organised various training courses on Mainland Law for counsel and other officers in DoJ, such courses were conducted by different universities on the Mainland. These programs and courses provide trainees with an opportunity to work in a legal setting in which the Chinese language is used as a medium of instruction and communication.

19. Between November 1996 and March 2000, DoJ has organised courses on Mainland Law covering various aspects of the law and legal system of the Mainland with the Fudan University of Shanghai. A total of 164 officers of DoJ and 80 officers from other government departments have completed the Fudan course.

20. In May 2001 and June 2002, DoJ organised two classes on Mainland laws and legal system which were run by the Sun Yat-sen University. A total of 24 counsel and 7 para-legal grade officers attended the course. In addition, counsel were also arranged to attend the national studies courses held at Tsinghua University, Peking University and Sun Yat-sen University, etc organised by the CSTDI to enhance their understanding of the development in the Mainland, including the legal system.

21. DoJ also organised a course on Mainland laws for para-legal grade officers within DoJ and legal-judicial staff from other departments. The course was conducted by the Sun Yat-sen University. A total of 7 classes were held between May 2002 and November 2008 during which 130 DoJ officers completed the course. Another course for newly recruited Law Clerks and Court Prosecutors may be arranged in the coming years.

The way forward

22. DoJ will keep up its efforts to enhance the development of a bilingual legal system and to nurture bilingual legal talents by providing adequate training for its officers in the use of Chinese in legal proceedings, in the drafting of legal documents and the writing of submissions in Chinese, and in the drafting of legislation in Chinese to ensure precision and accuracy when using legal terms.