

Taiwan

Formosa Transnational

Litigation

1 What is the structure of the legal profession?

The legal profession comprises judges, prosecutors and attorneys. To become a judge or a prosecutor, an individual must pass the stringent National Judiciary Examination held once a year. A similar examination exists for attorneys. Attorneys are subject to disciplinary actions and can be disbarred for gross misconduct by the Disciplinary Committee, but judges and prosecutors are rarely removed from office.

2 What is the structure of the Court system?

Civil claims are generally brought in the District Court. Claims for less than NT\$500,000 may be tried in the Simplified Procedure Court, while small claims procedures apply to claims for monetary claims of less than or equal to NT\$100,000. Appeals from the District Court are heard in the High Court and appeals from the High Court are reviewed by the Supreme Court, provided the claims exceed NT\$1.5 million.

3 What is the role of the judge (and, where applicable, the jury) in civil proceedings?

Taiwan is a civil law jurisdiction and there are no jury trials. Judges may take a relatively passive role, simply hearing the evidence and ruling on matters of fact and law and submissions from the parties. Alternatively, they may (and usually do) take a more active role, questioning the parties and witnesses, investigating the facts and gathering relevant evidence. Decisions are made on the basis of both statutes and precedents, although compared with common law jurisdictions, the extent of reliance on precedents is less.

4 What are the time limits for bringing civil claims?

Generally, civil claims must be brought within 15 years after the cause of action accrued. However, claims in tort must be brought within 10 years of the event and within two years of the date when the claimant first became aware of the damage and the tort-feasor.

5 How are civil proceedings commenced, and what is the typical procedure which is then followed?

A civil action commences when a plaintiff files a formal claim document with the Court. Subject to the payment of Court fees, the Court then issues and serves the complaint on the defendant. Generally, the case proceeds in a series of short hearings (rarely longer than a few hours) held several weeks apart. The judge typically controls the proceedings, setting hearing dates, helping to formulate issues for argument, investigating evidence and requesting submissions from parties. In addition to presenting oral arguments, a counsel generally submits written submissions.

6 What is the extent of pre-trial exchange of evidence, and how is evidence presented at trial?

Although there is no pre-trial procedure equivalent to “discovery” or “interrogatories” in Taiwan, under the Code of Civil Procedure both parties should exchange relevant documents before trial for the purpose of, among other things, clarifying the issues to be focused upon during trial. The judge may require parties to exchange documents, make statements regarding relevant evidence, and/or clarify and agree on the issues to which parties shall adhere during trial. On appeal, the Court may prohibit the submission of new issues not previously formulated and agreed. As a rule, the burden of proof is placed on the party to whom the evidence in question is most advantageous. The Court may also at its own discretion investigate evidence alleged by the parties. Witnesses and expert witnesses can be called to testify in Court and are generally questioned by the judge. Parties themselves may also question the witnesses, and the witnesses are subject to cross-examination by opposing counsel.

7 To what extent are the parties able to control the procedure and the timetable? How quick is the process?

The judge generally sets the hearing dates. Cases may last six months to one year (or even longer) during the first instance of trial. The Court may render decisions more quickly if one party's claim is particularly meritorious. Appeals typically take between eight and 18 months. Pending cases may be suspended by agreement between litigants for up to eight months, during which time they may pursue other options, including an out-of-Court settlement.

8 What interim remedies are available to preserve the parties' interests pending judgment?

A party may petition for provisional attachment by presenting *prima facie* evidence that illustrates an existing risk that his opponent's assets may be diverted to defeat a judgment. The Court may require security from the petitioner equivalent to one-third to the full value of the claim. The opponent may prevent the attachment by posting a counter-security equivalent to the full value of the claim. A party may also petition for an injunction to preserve the status quo pending trial. In general, an opponent may not avoid an injunction by lodging a counter-security.

9 What substantive remedies are available?

In general, remedies available under other legal systems are also available in Taiwan. They include monetary awards for damages, declaration, injunctive relief, assets attachment, orders for an account of profits and the transfer of property, etc. However, punitive damages are awarded only rarely and normally only in cases involving particularly outrageous conduct.

10 What means of enforcement are available?

Judgments and Court orders are generally enforced via compulsory execution procedures. In the case of a judgment against a debtor, the standard steps for initiating compulsory execution include:

- (i) the filing of the judgment creditor's application for a writ of execution based on the judgment;
- (ii) the seizure of the debtor's goods, land or other assets by the Court officials, and a Court order requiring any third party owing a debt to the judgment debtor to pay that debt instead to a Court account pending final distribution; and
- (iii) sale of the assets seized at a Court auction and distribution of the proceeds to all creditors with proven claims.

This is only one example. A variety of other enforcement options are available to the Court.

11 Does the Court have power to order costs? Are foreign claimants required to provide security for costs?

The Court will not award attorney fees, regardless of the outcome of the case, except in the Supreme Court (where a limited amount may be ordered). However, the losing party (or a party withdrawing suit) is responsible for payment of the litigation Court costs, which are assessed at each instance of trial. At the first instance of trial (District Court), the Court fees are calculated by reference to the amount claimed. At the second (High Court) and third (Supreme Court) instances, Court fees are about one and a half times the fees at first instance.

Where a plaintiff is not domiciled in Taiwan, or has no business establishment there, the Court will, prior to the defendant's oral argument and upon the defendant's motion, order the plaintiff to post a security in cash equivalent to the Court costs.

12 On what grounds can the parties appeal, and what restrictions apply? Is there a right of further appeal? To what extent is enforcement suspended pending an appeal?

Appeals to the High Court against judgments and orders from the first instance of trial are generally available as a right. When one party appeals, their opponent may file a collateral appeal. In the High Court, neither party may present new evidence or arguments except in extraordinary circumstances, because they are prohibited from raising new issues.

Upon petition, the High Court may grant an order for provisional execution of the judgment rendered by the District Court after having heard arguments from both parties. However, it will require the petitioning party to post a bond in an amount equal to one-third of the value of such execution. Alternatively, the party against whom execution is sought may petition the Court to stay execution by posting an amount equal to the full value of such execution.

Appeals to the Supreme Court may only be based on a misapplication of law by the lower Court. With respect to a claim involving assets, the value must equal or exceed NT\$1.5 million.

13 To what extent can domestic and/or foreign state entities claim immunity from civil proceedings?

Immunity from a civil action claimed by a state or state entity is limited to acts of a governmental nature. No such immunity exists for acts of a commercial nature where the state or state entity participated in market activities similar to those of a private entity.

14 What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments will not be recognised and enforced in Taiwan if:

- (i) the foreign Court rendering the judgment had no jurisdiction over the case according to Taiwan law;
- (ii) the foreign judgment was rendered by default and the summons or Court orders necessary for commencement of the action had not been duly served on the defaulting party in that foreign country or through judicial assistance in Taiwan;
- (iii) the foreign judgment is deemed inconsistent with Taiwan's public policy or good morals; or
- (iv) judgments rendered in Taiwan are not reciprocally recognised by the subject foreign Courts.

According to Taiwan's Law Governing Compulsory Execution, the party seeking to enforce a final foreign judgment in Taiwan must file a lawsuit in a competent Taiwanese Court for permission to enforce that judgment. The parties may appeal to the Supreme Court in Taiwan just as in other civil cases. However, neither party may proceed with any compulsory execution until a judgment approving the enforcement has become final in Taiwan.

15 Is it permissible for lawyers to charge contingency or conditional fees, or other fee arrangements based on the result of the litigation/arbitration?

Contingency fees are permitted in Taiwan, except in matrimonial and criminal cases.

Arbitration

16 Is the arbitration law based on the UNCITRAL Model Law?

Taiwan amended its Arbitration Law in 1998 to comply with the international standard as defined by the UNCITRAL Model Law. Many of the important provisions of the Model Law can be found in Taiwan's Arbitration Law.

17 What are the main national arbitration institutions?

There are four national arbitration institutions in Taiwan: the Arbitration Association of the ROC (<http://www.arbitration.org.tw>), the ROC Association of Labor Dispute Arbitration, the Chinese Construction Industry Arbitration Association and the Taiwan Construction Disputes Arbitration Association (<http://www.tcaa.org.tw>). Parties may pursue *ad hoc* or institutional arbitration.

18 Are there any restrictions on who may represent the parties to an arbitration?

No. Parties may represent themselves or be represented by any advocate of their choice, whether or not legally qualified.

19 What are the formal requirements for an enforceable arbitration agreement?

An enforceable arbitration agreement must:

- (i) relate to a dispute whose resolution through arbitration is legally permissible; and
- (ii) be in writing or expressed in any tangible format, showing a common intent to submit disputes to arbitration.

20 Can the Court refuse to stay litigation if there is a valid arbitration clause?

The Arbitration Law provides that the Court must stay litigation in deference to arbitration, unless the opposing party has already presented arguments on the merits of the case.

21 If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed, and who is the appointing authority?

In such a case the Arbitration Law provides that each party shall elect an arbitrator and the two arbitrators shall jointly elect a third as chief arbitrator. Where one party fails to appoint its arbitrator, the other party may petition the arbitration tribunal or the Court for an appointment. Where the two arbitrators cannot agree on a chief arbitrator within 30 days, the parties may petition the Court for an appointment.

22 Are restrictions placed on the right to challenge the appointment of an arbitrator?

Arbitrators must act independently and impartially, maintain confidentiality regarding the arbitration, and excuse themselves in cases of actual or perceived bias. In general, parties may challenge an unfit arbitrator and seek their removal. Challenges may also be based on an arbitrator's qualifications. An arbitrator must be a reputable person of legal or other professional expertise, such as:

- (i) a judge or prosecutor;
- (ii) an attorney, accountant, architect, technician or other business professional with over five years' experience;
- (iii) an arbitrator in a domestic or international arbitration;
- (iv) an assistant or a higher level professor with over five years' experience at a college accredited by the Ministry of Education; or
- (v) a professional with expertise and over five years' experience in a specialised field.

In addition, an arbitrator must not have a serious criminal record or be legally incapacitated.

23 Does the domestic law contain substantive requirements for the procedure to be followed?

In principle, the domestic law does not contain substantive procedural requirements. However, where the parties have not agreed on the arbitration procedure, the rules of the Arbitration Law shall apply. Where the Arbitration Law does not provide such rules, Taiwan's Code of Civil Procedure, or other rules deemed appropriate by the arbitration tribunal, shall apply.

The rules on service of process prescribed by the Code of Civil Procedure shall apply in arbitration. The Arbitration Law further provides that if expressly authorised by the parties, the arbitration tribunal may apply rules of equity when rendering its decision.

24 On what grounds can the Court intervene during an arbitration?

The Court may intervene during an arbitration upon a petition to appoint arbitrators. Additionally, the arbitration tribunal may request assistance from the Court or other bodies, governmental or otherwise, in the investigation and production of evidence.

25 Do arbitrators have powers to grant interim or conservatory relief?

Arbitrators have no power to grant interim or conservatory relief. In circumstances where a protective order is necessary, a party may petition the Court for relief in the form of a provisional seizure in accordance with the asset conservation provisions of the Code of Civil Procedure.

26 When and in what form must the award be delivered?

The arbitration tribunal must issue a written award within 10 days after the hearing containing the following:

- (i) names and addresses of the parties and their representatives;
- (ii) names, nationalities and addresses of any interpreters;
- (iii) the decision;
- (iv) the facts and reasons for the award, unless the parties have agreed that no reasons shall be stated; and
- (v) the date and place of the award.

The original copy of the award must be signed by the arbitrators. The arbitration tribunal must deliver a certified copy to each party, and a certified copy, along with proof of delivery, must be filed with a Court registry at the place of arbitration.

27 On what grounds can an award be appealed to the Court?

A party may apply to the Court to revoke the arbitral award if:

- (i) the arbitral award concerns a dispute not contemplated by the terms of the arbitration agreement or that exceeds the agreement's scope, unless the offending portion of the award can be severed;
- (ii) the grounds for the award were not stated, unless subsequently rectified by the tribunal;
- (iii) the arbitral award directs a party to act contrary to the law;
- (iv) the arbitration agreement is nullified, invalid, or has yet to come into effect;
- (v) the arbitration tribunal fails to provide a party an opportunity to present its case, or a party was not legally represented during the arbitration proceedings;
- (vi) the composition of the arbitration tribunal or proceeding is contrary to the arbitration agreement or the law;
- (vii) an arbitrator fails to disclose bias and appears to be partial, or continues to act despite legitimate request for their resignation;
- (viii) an arbitrator violates any duty that carries criminal liability;
- (ix) a party or any representative thereof has committed a criminal offence in connection with the arbitration;
- (x) the arbitral award relies upon forged or altered evidence or translations; or
- (xi) any judgment or administrative ruling upon which the arbitral award relies has been reversed or materially altered by a subsequent judgment or ruling.

An application to revoke an arbitral award must be submitted within 30 days after the arbitral award has been rendered or delivered.

28 What procedures exist for enforcement of foreign and domestic awards?

Article 37 of Taiwan's Arbitration Law provides that a domestic award will not be enforced unless a competent Court has, on application of a concerned party, granted an enforcement order. However, the arbitral award may be enforced

without an enforcement order if the parties agree in writing and the arbitral award concerns:

- (i) payment of a specified sum of money, or a certain amount of fungible items or valuable securities;
- (ii) delivery of a specified movable property.

The above is binding on the parties, their successors or those taking possession of the contested property for a party or its successors.

Taiwan is not a signatory to the New York Convention. Foreign arbitral awards are enforceable only after they have been recognised by the Court. To obtain recognition, application must be filed in Court and accompanied by the original arbitration agreement and award, or authenticated copies, together with the full text of foreign or international organisation's arbitration provisions pursuant to which the award was rendered.

The Court will dismiss an application for recognition of a foreign arbitral award if recognition or enforcement would be contrary to the public order or good morals of Taiwan, or if the subject matter of the dispute was not subject to arbitration under Taiwanese law. The Court may also refuse recognition (but is not bound to do so) if the country where the arbitral award is made, or whose laws govern the arbitral award, does not recognise and enforce Taiwanese arbitral awards.

29 Can a successful party recover its costs?

The arbitral award may include awards for costs of the arbitration proceedings, but no fees for legal representation may be awarded.

Alternative dispute resolution

30 Are the parties to litigation or arbitration required to consider or submit to any alternative dispute resolution before or during proceedings?

Taiwan's Code of Civil Procedure provides that certain disputes must be submitted to a reconciliation procedure in Court before formal action can be brought. The types of disputes listed in the Code can be broadly categorised as:

- (i) disputes over real property regarding division of boundary lines, sharing of administrative powers among co-owners, or lease tenancy;
- (ii) disputes among parties involved in a traffic incident or medical treatment;
- (iii) disputes between an employer and employee with respect to an employment contract;
- (iv) disputes among partners of a partnership business;
- (v) disputes over property rights between close family members; and
- (vi) disputes over property valued at less than NT\$100,000.

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Combining our experiences of local and international laws, familiarity with Taiwanese market, custom and business practices as well as government regulatory requirements, our teams work collaboratively together to provide the most effective and innovative resolution to clients faced with contentious legal issues. Generally, we advise on general legal/regulatory issues, assist in the preparation and interpretation of contracts and help our clients to resolve commercial issues.