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The International Comparative Legal Guide to: Litigation & Dispute Resolution 2010

A practical cross-border insight
into litigation & dispute resolution

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CDR
Commercial Dispute Resolution

Taiwan

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Taiwan got? Are there any rules that govern civil procedure in Taiwan?

Taiwan is a civil law jurisdiction. The Code of Civil Procedure (see <http://law.moj.gov.tw/Eng/>) is the law governing civil procedure. The judgments chosen to be judicial precedents by the Supreme Court have the same effect as laws and are binding upon all courts in Taiwan.

1.2 How is the civil court system in Taiwan structured? What are the various levels of appeal and are there any specialist courts?

In general, civil proceedings in Taiwan can be conducted at the district court in the first instance, and a case can be appealed to the high court and Supreme Court in the second and third instances. The district court and high court are trial courts hearing factual and legal issues, whereas the Supreme Court hears a case only when significant legal issues are involved.

Cases involving intellectual property rights should be filed with the Intellectual Property Court. Cases relevant to domestic affairs such as marriage, parent-child relations or succession should be filed with the Family Court.

There are various specialist courts at some district courts, such as the traffic court, labour court, medical court and financial court. The Taipei District Court will establish a construction court in 2010.

1.3 What are the main stages in civil proceedings in Taiwan? What is their underlying timeframe?

The main stages in Taiwanese civil proceeding generally are:

- Filing of a complaint/payment of court costs.
- Service of process on the defendant.
- Preparatory proceeding: investigation of evidence and exchange of pleadings.
- Oral debate session.
- Judgment rendered.
- Timeframe: six to eight months for first instance; four to six months for second instance; four to six months for third instance.

1.4 What is Taiwan's local judiciary's approach to exclusive jurisdiction clauses?

Parties may, by agreement, designate a court of first instance to exercise jurisdiction. For matters relating to rights *in rem* or demarcation of real property, the jurisdiction resides with the court for the place where the real property is located, which cannot be changed by the parties' agreement. If the parties agree on a jurisdiction clause specifying a court other than Taiwanese courts, the Supreme Court has indicated that unless the parties expressly state their intention to exclude other courts from hearing this case, the Taiwanese courts still have jurisdiction over the case.

1.5 What are the costs of civil court proceedings in Taiwan? Who bears these costs?

When filing an action with a court, the plaintiff needs to advance the court fees which are calculated based on the value of the claim. The prevailing party in an action is awarded recovery for court fees. Unless expressly agreed on by the parties, each party should bear his own attorney's fees for the first and second instances. The granting of attorney's fees for the third instance is subject to a cap of NT\$500,000.

1.6 Are there any particular rules about funding litigation in Taiwan? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Parties that cannot afford the costs of litigation can apply for litigation funding from legal aid only; legal cost insurance does not exist. Contingency fee/conditional fee arrangements are not permissible for the payment of court fees.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

A plaintiff must file a complaint with the court which should comply with the formality requirements stipulated under the Code of Civil Procedure; the plaintiff also needs to advance the court fees.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The various limitation periods are laid down by various statutes, among which, the most significant one is the Civil Code. The longest limitation period is 15 years. The limitation period starts to run from the time when the claim may be exercised. The time limits are treated as a substantive law issue.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Taiwan? What various means of service are there? What is the deemed date of service? How is service effected outside Taiwan? Is there a preferred method of service of foreign proceedings in Taiwan?

In Taiwan, to initiate a civil action, a complaint shall be submitted to the court with jurisdiction over the case. The complaint will be served to the defendant along with the summons for an oral debate session.

Service of process shall be effectuated by an execution officer or post office delegated by the court clerk. Service is also deemed effectuated when the court clerk delivers the paper to be served to the person in the courthouse. Where service cannot be effectuated at the domicile or residence, office or place of business of the person to be served or by leaving the paper with his/her housemate or employee of suitable age and discretion, it may be effectuated by depositing the paper with the local government or police department hearing jurisdiction where the service shall be effectuated. Service by this means shall take effect 10 days from the day of the deposit. Where the person to be served refuses to receive service without legal grounds, service will be effectuated by leaving the paper at the place of service. The court in which the action is pending may permit service of process to be effectuated by constructive notice in the following circumstances:

- Where the place where service shall be made is unknown.
- Where service effectuated at the domicile or residence or office of a person who enjoys immunity is ineffective.
- Where service which should be effectuated in a foreign country cannot be effectuated by the competent authorities of such country when requested to do so, the relevant Taiwan ambassador/minister envoy/consul, or other authorised institutes or organisations in that country; or the service is expected to be futile even if it has been effectuated.

A preferred method of service of foreign proceedings in Taiwan is service through judicial assistance.

3.2 Are any pre-action interim remedies available in Taiwan? How do you apply for them? What are the main criteria for obtaining these?

A creditor may apply for provisional attachment with regard to monetary claims or claims exchangeable for monetary claims, and for a provisional injunction with regard to non-monetary claims. An application for either of the above two orders shall be filed with the court that has jurisdiction over the principal case, or at the court where the object of the provisional attachment is located. The applicant needs to pay a security to the court, the amount of which is determined by the court.

3.3 What are the main elements of the claimant's pleadings?

The main elements are:

- parties, their addresses and statutory agents;
- prayer for relief;
- claim and the underlying facts;
- causes of action; and
- supporting evidence.

3.4 Can the pleadings be amended? If so, are there any restrictions?

After the service of the complaint, the plaintiff may not amend or add additional claims, except in any of the following situations:

- where the defendant agrees;
- where the amendment or addition of the claim is based on the same transaction or event;
- where only the prayer for relief is expanded or reduced;
- where the change of circumstances makes it necessary to replace the original claim with another claim;
- where the claim shall be adjudicated jointly with regard to several persons and one or several such persons who are not parties to the litigation are joined as parties;
- where the existence or non-existence of a certain legal relation, based upon which the case shall be decided, becomes disputed in the course of the proceeding and an additional claim for a declaratory judgment confirming such legal relation against the defendant is raised; or
- where it would neither severely obstruct the defendant's defence nor delay the litigation.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The defendant's response to the plaintiff's claim shall address the same items as indicated in the response to question 3.3 above.

The defendant may, prior to the conclusion of the oral debate session, raise a counterclaim against the plaintiff and the persons with regard to whom the counterclaim shall be adjudicated jointly in the court where the plaintiff's claim is pending. The defendant is also allowed to assert the defence of set-off.

4.2 What is the time limit within which the statement of defence has to be served?

Under the Code of Civil Procedure, a defendant shall submit his/her answer to the court with a written copy or photocopy thereof sent directly to the plaintiff within 10 days after receiving the complaint, and no later than five days prior to the oral debate session if one has been designated. Nonetheless, judges normally allow defendants to submit the pleadings after the expiry of such time limit.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

While an action is pending, a party may notify a third party whose legal interests will be adversely affected if the party involved is

defeated. The notified person is deemed to have intervened in the action at the earliest time when intervention is available, notwithstanding his/her failure or delay to intervene. As an intervener, the third party may not dispute the correctness of the decisions made in the action against the supported party. However, the defendant cannot directly list the third party as a defendant in the same proceeding.

4.4 What happens if the defendant does not defend the claim?

A party shall be deemed to have admitted to the facts if the party does not dispute a fact alleged by the opposing party, except where a party has already made other statements which may be considered as disputing such fact. A party's refusal to present any argument in the oral debate session shall be deemed as a failure to appear. Where one of the parties fails to appear at the oral debate session, the court may, on the appearing party's motion, enter a default judgment based on the appearing party's arguments; where the party who fails to appear is summoned and fails to appear again, the court may on its own initiative enter a default judgment based on the appearing party's arguments.

4.5 Can the defendant dispute the court's jurisdiction?

A court obtains jurisdiction over an action where the defendant proceeds orally on the merits without contesting the court's jurisdiction. Thus, a defendant is allowed to dispute the court's jurisdiction only prior to the oral debate on the substantive issues.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

In addition to the situations stated in the response to question 4.3 above, a third party may join an ongoing proceeding as a new party or as an intervener in case of the following events:

- A third party who is legally interested in an action may, for the purpose of supporting one of the parties, intervene in the action while it is pending.
- A third party may intervene to assert a claim against the parties to an action pending in a court under any of the following circumstances: (a) when the third person asserts rights to the whole or a part of any claim of the action; and (b) when the third person claims that the outcome of the action will infringe its rights.
- Where the claim shall be adjudicated jointly with regard to several persons and one or some such persons who are not parties are joined as parties.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The court may order arguments to be held jointly where the claims in multiple actions are initiated separately but are related or could be asserted in a single action. Arguments of several actions that have been ordered to be held jointly may be decided jointly.

5.3 Do you have split trials/bifurcation of proceedings?

This does not apply in Taiwan.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Taiwan? How are cases allocated?

No. Cases are allocated to judges on a random basis.

6.2 Do the courts in Taiwan have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Judges in civil courts enjoy the powers for case management. Parties may submit their requests regarding case management to the judge; acceptance of which is subject to the judge's discretion. There is no cost consequence for submitting such a request. Under certain circumstances, parties may appeal the judge's ruling regarding case management; the party filing the appeal needs to bear the appeal costs in the amount of NTD 1,000.

6.3 What sanctions are the courts in Taiwan empowered to impose on a party that disobeys the court's orders or directions?

The consequences of breaching a court's orders vary by the different nature of the orders. For instance, breach of a court's order requiring a party to produce a certain document may result in the court taking as the truth the opposing party's allegation with regard to such document or the fact to be proved by such document. Breach of a court's order requiring a third party to produce a certain document may result in the court imposing a fine on such third party.

6.4 Do the courts in Taiwan have the power to strike out part of a statement of case? If so, in what circumstances?

The court has discretion in evaluating factual statements made by the parties. It may instruct the parties to abandon part of their claims but the parties have the full discretion to decide whether to abandon such claims or not.

6.5 Can the civil courts in Taiwan enter summary judgment?

The concept of a summary judgment in Taiwan means that a court renders a ruling or a judgment based on review of the parties' written submissions without holding hearings. Only under certain circumstances are judges allowed to do so.

6.6 Do the courts in Taiwan have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court may stay the proceeding in case of any of the following circumstances:

- when it is necessary for a party to stay the proceeding due to his/her military service during wartime, or a party's communication to the court is obstructed due to a *force majeure*, war, or other unavoidable event;
- when the decision on an action is premised upon the existence or non-existence of certain legal relations to be

determined in another action;

- when a civil court's decision regarding its subject matter jurisdiction over an action conflicts with an administrative court's binding decision;
- in cases where a party has initiated an action with regard to a subject matter for which an action is pending in a foreign court, if reasons exist for the court reasonably to believe that the foreign court's judgment on the action may be recognised in Taiwan, and it is not substantially inconvenient for the defendant to litigate in such foreign country;
- when the commission of a crime is suspected in the course of proceedings; and
- where an action has been notified to a third party and if the court believes that the person notified is able to intervene, the court, by a ruling, may stay the proceeding until the person notified intervenes.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Taiwan? Are there any classes of documents that do not require disclosure?

A party bears the burden of proof with regard to the facts which he/she alleges in his/her favour, except either where the law provides otherwise or where the circumstances render it manifestly unfair. A fact need not be proved if it is generally known or known to the court in the course of performing its function. A fact need not be proved if it is alleged by a party and admitted by the opposing party in the preparatory pleadings, in the oral debate sessions, or before the commissioned judge or the assigned judge. A fact presumed *de jure* need not be proved absent proof to the contrary.

7.2 What are the rules on privilege in civil proceedings in Taiwan?

A witness may refuse to testify where the witness is to be examined with regard to a matter which he/she is obliged to keep confidential in the course of performing his/her official duties or conducting business, or where the witness cannot testify without divulging his/her technical or professional secrets. However, a witness may not refuse to testify if he/she is relieved from the confidentiality obligation.

7.3 What are the rules in Taiwan with respect to disclosure by third parties?

Where a document identified to be introduced as documentary evidence is in a third party's possession, a party may move the court either to order such third party to produce such a document or to designate a period of time within which the party who intends to introduce it as evidence shall produce such a document. When the court considers that the disputed fact is material and that the motion is just, it may order, by a ruling, the third party to produce the document or to designate a period of time within which the party who intends to introduce it as evidence shall produce such a document. If a third party disobeys an order to produce documents without giving a justifiable reason, the court may by a ruling impose a fine not exceeding NTD 30,000; and where necessary, the court may also by a ruling order compulsory measures to be taken.

7.4 What is the court's role in disclosure in civil proceedings in Taiwan?

Since the parties bear the burden of proof with regard to the facts which he/she alleges are in his/her favour, the courts generally play a passive role and only make decisions on the parties' motions regarding disclosure or submission of evidence.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Taiwan?

Only the parties or any third party under the permission of the parties are entitled to apply to the court for inspection of the documents submitted to the courts. The Trade Secret Act also provides that no parties, representatives of the parties, advocates, expert witnesses, witnesses, and other parties related to the case shall use or disclose without due cause any trade secrets of others, known or obtained by virtue of a judicial investigation or proceeding.

8 Evidence

8.1 What are the basic rules of evidence in Taiwan?

A party bears the burden of proof with regard to the facts which he/she alleges are in his/her favour, except either where the law provides otherwise or where the circumstances render it manifestly unfair.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The following types of evidence are admissible:

- examination of witnesses;
- expert testimony;
- documentary evidence;
- inspection; and
- examination of parties.

The parties may introduce the expert as a witness and the parties shall specify the matter to be examined. There is no distinction between an expert witness and a fact witness in Taiwan. The parties may make a motion to the court for taking expert testimony. The court will appoint an expert witness taking into consideration the parties' opinion.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Under the Code of Civil Procedure, unless otherwise provided by the laws, every person is under a general duty to testify in a civil action if he/she is called to be a witness. Where a witness who has been legally summoned fails to appear without giving a justifiable reason, the court may impose a fine on him/her.

A witness may submit written statements. If a party conducts a necessary examination of the witness, the court may still summon the witness to appear to testify in person.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Taiwan?

See responses to questions 7.3 and 7.4 above.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Taiwan empowered to issue and in what circumstances?

The different types of judgments and orders are declaratory judgments, judgments granting payments, judgments granting specific performance, judgments adjusting parties' legal relationship and various types of orders which serve different functions and have different effects.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Entitlement to damages and interests is a substantive law issue and the court should make the decision in compliance with the contract and various substantive laws. A claim for punitive damages is allowed under the Taiwan Civil Code if expressly provided by the parties in the contract. For a debt bearing interest, if no rate has been agreed on by the parties, the rate shall be 5% per annum. If the agreed rate of interest exceeds 20% per annum, the creditor shall not be entitled to claim any interest over 20%.

The Code of Civil Procedure stipulates that the losing party shall bear the litigation expenses, while in cases of a partial victory or a partial defeat the court may, in its discretion, order litigation expenses to be borne by both parties in a certain proportion.

9.3 How can a domestic/foreign judgment be enforced?

With respect to domestic judgments, a final and binding judgment is enforceable automatically. The parties may apply to the court for initiating the enforcement procedure. A final and binding foreign judgment shall be recognised by the Taiwan courts for being enforced.

9.4 What are the rules of appeal against a judgment of a civil court of Taiwan?

An appeal to the second instance shall be filed within 20 days following the service of the first instance judgment. The appeal can be based on challenge of factual and legal issues. An appeal to the third instance shall be filed within 20 days following the service of the second instance judgment and can only be based on challenge of illegality of the second instance judgment.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Taiwan? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration and mediation are the two alternative dispute resolution mechanisms most frequently used in Taiwan.

Arbitration in Taiwan is governed by the Taiwan Arbitration Act, which generally follows the UNCITRAL Model Law. Parties may submit disputes which can be settled to arbitration. There are several arbitration institutions in Taiwan, among which the most experienced one is the Arbitration Association of the Republic of China ("AAROC"). An arbitration award is binding on the parties

and has the same force as a final court judgment.

There are several types of mediation that could be undertaken by the disputing parties: mediation conducted by the mediation committee of a town or city, mediation conducted by the Public Construction Commission and mediation in the court. Acceptance of mediation result is subject to the consent of both parties.

1.2 What are the laws or rules governing the different methods of dispute resolution?

The Taiwan Arbitration Act is the law governing arbitration.

The Township Mediation Regulation, the Government Procurement Act and the Code of Civil Procedure govern different types of mediation.

1.3 Are there any areas of law in Taiwan that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

The Arbitration Act provides that only disputes that can be settled can be submitted to arbitration. Disputes involving violation of public order or legal relationship which cannot be decided by the parties is not subject to mediation.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Taiwan?

The major and most experienced arbitration institution in Taiwan is the AAROC. AAROC also establishes a mediation centre administering mediation.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

See the response to question 1.1 above.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

Parties are encouraged to adopt alternative dispute resolution mechanisms. Arbitration cases increased significantly during the past decade. Cross-strait commercial disputes in particular are frequently resolved by arbitration.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Taiwan?

For years, arbitration has been commonly used to resolve commercial disputes in Taiwan. One issue regarding arbitration is that government entities tend to file an action to nullify the award if they are not satisfied with the award. Such a tendency is certainly harmful to the development of arbitration. Mediation is widely encouraged. However, because acceptance of mediation result is subject to the parties' consent, which means that if one party refuses to accept the result the time and efforts spent will be in vain, mediation is not commonly used as arbitration.

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Chia-Ching Lee is known for his expertise in projects and construction dispute resolution. His depth of experience in dealing with government entities makes him the top choice for public projects.

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