

Encyclopedia of International Commercial Litigation

General Editor
The Hon. Sir Anthony Colman

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Taiwan

by

Nigel N. T. Li, Joyce C. Fan & Patrick P.C. Chu

Lee and Li

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Taiwan

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Taiwan

PART A—GENERAL SECTION

(1) THE JUDICIAL SYSTEM

A1.1 The Republic of China (ROC) Constitution, promulgated in 1947, provides structure for the government, which consists of a presidency and five yuans (or branches), that is, the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan. The first three yuans have functions similar to their counterparts in other democratic countries. The Control Yuan has the power to impeach and censure civil servants and propose corrective measures against illegal or improper executive actions. The Examination Yuan has the prerogative to qualify civil servants and professionals (including legal professionals).

A1.2 The Judicial Yuan oversees the Constitutional Tribunal, the Common Courts, the Administrative Courts, the Intellectual Property Court, the Committee on the Discipline of Public Functionaries, and the Secretariat.

(a) The Constitutional Tribunal

A1.3 The justices are vested with the power to interpret the Constitution and to unify the interpretation of laws and regulations. They are nominated and, with the Legislative Yuan's consent, appointed by the President. Fifteen justices compose the Constitutional Tribunal, which rules on the dissolution of unconstitutional political parties, and issues interpretive rulings on constitutional law issues.

A1.4 A private litigant whose constitutional rights have been violated may, when constitutional issues are involved, petition the Tribunal to interpret whether the law or regulation, as applied in the final and irreversible judgment against him or her, contradicts the Constitution, or when the final and irreversible judgment against him or her contains an interpretation of the relevant law and regulation that is inconsistent with that held by other courts, petition the Tribunal to render a unifying interpretation.

A1.5 For commercial litigation, the second category of petitioning may serve as the last resort of vindication while the possibility of constitutional petitioning cannot be excluded. If the Tribunal renders a favourable unifying interpretation or constitutional interpretation, the petitioner may have his or her case reopened with a view to overturning the final and irreversible judgment against him or her.

(b) The Courts

A1.6 There are three levels of common courts: the District Court, the High Court, and the Supreme Court. They are further divided into several civil tribunals and criminal tribunals at each level.

A1.7 All three levels of courts started in 1990 to publish their judgments in chronological order. Indexed reports on selected judgments of the Supreme Court before 1995 are available. Unfortunately, aside from these selected judgments, the reports are of limited assistance to legal professionals because they lack proper indexes.

(i) The District Court

A1.8 Currently, there are twenty-three district courts in the ROC (including a juvenile court in Kaohsiung and two district courts in Fuchien Province). Each district court may establish one or more summary divisions to try relatively minor cases. At present, there are in total forty-four such summary courts established.

A1.9 The district court has jurisdiction over civil and criminal cases of the first instance and appeals against decisions of the summary courts. Civil and criminal tribunals have been established under the district court to handle cases. In addition, specialized tribunals for family, juvenile, traffic, and labour matters may be available at the district court level. The Intellectual Property Court was established on 1 July 2008, which has concurrent jurisdiction over civil disputes arising from laws relating to the protection of intellectual property. The Intellectual Property Court has the jurisdiction to hear such civil cases as a court of first instance as well as a court of second instance. It also has jurisdiction to hear criminal appeals regarding certain offences relating to the protection of intellectual property.

A1.10 In the district court, civil cases are usually heard by a single judge. However, appeals against the decisions of the summary courts and the more important cases, currently defined as those involving complicated legal issues, are tried by a panel of three judges.

A1.11 Each district court has a civil execution department, headed by professional judges, in charge of provisional seizures, provisional injunctions, and provisional and final execution of judgments. Requests concerning these matters should be filed with the civil execution department. The execution of foreign judgments requires the initiation of a lawsuit with the district court, not merely an application with the civil execution department.

(ii) The High Court

A1.12 Currently, there is one Taiwan High Court with four branch courts and a Fuchien High Court Kinmen Branch Court in the ROC.

A1.13 The High Court has jurisdiction over appeals against decisions of the district court. The High Court has set up civil and criminal tribunals and specialized tribunals for juvenile, traffic, public security, election, and labour cases.

A1.14 The High Court tribunal consists of three judges, one of whom conducts the preliminary proceedings. The High Court reviews both the facts and legal issues of each case.

(iii) The Supreme Court

A1.15 The Supreme Court consists of eight civil tribunals and nine criminal tribunals, each comprising five judges. Issues are decided by majority opinion and *in camera*.

A1.16 Because there are several tribunals, each acting independently, inconsistent legal opinions among different tribunals arise. Thus, the tribunals meet periodically

to discuss specific legal issues with a view to harmonizing opinions, though the conclusions of such meetings are not legally binding. Nevertheless, given the fact that these decisions are made by a majority of the judges of the Supreme Court, these decisions are usually followed by the lower courts.

A1.17 Appeals to the Supreme Court may be made against court judgments of the second instance, except where the value of the benefits of the appeal do not exceed TWD 1,500,000.

A1.18 The Supreme Court exercises legal review only, not factual review. Therefore, appeals should be based on the grounds of violation of laws or regulations, including a failure to apply the relevant law or the misapplication or misinterpretation of the relevant law. Supreme Court reviews are routinely conducted through submission and review of written memoranda; oral proceedings are quite exceptional.

A1.19 Reopening of a matter subject to a final and irreversible judgment is possible in limited circumstances.

(2) THE JUDGES

A2.1 Being a country rooted in civil law, the ROC's civil procedures basically follow the inquisitorial system, and place the leading role on the judge, who is responsible for directing the proceedings, investigating the evidence, finding the facts and determining the legal consequences (such as assessing damages). No jury takes part in the proceedings.

A2.2 The judges are all career judges selected through national examinations. All LLB degree holders are eligible to take such examinations, which cover such commerce related subjects as the civil code, company law, maritime law, insurance law, and the law of notes. After a two-year orientation programme, recruits are assigned to district courts as judges. Most of the judges have not been practising lawyers before. Commercial expertise is usually developed through cases handled and the continuous educational programme offered by the Judicial Yuan.

(3) THE LEGAL PROFESSION

A3.1 Attorneys are qualified and licensed through national examinations. After 1993, upon passing the examination, six-month's training is required of an attorney before a licence can be obtained. There is no division between advocates and non-advocates. Licensed attorneys can engage in all fields of legal practice.

A3.2 Both solo practices and partnerships are common forms of business. As of December 2014, the total number of licensed attorneys was estimated to be more than 14,000, serving a population of about 23 million. Sizable law firms staffed with many licensed attorneys are comparatively small in number.

A3.3 Most attorneys engage in general practice. Special commercial litigations in such fields as banking, securities, and investments, and litigation involving foreign parties are handled mostly by the few sizable law firms that have the necessary international exposure and capability to provide integrated and comprehensive services.

A3.4 In tandem with the ROC's prosperous economy, there has been more international commercial litigation involving local parties than ever. As such, some major local firms have accumulated substantial experience in coordinating with foreign counsel, dealing with overseas clients and managing legal actions across frontiers.

A3.5 Although a private party can prosecute civil action without counsel, commercial litigation is rarely conducted without the assistance of attorneys.

A3.6 Hourly charges are widely adopted for international commercial litigation, though contingency arrangements may be available in some cases. For firms charging on an hourly basis, it has been a general practice for law firms to provide properly itemized billing statements.

A3.7 Procedures for the review of legal fees are matters to be governed by the agreement between the client and the attorney. Disagreement between the client and the attorney on the amount charged is usually settled privately, though the client always has the right to sue the attorney for a refund of overcharges. Likewise, an attorney also has the right to sue the client for outstanding fees and disbursements. In practice, litigation between attorney and client for fee disputes is rare.

A3.8 Non-ROC citizens are permitted to take the bar examination in the ROC and be qualified according to the ROC law.

A3.9 Foreign attorneys may only practise the law of the country in which they are qualified or international law adopted by that country, provided that they are permitted to do so by the Department of Justice and join the local bar association. There are certain qualification requirements applicable to foreign attorneys who wish to practise in the ROC.

A3.10 Foreign attorneys must indicate that they are foreign attorneys and the country in which they are qualified. Originally, they could not hire ROC attorneys nor form a partnership with ROC attorneys. After Taiwan acceded to the World Trade Organization (WTO), to fulfil Taiwan's obligations under the WTO, foreign attorneys now can hire ROC attorneys and form a partnership with ROC attorneys after obtaining permission from the Ministry of Justice.

(4) JURISDICTION OF THE COURTS

A4.1 The ROC courts have personal jurisdiction over a foreign defendant who has any domicile, residence, business office, or seizable assets in the ROC, and jurisdiction in rem over real property and vessels in the ROC. Furthermore, the ROC court has jurisdiction over contractual disputes and tort cases, in which the contracting parties so consent or the contracts at issue are to be performed, or the tortious acts are committed, in the ROC, respectively. Claims for payment under cheques, drafts, or promissory notes are subject to ROC court jurisdiction if the place of payment is within the ROC. The court will exercise jurisdiction when either subject matter jurisdiction, jurisdiction in rem, or jurisdiction in personam is present.

(5) COURT COSTS

A5.1 Upon filing a civil lawsuit, the plaintiff is required to pay court costs roughly equivalent to 1% of the value of the claim. Upon appeal, the court fee increases to 1.5% per instance. There are other miscellaneous expenses which usually will not exceed 1% of the total amount claimed. The plaintiff may recover the court cost from the defendant if he/she obtains a favourable judgment. As to the attorneys' fees, sans the parties' consent, each party should bear its own attorneys' fees.

A5.2 A plaintiff who withdraws an action before oral hearings are concluded in the Court of First Instance may, within three months after the withdrawal of the action, request the refund of two-thirds of the court costs paid. The same applies to a party who withdraws an appeal or a motion to set aside a judgment, or who settles out of court.

A5.3 When the plaintiff is a foreign company with no branch office in the ROC, the court may, at the request of the defendant, order the plaintiff to post a bond (usually 3% of the value of the claim) for the court costs.

(6) GENERAL CIVIL PROCEDURE

A6.1 Civil procedure is governed by the Code of Civil Procedure (the 'Code'). The court commences review on cases by scheduling the first hearing within weeks' after the filing of the plaintiff's action. The court's review usually takes several hearings, each at a few weeks' interval to the next. This 'dentist' approach is a by-product of the traditions of the inquisitorial system in civil law jurisdictions, and ensures prompt commencement of judicial review on litigants' cases, and encourages but does not always achieve the timely resolution of disputes. While conclusions of most cases can be expected at the district court level within six to eight months, exceptionally complicated cases may take the district court years before a judgment can be rendered.

A6.2 The term 'trial' in its broader sense covers the entire proceeding, starting from the first hearing to the rendition of the judgment. However, for the purpose of the following discussion 'trial' only refers to the final (oral argument) hearing conducted before the judge.

A6.3 Court hearings are conducted in an open court unless the nature of the case demands a secret proceeding. The statutory grounds for secret proceedings are the protection of national security, public order, or good morals. Cases involving trade secrets can also be tried in court privately, at the party's request. The court will not conduct its proceedings privately out of the parties' request without statutory justification. For this reason, arbitration may be a preferred mechanism for dispute resolution in cases where confidential treatment is of the utmost interest to the parties.

A6.4 Either party may object to any procedural non-conformity during the hearings. Waiver of objections will be activated if the party has argued the merits of the case knowing, or having reason to know, of such non-conformities without any objections.

A6.5 The parties are responsible for asserting the proper cause of action, providing the facts alleged by them and presenting legal arguments to establish the cause of action. Failure to do so will result in a lost case. However, as litigants are not always represented by counsel, the Code authorizes the court to clarify the issues with the

litigants and to direct the litigants to present the relevant evidence or make the necessary statements.

A6.6 If the facts alleged by the plaintiff give rise to more than one cause of action under the substantive law, and the plaintiff is not aware of them all, the court should instruct the plaintiff, so that he or she may include such causes of action in the same suit, and the disputes between the parties may be resolved in one set of proceedings.

(a) Pre-trial Definition of Issues

A6.7 The plaintiff establishes his or her case in a written memorandum by stating the pleading, causes of action, factual background, and legal arguments. Once the causes of action are identified, except under enumerated circumstances, the defendant's consent is required if they are to be changed or new causes of action are to be added.

(b) Pre-trial Hearings and Investigation of Evidence

A6.8 Because the term 'trial' has been defined as the last session of oral argument, the term 'pre-trial hearings' include both preparatory hearings, which are conducted only when a case is heard by a panel of judges and generally limited to the clarification of the causes of action, and sessions of oral argument other than the final oral argument. In pre-trial hearings, the parties clarify the causes of action and the court conducts investigation, identifies the legal issues and listens to the opposing parties' legal arguments. Please note that the distinction between a trial and a pre-trial hearing is blurred in the district court because most cases in the district court are heard by a single judge. Thus, the practice is that every session is designated as a hearing of oral argument and the trial of a case can be concluded at any session.

A6.9 During these hearings, the court may:

- summon the parties or their legal representatives to court;
- order that the parties or a third person provide documents/objects for inspection;
- summon witnesses or expert witnesses;
- inspect physical evidence or request government agencies or other organizations to conduct investigations; and
- assign a judge to investigate the relevant evidence (when the court is composed of three judges).

A6.10 In order to prevent unfair surprise attacks or defences during the trial, the parties are not allowed to present new arguments or evidence or request the court to investigate new evidence which has not been presented in the pre-trial hearings. However, this rule does not apply when:

- the matter at issue should be investigated by the court *ex officio*;
- late presentation does not cause substantial delay to the proceeding;
- the presenting party can demonstrate that its delay was caused by events unattributable to itself; or
- there exist other circumstances that render such late presentation obviously fair.

A6.11 The court is responsible for the investigation of the relevant evidence, including the review of physical/documentary evidence and the questioning of witnesses. The

Code imposes few restrictions on the admissibility of evidence and allows the judge to exercise wide discretion in deciding on this issue. As long as the court regards it as relevant, almost any statement, document, or physical object may be used as evidence. The parties are, however, free to challenge the authenticity and truthfulness of such evidence.

A6.12 Requests for an investigation of the evidence should be made to the court, not to the other party. The court will then review the relevancy and appropriateness of such requests and rule accordingly. When the other party is ordered to present certain documentary evidence but fails to do so without due cause, the court may accept the factual assertion by the requesting party.

A6.13 A witness may testify by making a written statement out of court if agreed by the parties. When technical means exist for exchanges of sound and images between the location of a witness and the court, the witness may, if the court sees fit, be examined directly via such means.

A6.14 Either party may introduce witnesses in court and request the court to question the witnesses. Cross-examination is possible if approved by the court. The court may order either party to leave the court room temporarily if in its opinion, the witness has difficulties testifying in the presence of that party. However, after the witness finishes testimony, the court should summon that party back to court and advise him or her of the contents of the testimony so as to allow the party to rebut the testimony.

A6.15 When technical issues are involved (as is typical in intellectual property infringement cases or construction disputes), the court may order an investigation by an expert and rely on the expert's testimony in its deciphering of the facts. Both parties can challenge the expert witness' testimony, and may recommend other experts to the court for its consideration. The final decision and appointment is made by the court.

A6.16 When documentary evidence is in the custody of only one party, the court may order that party to submit such document.

A6.17 When the facts to be established by documentary evidence are material, and at the reasonable request of the party adducing the evidence, the court should order a third party having possession of such document to produce it, or set a time limit for the party adducing the evidence to produce such a document.

A6.18 If the investigation on the evidence must be conducted in a foreign jurisdiction, the court may issue rogatory letters through diplomatic channels to solicit the judicial assistance of the foreign court.

A6.19 The court should appoint interpreters where either party is a foreigner who does not understand Mandarin Chinese. However, litigants usually prefer to bring their own interpreters to ensure proper interpretation.

(c) Transcripts and Tape Recording

A6.20 The court clerk prepares all transcripts for pre-trial and trial hearings, to which both parties may have access. The conformity of the discovery proceeding to the Code should be exclusively proved or disproved by the transcript.

A6.21 Stenographic recording is not available in the Chinese language; the transcripts are in a summary form and not verbatim of all statements made. The parties are usually given an opportunity to review the transcripts on computer screens on the spot. Disputes over the accuracy or completeness of the record may be resolved instantly.

A6.22 If the disputes cannot be resolved on the spot or arise later, either party to the lawsuit may have access to the tape recording within a given time limit. Upon the discovery of any inconsistency, the court should correct the transcript according to the tape recording.

(d) Pre-action Investigation of Evidence

A6.23 Before filing a lawsuit, either party may apply to the court to take the testimony of witnesses or any physical evidence that might be lost or difficult to obtain at the trial, for example, goods alleged to be defective which are soon to be exported.

A6.24 Upon granting approval to the application, the court should schedule a date for an investigation of the evidence and notify the applicant thereof. Except in cases of extreme urgency, the court should serve a copy of the application and the ruling to the other party before the scheduled date so that the other party may be present when the evidence is taken.

(e) Trial

A6.25 Trials are scheduled when the court considers that all the factual as well as legal issues have been clarified and time is allocated for the parties to make closing arguments. The trial date is usually set at the end of the last pre-trial hearing and is adhered to. The waiting time is usually two to three weeks.

A6.26 A trial commences with the oral presentation of the pleading of the parties. The plaintiff and the defendant then take turns verbally presenting their statements concerning the relevant facts and legal arguments. The presentation may be supplemented, but not replaced, by written memoranda submitted before and/or during the trial. The court may also enquire whether the parties have any further request for investigation of the evidence. Usually the parties' answer is in the negative because any such request made during trial is generally considered an undue delay of the proceeding, which, as mentioned above is not allowed.

A6.27 The court must allow the parties all opportunities to debate the admissibility and weight of evidence as well as the legal arguments during the trial. If the trial lasts longer than the estimated time, the court may either continue the trial to its end on the same day or set another trial date.

A6.28 Trial may be reopened after its conclusion but before the announcement of the judgment if the court regards it necessary to further clarify any factual and/or legal issues.

A6.29 To facilitate a prompt and smooth trial, the court may hold a separate oral hearing where a case contains several causes of action. Once the case is ordered to be heard in separate hearings, the judgments should be made separately. In practice, the court seldom makes such orders.

A6.30 The court may also consolidate several actions separately instituted in the trial under the condition that they may be joined in the same proceedings. In such case, the judgments may be delivered jointly where the parties are the same.

A6.31 Only the judge attending the trial may take part in the making of a judgment. If there is any change in the composition of the court due to the shifting of judges, the trial must be reopened so that the new judge can hear the case personally.

A6.32 The Code requires the announcement of a judgment no later than two weeks after the conclusion of the trial and does not require either party's presence. Only the holdings of the court need to be read aloud at the oral announcement of a judgment, but the court is free to include the reasoning in the announcement. A written judgment, however, should contain the court's decisions on the parties' pleadings, and the underlying facts and reasons. The original of a court decision must be served on the parties within ten days of the court clerk's receiving the decision from the judge. An official copy of the judgment should be served on both parties within ten days after the court clerk receives the original judgment from the judge. However, these deadlines are rarely kept. Missed deadlines are not grounds for appeal.

(7) EFFECT OF PREVIOUS DECISIONS

A7.1 Unlike common law countries, the court does not adhere to the principle of *stare decisis* as a general rule, except for certain precedents officially selected by the civil and/or criminal tribunals' conference of the Supreme Court. However, given the Supreme Court's authority, its decisions in most cases will be followed by the High Court and the District Courts.

A7.2 The civil and/or criminal tribunals' conference of the Supreme Court hold meetings to discuss major legal issues when necessary (usually in the presence of conflicting opinions among the Supreme Court judges). The conclusions thereof are generally followed by the Supreme Court and lower courts, although not legally binding.

(8) APPEALS

A8.1 Appeals to the court of second instance or third instance should meet the following requirements:

- following proper format;
- made prior to the expiration of the limitation for appeal (i.e., twenty days after the service of a judgment).

A8.2 An appeal to the court of third instance must be based on limited grounds as further described in A8.9.

A8.3 The 'court of second instance' includes the High Court for ordinary procedures; the district court, which is composed of a panel of three judges for summary procedures; and the Intellectual Property Court, which comprises a panel of three judges for appeal procedures. However, the 'court of third instance' always refers to the Supreme Court regardless of whether it is for ordinary or summary procedures.

A8.4 The law adopts the principle of appropriate timing, demanding that the means of attack or defence be submitted in a manner consistent with the order of proceedings; otherwise, they may be rejected.

A8.5 In the Court of First Instance, parties should introduce means of attack or defence at appropriate times in accordance with the progress of the proceedings, and before the completion of oral proceedings. To prevent delay, the court may reject a new means of attack or defence if its intent is not readily apparent and such clarification as may be necessary is not given when the court so orders.

A8.6 Parties may still introduce new means of attack or defence during second-instance proceedings. However, the court may reject them if they concern points of dispute already excluded at the first-instance issue simplification negotiations, if they were already rejected by the court of first instance, or if the reasons for their not being raised in first instance proceedings are attributable to the party concerned.

(a) The First Appeal

A8.7 Upon appeal to the court of second instance, the court will review both the facts and legal issues *de novo*, and the proceeding at the appellate level is deemed an extension of that of first instance. All procedural acts by the litigants at first instance remain effective at second instance. The litigant's ability to produce new evidence, raise new issues and present new arguments at second instance may be restricted by the court to prevent undue delay of the proceedings.

A8.8 When the appellate court considers that there are adequate grounds for appeal, it should reverse the lower court judgment and render a new judgment rather than remand the case to the lower court. However, in extremely rare situations, when the proceeding conducted by the lower court is found to have material defects, the appellate court may, if necessary, remand the case to the lower court for a new trial.

(b) The Second Appeal

A8.9 The Supreme Court only conducts legal review; therefore, grounds for an appeal to the Supreme Court are restricted to the following violations of laws and regulations:

- the lower court was not constituted legally;
- the judge should have been precluded by law from taking part in the judgment;
- the court lacked jurisdiction over the subject matter or violated the provision granting exclusive jurisdiction;
- either party was not duly represented by his or her agent;
- the trial procedural rule requiring that the oral argument be open to the public has been contravened; or
- the judgment lacks grounds or the grounds given are mutually inconsistent.

A8.10 The last item of permissible grounds is most commonly alleged in an effort to overturn a judgment. The taking of evidence contrary to the rules of logic and the failure to comment on the arguments presented by the parties all fall within its parameter.

A8.11 New evidence or new factual statements cannot be presented during the appeal. When the Supreme Court considers the appeal well grounded, it will vacate

the lower court judgment and either remand the case to the lower court or, where appropriate, render a judgment, thereby concluding the matter. The latter scenario is, however, rare in practice.

(9) LIMITATION PERIODS

A9.1 The Civil Code provides for a general limitation of fifteen years for all claims unless otherwise provided in the Civil Code or other laws. Exceptions include claims based on torts that are subject to a two-year limitation that starts to run when the injured party becomes aware of the injury and the person liable for it; provided, however, that no claim can be filed ten years after the occurrence of the tortious act. The following also lists some other exceptions.

- (1) Five-year limitation period: For the payment of interest, bonus, rent, pensions, and other periodical payments due at intervals of one year or less.
- (2) Three-year limitation period: Claims against the acceptor of a bill of exchange and the issuer of a promissory note.
- (3) Two-year limitation period:
 - (a) charges for lodging and food accommodated by inn, restaurants, and places of amusement;
 - (b) cost of transportation and disbursements by carriers;
 - (c) remuneration and disbursements of attorneys and public accountants;
 - (d) remuneration and disbursements of technical experts and contractors;
 - (e) claims by merchants and manufacturers for the price of goods or products supplied;
 - (f) claims arising out of an insurance contract; and
 - (g) (claims arising out of a collision of vessels.
- (4) One-year limitation period:
 - (a) the right to demand correction of a defect or reimbursement of expenses made for correction of a defect by an owner under a contract for work;
 - (b) claims for remuneration, reimbursement of expenses or damages relating to a contract of deposit;
 - (c) the right of recourse of the holder of a bill of exchange or a promissory note; and
 - (d) claims arising out of general average of loss in maritime matters.
- (5) Six-month limitation period:
 - (a) claims for damages by the lender for damage caused to the property lent; and
 - (b) the right of recourse of an endorser of a bill of exchange or of a promissory note against any antecedent party.
- (6) Four-month limitation period: The right of recourse of the holder of a cheque against prior endorser.
- (7) Two-month limitation period: The right of recourse of an endorser of a cheque against prior endorser.

(10) SUMMARY PROCEDURES AND SMALL-CLAIM PROCEDURE

A10.1 Cases involving claims with a value of not more than TWD 500,000 and certain categories of claims (regardless of their values) are subject to summary procedures and should be lodged in a summary court presided over by a single judge.

A10.2 Compared to ordinary procedures, the summary procedures provide quicker and lower-cost remedies for creditors. Their key features include:

- The party may initiate an action by filing a written complaint or through a verbal request.
- The court then fixes the time and place of trial and serves notice on the parties. The notice indicates that the trial is subject to summary procedures and the parties should bring with them the evidence to be submitted and the witnesses to be called.
- Both parties may, without the court's summons, appear before the court when the court is in session and proceed with oral arguments.
- The court may summon a witness or an expert witness, without the service of summons, in any convenient and proper manner. However, if the witness or the expert witness does not appear before the court on the fixed date, he or she should be served with a writ of summons.
- The court may order the witness or the expert witness to make a written statement outside of the court if the court anticipates that such a statement is trustworthy.
- The judgment needs only state the essence of the facts and reasons. Furthermore, a transcript listing the main text of the judgment, the claim and the essential points of reasons may be given in lieu of a formal judgment. The service of an official copy of the transcript has the same effect as the serving of a judgment.
- A judgment of the summary court may be appealed to the competent district court. The trial over the appeal should be conducted by a panel of three judges. Due to the extreme difficulties for a party to appeal to the court of third instance, a judgment of the district court for a case tried by the summary procedures is usually final and irreversible. However, if any important evidence that might have affected the outcome had not been taken into consideration, either party may file an action for a retrial.
- If the value of a claim is TWD 1,500,000 or more, the losing party may appeal to the Supreme Court, provided that (1) the district court's application of the laws is grossly erroneous; (2) the legal opinion involved in the claim is significant in principle; and (3) the district court approves the appeal with a written opinion stating why the requirements for appeal are fulfilled.

A10.3 When the case is to claim for payment of money, fungibles, or securities, and the claim value is not more than TWD 100,000, the small-claim procedure applies. In other cases, the parties may agree in writing to adopt the small-claim procedure if the claim value is not more than TWD 500,000.

A10.4 Most provisions governing the summary procedure apply *mutatis mutandis* to the small-claim procedure, subject to the following unique features of the small-claims procedure:

- The plaintiff may use the standard complaint form prescribed by the Judicial Yuan.
- The small-claim procedure may be conducted in the evening hours, on Sundays or national holidays, except when objected to by a party.
- Upon both parties' consensus, or when the time and cost for collecting evidence is manifestly disproportional to the claim amount, the court may, taking the entire situation into consideration and without collecting evidence, uncover the facts and enter an equitable decision.
- The parties may amend the claim, raise an additional claim or a counterclaim only to the extent permitted by the small-claim procedure, except when the parties have agreed on the continued application of the small-claim procedure and the court also considers it appropriate to do so.
- A claim may not be divided for the purpose of adopting the small-claim procedure except when the claimant has represented to the court that he/she will not initiate a separate action with regard to the remainder of such claim.
- A written judgment may indicate only the main text and the gist of the reasons, if necessary.
- The court shall, ex officio, declare a provisional execution upon entering a judgment against the defendant.
- In ordering a defendant to perform the payment obligation, the court, with the plaintiff's consent, may relieve the defendant from part of the payment obligation in the judgment if the defendant voluntarily makes a certain portion of the payment within a designated period. When the court enters a judgment allowing either the performance of payment by instalments or a grace period for payment depending on the defendant's request, the court may set an additional amount that the defendant shall pay to the plaintiff if he/she defaults in performance. In no event shall such additional amount exceed one-third of the amount awarded by the judgment.
- A judgment of the small-claim procedure court may be appealed to the competent district court, provided that such judgment is in contravention of the laws and regulations. The appeal shall be adjudicated by a panel of three judges.
- When both parties agree or when the import of the appeal sufficiently shows that the appeal is meritless, the judgment in the second instance under the small-claim procedure may be entered without oral argument.

(11) PROVISIONAL EXECUTION

A11.1 In principle, only a final and irreversible (meaning subject to no appeal) judgment will be enforced and executed. However, in an action relating to property rights, the plaintiff may apply to the court for a provisional execution of a favourable judgment before it becomes final and irreversible. This is usually requested when the plaintiff submits his pleadings.

A11.2 In some specific situations, for example, a judgment based upon the defendant's acceptance of the liabilities or a judgment ordering the performance of an obligation on a negotiable instrument, etc., the court should, ex officio, make such declaration.

A11.3 To support the request for a provisional execution, the plaintiff must either demonstrate that there may be irreparable damages in the absence of a provisional

execution or express willingness to post a bond at an amount to be fixed by the court. In the latter case, the provisional execution cannot commence until the bond is posted.

A11.4 In response to the plaintiff's request for a provisional execution, the defendant may either demonstrate that the provisional execution may result in irreparable damages to the defendant or post a counter-bond at an amount to be fixed by the court to avoid the provisional execution.

A11.5 A judgment with a declaration of provisional execution can be compulsorily enforced as if it were a final and irreversible judgment. However, the declaration will lose its effect when the judgment or the declaration itself is reversed by a higher court upon appeal. In such case, the defendant may claim for compensation of any damages he or she has suffered as a result of the provisional execution. The bond deposited by the plaintiff can be applied to compensate such damages.

(12) PRECAUTIONARY PROCEEDINGS

A12.1 A favourable judgment may be without real benefit to the plaintiff if the defendant is judgment-proof, that is, with few or no assets. The Code provides for two ex parte precautionary proceedings: provisional seizure and provisional injunction. A provisional injunction also serves one additional function, that is, the freezing of the current *status quo* pending a solution of the dispute to prevent the inflicting of irreparable harm upon either party.

A12.2 Because time is usually of the essence during such proceedings, the court is in the practice of rendering a decision within one or two weeks after the filing of an application. The creditor should file an application for execution of a provisional seizure or a provisional injunction order within thirty days after receipt of the court decision.

A12.3 When the court order for provisional seizure or provisional injunction has been finally and irreversibly revoked or altered, the court may, upon the debtor's application, cancel any execution already conducted.

(a) Provisional Seizure

A12.4 Prior to filing a lawsuit based on a monetary claim or a claim convertible to a monetary claim or during the pendency thereof, the plaintiff may apply to the district court with jurisdiction over the lawsuit or over the place where the assets to be seized are situated for a provisional seizure order. The applicant needs to either demonstrate the existence of a risk that the compulsory enforcement of a favourable judgment may be impossible or very difficult afterwards, or express his or her willingness to post a bond at an amount to be determined by the court, usually one-third of the amount claimed. In the latter case, the provisional execution cannot commence until the bond is posted.

A12.5 In order to minimize the financial burden of the posting of a bond, it is possible for the plaintiff to claim a lower amount first and expand the claim later.

A12.6 The bond will be released if the plaintiff prevails in the litigation, or upon the conclusion of the litigation, as long as the defendant does not claim in a timely

manner for damages arising from a wrongful provisional seizure. The mere losing of the litigation does not render the provisional seizure wrongful.

A12.7 If the case concerned has not been lodged in the court, the court that orders the provisional seizure will, upon the application of the debtor-defendant, order the creditor-plaintiff to institute an action within a definite time fixed by the court. If the creditor-plaintiff fails to do so, the debtor-defendant may request the court to revoke the ruling for the provisional seizure.

A12.8 The debtor-defendant may request the court to vacate the provisional seizure order under any one of the following circumstances:

- if the lawsuit is not instituted by the creditor-plaintiff within the time limit fixed by the court upon the request of the debtor-defendant;
- the cause for provisional seizure has disappeared; and
- the debtor-defendant is willing to deposit a counter-bond at an amount to be fixed by the court, in which case, the provisional seizure order cannot be vacated until the counter-bond is posted, which serves as a substitute for the assets to be seized.

A12.9 All rulings on an application of provisional seizures are appealable.

(b) Provisional Injunction

A12.10 In the case of a non-monetary claim, the plaintiff may apply to the court for a provisional injunction to force the defendant to take or to refrain from taking certain actions.

A12.11 The applicant needs either to demonstrate the existence of a risk that the compulsory execution on his or her claim may be impossible or very difficult afterwards unless the provisional injunction is granted, or post a bond in an amount to be determined by the court in light of the possible adverse effects on the defendant. In cases in which the plaintiff seeks to stop the defendant from selling certain products, some courts have set the bond with reference to the defendant's annual revenue derived from the products in question or paid-up capital, which could be a very high figure.

A12.12 If the amount of the bond as determined by the court is considered excessive, the plaintiff always has the option not to post it. The defendant usually cannot post a counter-bond with the court to vacate the provisional injunction order, except in extraordinary circumstances.

A12.13 The bond will be released if the plaintiff prevails in the litigation, or upon the conclusion of the litigation if the defendant does not claim in a timely manner for damages arising from a wrongful provisional injunction. The mere unfavourable outcome of the litigation does not render the provisional injunction wrongful.

A12.14 Most rules governing provisional seizure apply *mutatis mutandis* to provisional injunctions, including the revocation of the order if the applicant fails to file the lawsuit against the debtor-defendant within the time limit set by the court upon the request of the debtor-defendant.

(13) NON-LITIGATION PROCEDURE

(a) Out-of-Court Mediation

A13.1 According to the Act for Mediation in Counties, Towns or Cities, every county, town, and city must establish a mediation committee to mediate over civil disputes and certain criminal disputes. Parties to a civil dispute may, by mutual consent, apply to the mediation committee for mediation on a fee-free basis. In addition, the court of first instance may refer certain minor cases to the mediation committee. If a settlement is reached through the mediation process, the mediation committee must prepare the mediation agreement, which must be approved by the competent court. The approved mediation agreement has the same effect as a final and irreversible judgment. In addition, if a lawsuit was filed before and not yet concluded when the mediation agreement is approved by the court, the plaintiff may apply to the court for a refund of two-thirds of the court fee within three months after the receipt of the approved mediation agreement.

A13.2 When a government agency or state-owned enterprise and its supplier or contractor has disputes over government procurement, they may apply to the Complaint Review Board for Government Procurement ('CRBGP') for mediation. The CRBGP mediation is getting popular for resolution of disputes arising from government procurement contracts due to two unique features of the CRBGP mediation conducted pursuant to the Government Procurement Act. They are: (1) when a supplier or contractor under a government procurement contract requests for a CRBGP mediation, the procuring entity may not refuse to participate; and (2) once the CRBGP makes a proposal to resolve the dispute, the procuring entity can only refuse to accept such proposal if it obtains an approval of its superior agency.

(b) In-Court Reconciliation

A13.3 In general, cases valued at less than TWD 500,000 and certain less complicated cases (e.g., disputes arising from an employment agreement between an employer and an employee), should first undergo a reconciliation procedure conducted in the court before lawsuits are initiated. The following categories of cases, however, are exempted from the mandatory reconciliation requirement:

- when reconciliation is apparently impossible;
- when prior reconciliation conducted by other statutory agencies over the same matter has failed;
- when the action is related to a negotiable instrument;
- when the action is a counterclaim;
- when the summons to be served on the other party ought to be effectuated in a foreign country or through public notice; and
- when the action arises from a claim by a financial institution based on a loan contract or a credit card contract.

A13.4 For cases not subject to mandatory reconciliation, the parties can also, by consent, opt for such procedure.

A13.5 The court should promptly fix the date for the reconciliation proceeding and notify the parties. The parties may recommend one to three persons to serve as mediators assisting in the reconciliation.

A13.6 The reconciliation proceeding is presided over by a single judge. Normally, the proceeding is held in court and can be held in camera. If necessary, the judge can determine if it is necessary to conduct the proceeding in a more appropriate place.

A13.7 Any third party who is concerned in the matter may, with the permission of the court, participate in the proceeding.

A13.8 Reconciliation is achieved based upon the consent of the parties. However, in property right cases, if the parties are close to reaching a compromise, the court may make a proposal for a resolution of the case. If no opposition to such proposal is raised within ten days, the proposal will be deemed the reconciliation result.

A13.9 A reconciliation result has the same effect as a final and irreversible court judgment. However, should there be any grounds on which the reconciliation should be invalidated or revoked, the parties may file an action with the same court to annul the reconciliation and pursue the course of litigation.

A13.10 Upon a failed reconciliation, the court should immediately commence the litigation proceedings.

(c) Court Settlement

A13.11 The court may, at any time during the proceedings, attempt to bring the parties to a settlement, where hopeful. Most settlements are reached during the first or second instance of litigation.

A13.12 An attorney may not reach a court settlement for his or her client unless specifically authorized to do so in the power of attorney.

A13.13 A court settlement should be made before the court at a hearing and be recorded in a transcript taken by the court clerk. A copy of such a transcript should be served on the parties concerned within ten days from the date the court settlement is made.

A13.14 A court settlement has the same effect as a final and irreversible court judgment. Should there be any grounds on which a court settlement should be invalidated or revoked, either party may request the same court to annul the settlement and continue with the litigation proceeding.

(14) ENFORCEMENT OF DOMESTIC JUDGMENTS AND ORDERS

A14.1 The Civil Execution Department (the ‘Department’) at each District Court is in charge of the civil compulsory execution proceedings, which are governed by the Compulsory Execution Law.

A14.2 The following judgment, order or other execution titles can be compulsorily executed:

- a final and irreversible judgment;
- an order of provisional seizure, provisional injunction or provisional execution and other court orders upon which compulsory execution can be made pursuant to the law;

- a court settlement or reconciliation made pursuant to the Code;
- a notarial deed subject to compulsory execution pursuant to the Public Notarization Law;
- a court order permitting the auction of mortgaged or pledged property; and
- any other execution titles authorized by the law.

A14.3 If the execution is subject to any condition, or time limit or requires the creditor to provide any security or counter-performance, such execution should commence only after satisfaction of these requirements.

A14.4 If the compulsory execution is based on a final and irreversible judgment, the following persons should also be subject to such execution:

- (i) the person who becomes the creditor/debtor's successor after the commencement of the action;
- (ii) the person who possesses the object for the creditor/debtor or his or her successor;
- (iii) when a person was named plaintiff or defendant for another person, such other person;
- (iv) the person who becomes the successor to the person under above item after the commencement of the action; and
- (v) the person who possesses the object for the person under the above items (iii) or (iv).

The above provision shall apply *mutatis mutandis* to the compulsory execution based on other execution titles.

A14.5 When a creditor applies for compulsory execution based on a court judgment, he or she needs to present an official copy of the judgment together with a court-issued certificate that the judgment has become a final and irreversible judgment.

A14.6 When a creditor applies for a compulsory execution based on a court ruling, he or she needs to present an official copy of the order. Court-issued certificates concerning the irrevocability of the order are not required because a court order can be enforced even before it becomes irreversible.

A14.7 For an application for the auction of mortgaged or pledged property, the creditor needs to present to the court documents certifying the credit and mortgage or pledge and the court order for review.

A14.8 No execution cost is required for filing a compulsory execution for a claim of a value less than TWD 5,000. When the value of the claim is TWD 5,000 or more, the creditor is required to pay an execution cost equal to 0.8% of the claim value. The execution cost for filing a compulsory execution concerning a non-monetary claim is fixed at TWD 3,000 per matter.

A14.9 The enforcement of a compulsory execution can be, upon the creditor's consent, deferred twice, and each time for not more than three months. After a deferment expires, the court should notify the creditor of the expiry. If the creditor does not, within ten days after receipt of the court notice, apply for continuing the execution, the application for the compulsory execution should be deemed withdrawn. In carrying out the compulsory execution, if necessary, the court may postpone the execution date.

A14.10 When the compulsory execution proceedings are suspended owing to the creditor's failure to provide the necessary assistance (e.g., leading the court clerk to the location of the object) or to pay the required cost in advance, the court may reject the creditor's application for such compulsory execution and revoke any execution already conducted.

A14.11 The court may compel the debtor to appear in the proceeding. If the debtor fails to appear without justifiable reason, or there are sufficient facts to justify an apprehension that the debtor may abscond, a warrant of arrest may be ordered. If the debtor has the financial ability to discharge the debt but maliciously refuses to do so, or the debtor has fraudulently concealed or disposed of his or her property to evade the compulsory execution, the court may restrict his or her residence if there are facts sufficient to justify an apprehension that the debtor may abscond. If the debtor violates the limitation upon his or her residence, a warrant of arrest may be ordered.

(a) Remedies against Compulsory Execution

A14.12 When compulsory execution infringes upon the interests of a person (e.g., the court's order for the compulsory execution or the measures adopted by the court are not lawful or proper), such person may, before the conclusion of the execution proceedings, file an objection with the court.

A14.13 If grounds to extinguish or to bar the creditor's claim occur after the executive title is established, the debtor may, prior to the conclusion of the compulsory execution proceedings, institute a lawsuit to protest such compulsory execution. However, when the execution title has no *res judicata* effect (e.g., a court ruling permitting the execution of a promissory note), the debtor may institute such a lawsuit even if such grounds occurred before the executive title is established. Upon the filing of such suit, the court may, *ex officio* if necessary, or at the request of the debtor (in which case, the debtor needs to post a bond with the court), suspend the proceedings pending the protest lawsuit.

A14.14 When the creditor applies for compulsory execution against any person provided in items (i)–(v) of A14.4 and such person alleges that he or she should not be subject to the compulsory execution, such person may, before the conclusion of the compulsory execution proceedings, institute a lawsuit to object to such compulsory execution. Upon the filing of such suit, the court may, *ex officio* if necessary, or at the request of the debtor (in which case, the debtor needs to post a bond with the court), suspend the proceedings pending the protest lawsuit.

A14.15 When the creditor's application for compulsory execution against any person provided in items (i)–(v) of A14.4 is rejected by the court, he or she may, within ten days after receipt of the court decision, institute a lawsuit for compulsory execution against such person.

A14.16 When a third party has a legal right over the property that can prevent any compulsory enforcement on the property, he or she may, before the enforcement concludes, institute a lawsuit to object to the enforcement. Upon the filing of such suit, the court may, *ex officio* if necessary, or at the request of the third party (in which case, the third party needs to post a bond with the court), suspend the enforcement pending the outcome of the lawsuit.

(b) Compulsory Execution Concerning Monetary Debt

A14.17 Monetary claims can be enforced through compulsory execution on a debtor's movables, immovables, and other assets. Other creditors, including creditors with any execution title, mortgage, pledge, or lien or other preferential right, and government agencies entitled to enforce any monetary claim against the debtor, may participate in the distribution of the proceeds derived from the compulsory execution. The provisions concerning the execution cost provided in A14.8 shall apply to the distribution.

(i) Execution on Movables

A14.18 In carrying out a compulsory execution on movables, the claimant needs to locate the seizable property of the debtor and report the results to the court. The court should then send a court clerk to attach the property by either taking possession or placing it under the custody of another person, for example, the debtor or creditor, when appropriate. The clerk should adopt the proper measures to declare such attachment, such as posting a notice on the property and/or putting a seal or impression on the property.

A14.19 Attachment of movables should be limited to the extent that the value thereof is sufficient to meet the amount of the claim and the costs to be borne by the debtor.

A14.20 When it could be expected that no proceeds derived from the property, after deducting the execution cost, will remain, the property should not be attached. When no proceeds derived from the attached property, after deducting both the claim with preferential right and the execution cost, will remain, the court should revoke its attachment. However, if the creditor is willing to afford the execution cost, the property can still be attached.

A14.21 After the attachment, any transfer or other disposition of the attached property which may interfere with the execution has no effect on and does not impair the right of the creditor. The judge is required to promptly fix a date for the auction of the property, which should be within one month after the attachment, and make a public announcement thereon. However, under any one of the following circumstances, the property attached may be directly sold without an auction:

- (i) upon the application of both the creditor and the debtor;
- (ii) when the sales price has been mutually agreed upon by both the creditor and the debtor;
- (iii) when the property attached is corruptible;
- (iv) when the property attached has the risk of depreciating;
- (v) when the property attached has a market price; and
- (vi) when the custody of the property attached is difficult or overly expensive.

A14.22 Auctions are conducted by the court clerk under the order and supervision of the judge. The department may also delegate an auctioneer or an appropriate person to conduct an auction where appropriate. Proceeds derived from an auction, after deducting all of the necessary costs, are handed to the creditor. Other creditors may also apply to take part in the distribution. The remaining proceeds will be returned to the debtor. The same procedures also apply to valuable securities.

A14.23 In general, the above procedures also apply to valuable securities. After the valuable securities are sold through auction, the court may, on behalf of the debtor,

endorse the valuable securities to the buyer. However, when appropriate (e.g., where the object is a negotiable instrument, such as a promissory note), the court may, instead of selling the object through auction, dispose of the object by issuing an order prohibiting the debtor from collecting the payments thereunder and the third party from making payments to the debtor, allowing the creditor to collect the payment or transferring the right to the creditor, and/or instructing the third party to make the payment to the court for hand-over to the creditor.

When valuable securities are attached and are in the possession of the court, the court should, on behalf of the debtor, conduct the necessary procedures to preserve the right thereof.

(ii) Execution on Immovables

A14.24 Compulsory execution on immovables also commences via an attachment. However, the court usually allows the debtor to keep or continue using the immovables pending auction. Before attachment, the court should notify the registry in charge of the registration of the immovables to be attached to record such attachment and the attachment will take effect upon the service of the court notice.

A14.25 In order to clarify the status of the property attached, the court may summon the debtor and/or the third party who is in possession of the property attached and/or order them to provide the relevant documents. If the debtor unjustifiably refuses to comply, the court may place him or her under custody ex officio or upon creditor's request. If such third person unjustifiably refuses to comply, the court may impose upon him or her a fine of not more than TWD 15,000.

A14.26 Before an auction, the court should order an appraisal so as to assess the value of the property and fix the base price, that is, the minimum price for the auction, of the attached property and make a public announcement of the auction in advance.

A14.27 When the creditor is notified by the court that the base price for the auction is insufficient to cover the preferential claim and the execution costs, unless the creditor can, within seven days after receipt of the court notice: (1) prove the sufficiency of the base price or set another reasonable base price; and (2) warrant to bear the execution costs when the auction fails, the court should revoke the attachment and return the seized property to the debtor. However, the above should not apply to an auction requested by a mortgagee or creditor with preferential claims.

A14.28 Contrary to movables, an auction of immovables can only be carried out by the clerk under the order and supervision of the judge, and takes the form of sealed bids. All bidders are required to deposit a bond with the court and the highest bid above the base price is taken.

A14.29 After the successful bidder makes full payment for the immovables bought from an auction, the court issues a transfer certificate to him or her upon which the buyer acquires the title to the property and any superficies, servitude, and lease thereon, will also be automatically transferred to him or her. However, a mortgage existing on the property will be extinguished after the auction, unless the buyer agrees to take over the mortgage, upon the consent of the mortgagor. If the immovable is still in the possession of the debtor or other third persons, the court should either terminate their possession and turn over the immovable to the buyer or indicate in the public notice for auction that the court takes no responsibility in turning over the property.

(iii) Execution Against Vessel and Aircraft

A14.30 As to the compulsory execution on vessels, please refer to B9.1–B9.5.

A14.31 In general, the provisions of compulsory execution on vessels shall apply *mutatis mutandis* to compulsory execution on aircraft. The aircraft seized may be delivered to the local competent authority of civil aviation for custody. If possible, the court should notify the creditors registered at the competent authority of the impending auction of the aircraft.

(iv) Execution Against Other Property

A14.32 When the execution is on the debtor's account receivable against a third party, the court should issue an order prohibiting the debtor from collecting payments and the third party from making payments to the debtor.

A14.33 In the meantime, the court may, after consulting the creditor, also issue an order allowing the creditor to collect the payment or for the transferring of the right to the creditor. When appropriate, the court may order the third party to make payment to the court for the handing over of the right to the creditor. Before the court issues the orders of this article, the third party may lodge the payment restricted by the orders set forth in A14.32 at the public lodgement office of the place of performance and report such lodgement to the court.

A14.34 When the account receivable is secured by a mortgage or pledge, when the court issues the orders set forth in A14.32 and A14.33, the court should notify the registry in charge of the registration of the mortgage or pledge to record the issue of such orders.

A14.35 For the compulsory execution on continuing payment, such as salary, the orders under A14.32 and A14.33 issued on the current payment should be binding on the forthcoming payment until the claims and the costs involved are satisfied.

A14.36 As to the execution on the debtor's right to take delivery of movables or immovables, the court should prohibit the debtor from disposing of the property and the third party from delivering or transferring it to the debtor. When appropriate, the court may order the third party to turn over such property to the court so that the property itself can be executed in accordance with the procedures for movables or immovables, as the case may be.

A14.37 As to the execution on the debtor's right to take delivery of vessels or aircraft, in addition to the application of the provisions of A14.30 and A14.31, the above should be applicable *mutatis mutandis*.

A14.38 When the execution is on the debtor's other rights, such as copyright, trademark right, or patent, the court may, depending on the nature of the right, follow the aforesaid procedures.

A14.39 If a third party opposes the orders of this section, he or she may, within ten days after receipt of the orders, file an objection with the court and the court should notify the creditor of the objection. When the creditor considers the third party's objection to be unjustified, he or she may, within ten days after receipt of the court notice, file a suit with the court. The court may, upon the application of the third party, revoke the issued order, provided that the creditor does not file a suit to protest the third party's objection.

(v) Execution Against Property of Public Juristic Person

A14.40 Considering public interest, the compulsory execution against a central or local government agency or any other public juristic person, which is not a financial institute and whose business is relevant to public living, should be conducted through the following procedures. Compulsory execution against a financial institute, or a public juristic person whose business is irrelevant to public living, should follow the ordinary procedures as stated above.

A14.41 First, the court should issue an order to such special debtor to urge him or her to, within thirty days after receipt of the order, discharge the debt or deliver the payment to the court for hand-over to the creditor. If the debtor fails to comply and the payment is budgeted, the court can conduct the execution against the treasury pursuant to the procedures mentioned in A14.32 and A14.33.

A14.42 The court can conduct compulsory execution on such debtor's property other than that for public use and necessary for the operation of its business. If necessary, the court can carry out the relevant investigation.

(c) Compulsory Execution Concerning Claims for the Delivery of Things

A14.43 When the execution title demands the debtor to deliver specific movables, the court may seize such property and deliver it to the creditors. When the object is a seal or a documentary proof and the above execution is in vain, the court may declare such object null and void by a public announcement and issue a new certificate to the creditor.

A14.44 When the execution title demands the debtor to turn over specific immovable, vessel, or aircraft, the court may terminate the debtor's or the third person's possession thereof and have the creditor possess the same.

(d) Compulsory Execution Concerning Claim for Feasance or Non-feasance

A14.45 When the creditor seeks to enforce a judgment ordering the debtor to perform a specific act and such act may be performed by a third party (e.g., the delivery of goods, or the construction of a building), the court may order a third party to act for the debtor and charge the costs for such third-party performance to the debtor, which should be paid in advance by the debtor or the creditor.

A14.46 However, when the act is personal and cannot be performed by anyone other than the debtor (such as an artistic performance), the court may set a definite period for the debtor's performance. If the debtor fails to comply, the court may impose a fine of not more than TWD 300,000 and not less than TWD 30,000 so as to force the debtor to complete the performance. If the debtor still fails to comply, the court may impose a fine within the range above or place him or her under custody.

A14.47 When the creditor seeks to enforce a judgment ordering the debtor not to do a specific act and the debtor fails to comply, the court may impose a fine of not more than TWD 300,000 and not less than TWD 30,000. If the debtor still fails to comply, the court may impose a fine within the range above or place him or her

under custody. If necessary, the court may, upon the creditor's request and at the debtor's expense, undo such act or otherwise eliminate its results.

A14.48 In carrying out the compulsory execution of A14.46 and A14.47, if necessary, the court may notify the relevant authority to provide appropriate assistance.

(15) HORTATORY PROCEEDINGS

A15.1 If the claim of the creditor is for the payment or delivery of a definite amount of money or a definite quantity of other fungible, or valuable securities, the creditor may apply to the court to issue, in accordance with the provisions relating to hortatory proceedings, an order for payment.

A15.2 Under the hortatory proceedings, the court gives a ruling on the application for an order of payment without summoning the debtor to court. An order for payment has the same effect as a final and irreversible judgment if the debtor does not file an objection within twenty days of receiving the order.

A15.3 However, in the event that the creditor fails to perform its counter-performance or if the service of the order for payment must be conducted in a foreign country or by publication, the hortatory proceedings may not be adopted.

A15.4 If the debtor files an objection with the court within the statutory time limit, the order for payment loses its effect, and hence the application of the creditor for such order is deemed the institution of an action or an application for reconciliation.

A15.5 Given such, if the debtor will almost certainly file an objection against the order for payment, it may not be advisable for the creditor to waste time applying for such order. Therefore, international commercial monetary claims are generally not resolved through hortatory proceedings. The court fees for applying for a payment order are fixed at TWD 500.

(16) ARBITRATION

A16.1 The Arbitration Law ('Law') provides for the legal basis, procedural rules and enforceability of arbitrations. The great majority of arbitrations conducted in the ROC are administered by the Chinese Arbitration Association, Taipei ('Association'). The Law accords the same legal effects as a final and irreversible judgment to an arbitration award between the parties, although its enforceability varies between domestic and foreign awards. An award may be challenged on certain grounds as enumerated in the Law and are subject to the courts' review.

A16.2 In arbitrations administered by the Association, the parties may state in the arbitration agreement how the arbitrator(s) is (are) to be appointed and their number. If the agreement is silent on this issue, three arbitrators are to be appointed. The parties may each appoint one and the two appointed arbitrators then appoint the third arbitrator. The parties may nominate non-Association listed arbitrators.

A16.3 In order to act as an arbitrator, a person must possess a reputation for integrity and impartiality as well as sufficient experience in an academic, legal, or professional field. Under the Law, the arbitrators make up the 'arbitral tribunal' and have the

power to set the time and place of arbitration as well as to appoint interpreters, summon witnesses, and determine the validity of arbitration agreement. The arbitrators should undergo training prescribed by the Ministry of Justice and the Executive Yuan. Arbitrators should maintain the confidentiality of the proceedings yet strictly disclose any circumstances which give rise to any conflicts of interest or doubts as to their impartiality and independence.

(a) Arbitration Procedures

A16.4 When a party applies to the Association for arbitration, he or she must submit a written application with the required arbitration fee and with enclosure of the arbitration agreement. Immediately after receipt of the application, the Association should deliver the application to the other party and request the other party to respond within ten days after receipt of the application.

(b) Evidence

A16.5 Both parties to the arbitration should make statements concerning the facts of the dispute and present their arguments. Their statements should be supported by evidence. The arbitrators can examine witnesses and appoint experts to offer opinions. In case judicial assistance is required for investigation of evidence, the arbitrators may request the court to conduct necessary investigations.

(c) Hearing

A16.6 The arbitrators should also determine on the location and date of the first hearing within ten days after their appointment. The arbitrators are required by the Law to make inquiries and direct both parties to present their cases. For arbitrations administered by the Association, hearings usually take place at the Association's facilities. The parties cannot challenge the arbitration procedures as adopted by the arbitrators. Arbitral tribunals must render an award within six months (extendible for an additional three months) of the commencement of the arbitration. In construction disputes, contractors prefer arbitration because most arbitrators are well versed in construction law or have extensive experience in the construction industry. Also, unlike a court judgment, which usually takes several years to become final, an arbitral award is final and conclusive when it is rendered within the nine-month time limit.

(d) Fees

A16.7 The Association publishes its schedule of fees and expenses to be paid in an arbitration administered by the Association. The arbitrators will decide which party should bear the fees and expenses in the award.

(e) Award

A16.8 When the arbitrators conclude the hearings, they should render an award within ten days. For arbitrations administered by the Association, the format of the award is similar to that of a judgment. If there is more than one arbitrator, an award must be made by a majority decision. The award must specifically identify the parties, counsel, if any, decision, pertinent facts and reasons. If the form is incomplete, the

court may refuse to enforce a domestic award; however, foreign awards do not have to follow this format.

(f) **Judicial Review of the Award**

A16.9 A domestic award can be enforced upon a court order permitting such enforcement. The court is not supposed to review the merits of the case again. The court may refuse to grant such an order if:

- the arbitral award concerns a dispute not contemplated by the terms of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award;
- the reasons for the arbitral award were not stated, as required, unless the omission was corrected by the arbitral tribunal; or
- the arbitral award directs a party to act contrary to the law.

A16.10 Either party may initiate a lawsuit requesting the court to revoke an award on the grounds of material defects as enumerated in the Law. These grounds include the invalidity of the arbitral agreement, the lack of a fair presence in the arbitration proceedings, the presence of a disqualified arbitrator, the criminal offense of an arbitrator, falsified evidence, and subsequent judicial overturn of the legal basis (such as a judgment or an administrative order) of the award, etc.

PART B—PARTICULAR CLAIMS

(1) CLAIMS FOR A BREACH OF CONTRACT ON THE SALE OF GOODS

B1.1 There are no special procedures for claims for a breach of contract on the sale of goods. The procedure is that set out in A(6) above.

(2) CLAIMS FOR THE TITLE TO OR DAMAGE TO GOODS IN THE JURISDICTION IN QUESTION

B2.1 There are no special procedures for claiming for the title to or damage to goods in the jurisdiction in question. The procedure is that set out in A(6) above.

(3) CLAIMS FOR MONEY DUE UNDER INSURANCE/REINSURANCE CONTRACT

B3.1 There are no special procedures for cases involving insurance and/or reinsurance disputes. A claim for money payable under an insurance or reinsurance contract is subject to ordinary or summary procedures, depending on the amount claimed: *see* A(6) above.

B3.2 According to the ROC Insurance Law, insurance is divided into property insurance and personal insurance. Property insurance includes fire insurance, marine insurance, inland and aviation insurance, liability insurance, bond insurance and other kinds of property insurance as approved by the Ministry of Finance. Personal insurances include life, health, personal accident, and annuity.

B3.3 Given the difference in nature, property insurance, and personal insurance are subject to different rules. For example, an insurer of personal insurance generally may not initiate a lawsuit to demand payment of the premium, while an insurer of property insurance may.

B3.4 The limitation period for a claim arising out of an insurance contract is two years, starting from the date the claim becomes exercisable.

B3.5 With respect to marine insurance, the Maritime Law also applies. When specified circumstances occur, the insured may abandon the insured vessel or cargo and transfer all his or her rights thereon to the insurer in exchange for payment of the full insured amount. The right of abandonment will expire two months after the cause triggering abandonment becomes known to the insured.

(4) CLAIMS TO ENFORCE CORPORATE SHARE-SALE TRANSACTION

B4.1 There are no special procedures for claims to enforce a share-sale transaction: *see* A(6) above. To execute a judgment ordering the transferring of shares, the general procedures set out in A14.25 are applicable.

B4.2 The Company Law prohibits a company from restricting the transfer of its shares in its articles of incorporation. However, the following are exceptions to the general principle of the free right to transfer shares:

- a company should neither redeem nor purchase its own shares unless under very limited circumstances;
- when a company has not been duly incorporated, the transfer of its shares should be prohibited;
- no transfer of shares by promoters should be permitted until one year after the company's incorporation; and
- during the terms of office, directors and supervisors of a public reporting company should not transfer more than 50% of the shares held by them; otherwise, they should automatically be discharged from the directorship or supervisorship.

B4.3 The transfer of shares requires delivery of the share certificates and endorsement where the share certificates are name bearing. Registration with the company is not a precondition for effecting the transfer but is a must if the transfer is to be asserted against the company (e.g., for sharing in dividends, attending shareholders' meetings, exercising voting rights, etc.).

(5) CLAIMS TO ENFORCE COPYRIGHT AND TRADEMARK

B5.1 As stated in A1.9, the newly established Intellectual Property Court has concurrent jurisdiction over civil disputes arising from laws relating to the protection of intellectual property. Therefore, in filing a lawsuit to enforce their claim, the owners of copyright and trademark may choose between the Intellectual Property Court and the common court.

(a) Copyright

B5.2 The Copyright Law provides protection to original works in the literary, scientific, artistic, or other academic domain without any registration requirements.

B5.3 Generally, works of a foreign national conforming to either of the following conditions are entitled to protection under the Copyright Law:

- When a work is first published in the ROC or in a place outside of the ROC and published in the ROC within thirty days thereafter; provided, however, that reciprocal protection is granted to works of ROC nationals.
- When, according to a treaty or agreement or to the copyright laws or customary practices in the author's home country, works of ROC nationals are entitled to protection.

B5.4 Unauthorized reproduction, public recitation, public broadcast, public presentation, public performance, public display, adaptation, compilation, or renting of another person's works are all prohibited under the Copyright Law. Against such infringement, the copyright owner may institute civil actions for monetary damages and injunction against further infringement, or for destruction of the infringing materials.

B5.5 The Copyright Law provides the copyright owner with better protection than the Civil Code. For instance, generally, under the Civil Code, the injured party bears the burden of proving his or her actual damages. However, the Copyright Law sets forth certain options for the injured party in the calculation of his or her damages. If the injured party has difficulty in proving his or her actual damages in accordance with the aforesaid options, he or she may request the court to determine the damages in a sum not less than TWD 10,000 and not more than TWD 1,000,000. In case the infringing act is material and is committed intentionally, the damages may be increased up to TWD 5,000,000.

B5.6 In addition, with regard to the import or export of goods that infringe on copyright or plate right, the copyright owner or the plate right owner may apply with the Customs to suspend the release of the goods by posting a bond in an amount equivalent to the duty-paid value of the import or the value of the export when leaving the shore that is appraised by Customs. Once the seizure is later proved to be unjustified, Customs should cancel the seizure. In such case, the owner should be liable for the damages resulting therefrom.

B5.7 The injured party may also request a publication of, at the expense of the infringer, the whole or a part of the contents of the court's judgment in newspapers or magazines to restore his reputation, and alert the public.

B5.8 The copyright owner may also file criminal complaints with the district attorney for the latter to commence an investigation and press criminal charges against the infringer.

B5.9 Only the expression of a work is protected by the copyright regime, not including underlying ideas, procedure, production process, system, method of operation, concept, principle, or discovery from the work.

B5.10 The right to seek compensation for infringement is extinguished if not exercised within two years from the time the claimant knows of the loss and the identity of the obligor, in any event not to exceed ten years from the time the infringement occurred.

B5.11 Work done prior to the ROC's WTO accession, if not yet protected by the Copyright Law, may enjoy copyright protection. However, any person, who, prior to the WTO accession, has either utilized or made significant investment to utilize the work, may continue to utilize the work for two years after the accession.

B5.12 Copyright owners may, with the approval of the government agency in charge of copyright matters ('Specialized Agency'), establish collective copyright management organizations (CMO) for the purpose of exercising the copyright or for collecting and distributing payments for use of copyrighted material. Exclusive licensees may also join a CMO. A CMO provides services for the management of economic rights under copyrights on behalf of multiple copyright owners, and uniform royalty rates and methods for distribution of royalties are adopted as the basis for collection and

distribution of royalties, and licence agreements with users are formed in the name of the CMO.

B5.13 The Specialized Agency has established a copyright review and mediation committee ('Committee') to handle (i) mediation of disputes between the CMO and users concerning payment for use of copyrighted material; (ii) mediation of disputes concerning copyright or plate rights; and (iii) other consultation in connection with copyright examination and mediation. Within seven days of the date of the conclusion of a mediation settlement, the specialized agency should submit the written mediation settlement statement for review by the court. After the mediation settlement has been approved by the court, the parties should not initiate any further public or private prosecution or action with respect to the mediated matter.

(b) Trademark

B5.14 Trademarks in the ROC are governed by the Trademark Law. Registration with the Intellectual Property Office (IPO), Ministry of Economic Affairs, is necessary for protection under the Trademark Law, except for well-known foreign trademarks.

B5.15 The exclusive right to use a registered trademark is attached to the designated classes of goods or services. In reviewing an application for registration, the primary check point is whether the trademark at issue is distinctive and is not identical or confusingly similar to any other registered trademarks.

B5.16 When an application for registration of a trademark is found to be in conformity with the Trademark Law, the Ministry grants an approval and publishes the matter in the Trademark Gazette. If no opposition is raised within three months from the publication or is sustained, the trademark for the application may be registered and the date following the expiration of the said period should be the registration date of the trademark.

B5.17 In addition to a prior opposition, an interested party can apply to the IPO for a review to invalidate a registration in case the registration should not have been approved in the first place. Either party may appeal the IPO decision through the administrative appeal procedure and ultimately to the administrative court's judicial review.

B5.18 If an application for registration is rejected or the approval of the trademark application is revoked by the IPO, the applicant may, within thirty days following the date of service of the written decision, institute an administrative appeal.

B5.19 A trademark owner or licensee may sue an infringer for damages, injunction, and destruction of the trademark or related documents in the commission of the infringement. He or she may also initiate a criminal action against an infringer. The owner may request publication in the newspaper, at the expense of the infringer, of the contents, in full or in part of the court judgment so as to restore the image of the trademark and alert the public.

B5.20 Contrary to the general principle that the plaintiff needs to prove and quantify the loss suffered in order to claim monetary damages, the Trademark Law offers a more thorough protection by easing this burden of proof. If the plaintiff cannot prove the amount of his or her actual damages, he or she may take the difference, as the amount of damages, which is derived from subtracting the profit gained after such infringement from the profit that would normally have been gained from the

use of the registered trademark. Or, he or she may claim damages in an amount no more than 1,500 times the unit retail price of the seized commodities in question, provided, however, that if the quantity of the commodities under seizure exceeds 1,500 pieces, the amount of compensation for damages should be assessed based on their total selling price. Alternatively, the plaintiff may also use the total revenue that the infringer receives from the infringing products, minus the costs thereof, in his or her calculation of the damages. If the infringer cannot prove his or her costs, the total revenue can be used to determine the damages. In 2011, the amended Trademark Law further allows the plaintiff to claim damages in an amount equivalent to the royalties he or she can potentially receive from licensing the registered trademark.

(6) CLAIMS FOR INTEREST IN A BANK ACCOUNT

B6.1 For a claim for interest in a bank account, summary procedures should be followed, irrespective of the amount claimed. With respect to the summary procedures, please refer to A10.1 and A10.2.

(7) CLAIMS FOR RECOVERY OF A CHARTER HIRE/DAMAGES UNDER A CHARTERPARTY

B7.1 There are no special procedures for a claim for the recovery of a charter hire and damages under a charter party. The procedure is that set out under A(6) above. However, in terms of the compulsory execution of a judgment, please refer to B9.1/B9.5.

(8) CLAIMS FOR AMOUNTS DUE UNDER A JOINT VENTURE AGREEMENT

B8.1 There are no special procedures for claims on amounts due under a joint venture agreement. The procedure is that set out under A(6) above.

(9) ARREST OF VESSELS

B9.1 To conduct a compulsory execution on a vessel, the application should be filed with the court within whose jurisdiction the vessel is moored. The provisions pertaining to compulsory execution against immovables may apply *mutatis mutandis* to vessels as well as vessels under construction except for limited exceptions such as non-propelled vessels, small motor vessels, official vessels, and naval vessels, which are subject to the compulsory execution procedure for movables.

B9.2 A seizure of vessels only navigating in the territory of the ROC can be effected by a proclamation with an actual arrest so that the vessel can continue to navigate. For other vessels, a seizure is conducted by:

- attaching a seal on the vessel;
- taking possession of all necessary deeds, including the document proving the nationality of the vessel; or

- ordering the vessel to moor at a designated mooring and then notifying the competent authority. However, upon the application of the party and the interested person and the consent of the creditor, the court may permit the vessel to navigate when it deems proper.

B9.3 While final execution can be conducted at any time, a provisional seizure may only be carried out before the subject vessel completes preparation for the commencement of the voyage or after the voyage is finished. However, such restriction is not applicable in the event that the execution is for a claim which has been incurred for the purpose of realizing the anticipated voyage or for a claim of damage incurred from the collision of ships.

B9.4 The seizure of a vessel may be revoked if the debtor or an interested party provides security in an amount equal to either the value of the claim plus the cost of the execution or the vessel's value. A written guarantee by insurer or bank can serve as such security.

B9.5 When a foreign vessel is sold by auction conducted by the ROC court, the preferential rights and mortgage existing thereon will be governed by the laws of the country of its nationality.

(10) ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

(a) Enforcement of Foreign Judgments

B10.1 The enforcement of a foreign judgment in the ROC is governed by Article 402 of the Code of Civil Procedures and Article 4-1 of the Compulsory Execution Law. The ROC court will recognize and enforce a final and irreversible foreign judgment on a reciprocal basis, unless the foreign court has no jurisdiction over the matter, or the defendant of a foreign default judgment has not been properly served, or the judgment contravenes the ROC's public order or good morals.

B10.2 In the case of a foreign default judgment, the summons for the commencement of the lawsuit must either have been legally served on the defendant in the foreign country, or the defendant must have been served through ROC judicial assistance. Failure to meet either of these two requirements will render the judgment unenforceable in Taiwan.

B10.3 Concerning ROC judicial assistance, it should be emphasized that service of process in Taiwan can only be conducted by the court, not by the parties or their attorneys.

B10.4 The procedure for service through ROC judicial assistance is as follows:

- The plaintiff must apply for rogatory letters to be issued by the foreign court. The ROC courts will not serve the pleading without letters rogatory, which should indicate the willingness of the foreign court to provide reciprocal assistance to the ROC courts under similar situations, and has to specify each defendant's name, nationality, and address of domicile.
- The copies of the summons must be certified by the foreign court.

- The letters rogatory and summons must be translated into Chinese and be attached with the Chinese translation. The translations should be certified by the translator and notarized by a notary public to prove that they are consistent with the original language.
- The plaintiff then needs to send the letters rogatory and the summons together with their Chinese translation to the proper agency in the foreign country for transmission through diplomatic or quasi-diplomatic channels.

B10.5 The plaintiff needs to initiate an action with the ROC court at the place of the debtor's residence, or where the debtor has no residence in the ROC, where the object is located or where the execution is to be carried out, to enforce the foreign judgment. It is not for the court to review the merits of the case, but rather only focus on whether there exists any statutory ground not to enforce the judgment. In the absence of any such grounds, the court will render a judgment permitting the enforcement of the foreign judgment. The defendant can appeal such judgment through the normal procedure.

(b) Enforcement of Foreign Arbitral Awards

B10.6 The Arbitration Law institutionalizes arbitration as an alternative to litigation in the resolution of commercial disputes. Foreign arbitral awards, defined as those granted outside of the ROC, or made pursuant to foreign laws, may be recognized and enforced on a reciprocal basis. Enumerated grounds under the Arbitration Law for a refusal to recognize a foreign award include contravention of ROC public order or morality and substantial procedural defects in the arbitration proceedings.

B10.7 Similar to the enforcement of foreign judgments, the party seeking to enforce the arbitral award needs to initiate an action with the ROC court. The court is not supposed to retry the case but only review whether there exist any statutory grounds not to enforce such award. Either party may appeal any unfavourable judgment by the court.

