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Dispute Resolution Law Guide 2017

争议解决法律指南 2017

Jurisdiction: Taiwan

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1. What is the structure of the court system in respect of civil proceedings?

The 'three-level and three-instance' system is adopted for civil proceedings in Taiwan. 'Three-level' refers to the three levels of court: the District Court, High Court and Supreme Court. 'Three-instance' means a case is initially heard by the District Court (first instance), and may be appealed to the High Court (second instance), and further to the Supreme Court (third instance) if applicable. While factual and legal issues of a case are heard in the first and the second instances, only an erroneous application or violation of laws and regulations is reviewed in the third instance. No appeal may be taken in the third instance unless the judgment is in contravention of laws and regulations; an appeal to the Supreme Court is also subject to a threshold of value of the subject matter.

2. What is the role of the judge in civil proceedings?

The role of the judge in civil proceedings in Taiwan has some features of an inquisitorial system. Under some circumstances, the judge actively leads the proceedings. For example, according to the law, if the judge cannot come to a judgment on the basis of the evidence provided by the parties, the judge can decide to investigate other evidence to discover the truth[1]; the judge should direct the parties to present their arguments appropriately and completely on the facts and the law regarding the matters at issue[2]. The judge should ask or lead the parties to make representations, provide evidence or make other statements on the facts or the law[3]. The above embodies the features of an inquisitorial system.

3. Are court hearings open to the public? Are court documents accessible to the public?

Court hearings are open to the public[4], but they are closed to the public in certain instances, e.g. cases regarding applications for a protective order[5], cases concerning trade secrets[6], juveniles[7], sexual assaults[8], families[9] and mediation[10].

Court documents (including parties' submissions, evidence investigated by the court, hearing minutes and expert opinions) are not accessible to the public. Only the parties, advocates,

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1 Section 288(1) of the Code of Civil Procedure
2 Section 199(1) of the Code of Civil Procedure
3 Section 199(2) of the Code of Civil Procedure
4 Section 86 of the Court Organic Act
5 Section 12(3) of the Domestic Violence Prevention Act
6 Section 14(2) of the Trade Secrets Act
7 Section 34 of the Juvenile Proceeding Act
8 Section 18 of the Sexual Assault Prevention Act
9 Section 9 of the Family Act
10 10 Section 410(2) of the Code of Civil Procedure

interveners and other persons relevant to the case and permitted by the court can access court documents[11].

4. Do all lawyers have the right to appear in court and conduct proceedings on behalf of their client? If not, how is the legal profession structured?

There is no barrister-solicitor system in Taiwan. An attorney who is legally licensed by the government and whose licence is not revoked or by any order suspended is eligible to appear in court and conduct proceedings on behalf of the client, regardless of the type of the case or the specialty involved[12].

A lawyer must join a local bar association to practise in a specific region[13]. Currently, there are 16 regional bar associations in Taiwan. In other words, although a lawyer may be eligible to defend a client, if he/she would like to appear in court in a certain region, he/she must join the respective regional bar association.

5. What are the limitation periods for commencing civil claims?

Unless shorter periods are provided by the law, the limitation period for commencing civil claims is 15 years starting from the moment the claim can be exercised[14].

Some examples of a shorter limitation period are as follows:

(a) if the claim is for the payment of interest, dividends, rental, maintenance, pensions, or other periodical prestations whose interval is equal to or less than one year, the limitation period for the claim for each payment or each prestation is five years[15];

(b) if the claim is for:

(i) transport charges;

(ii) remuneration for medical practitioners, pharmacists, nurses, attorneys, certified public accountants, public notaries or technical experts; or

(iii) the price of goods or products supplied by merchants or manufacturers, the limitation period is two years[16];

(c) the limitation period for a claim for compensation for torts is two years starting from when the claimant becomes aware of the damage and the person who should be liable for the damage; however, the limitation period can in no way exceed 10 years after the occurrence of the tort[17].

6. Are there any pre-action procedures with which the parties must comply before commencing proceedings?

There are usually no requisite pre-action procedures before civil proceedings are commenced, except for certain matters where compulsory mediation before the commencement of litigation proceedings is required by law. Such matters include disputes arising from adjacency of real estate, determination of boundaries or demarcation of real estate, co-ownership of real estate, rentals of real estate, superficies, traffic accidents, medical treatments, employment contracts, partnerships, proprietary rights between spouses or certain relatives, and proprietary rights where the value of

[11] Section 242(1), (2) and (6) of the Code of Civil Procedure and section 2 of the Rules of Reviewing Court Documents
[12] Sections 3, 4 and 5 of the Lawyer's Act
[13] Section 11(1) of the Lawyer's Act
[14] Sections 125 and 128 of the Civil Code
[15] Section 126 of the Civil Code
[16] Section 127 of the Civil Code
[17] Section 197(1) of the Civil Code

the subject matter is less than NTD 500,000[18]. Mediation may also be initiated upon a party's motion before or during the litigation proceedings[19].

The court usually recommends mediation before any litigation[20].

7. What is the typical civil procedure and timetable for the steps necessary to bring the matter to trial?

To bring a matter to trial, besides filing a pleading specifying the counterparty and the subject matter, the plaintiff has to advance the court fee; otherwise, the court may dismiss the claim. When the dispute concerns proprietary rights, the court fee is calculated on the basis of the value of the subject matter. When the dispute is not relevant to proprietary rights, the court fee is NTD 3,000 for the first instance[21].

Certain cases are subject to compulsory mediation before the commencement of litigation proceeding, as explained in question 6.

Usually, it takes six and eight months respectively to complete the litigation proceedings for the first and second instances, and another 6–12 months for the third instance proceedings.

8. Are parties required to disclose relevant documents to other parties and the court?

The court may order the parties to specify and submit the evidence for issues identified by the court[22]. Where a document specified as evidence is in the opposing party's possession, a party may move the court to order the opposing party to provide such document[23]. Parties are required by law to provide the following documents: documents created for the interests of the other party, commercial accounting materials, and documents created regarding matters relating to the action[24].

9. Are there rules regarding privileged documents or any other rules which allow parties to not disclose certain documents?

In civil proceedings, the parties are obligated to adduce documents created regarding matters relating to the action. However, if the documents involve the privacy or trade secrets of either party or a third party, and if disclosed, the relevant party may suffer from material impairment, the party in possession of the

documents may refuse to provide them[25]. Even when such documents are provided, the court may, on motion or sua sponte, render a ruling to deny the inspection, copying or photographing of such documents by those who have the right to access the court documents[26].

10. Do parties exchange written evidence prior to trial or is evidence given orally? Do opponents have the right to cross-examine a witness?

A copy of any submissions sent to the court by a party is required to be provided to the opposing party[27]. The parties may therefore exchange written evidence via the submissions prior to or during the trial. Some evidence may be given orally, such as the testimony of a witness or an expert.

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18 Section 403(1) of the Code of Civil Procedure
19 Sections 404(1), 405(1), 420-1(1), 463 and 481 of the Code of Civil Procedure, and section 9 of the Key Points for the Court to Promote Mediation
20 Section 8 of the Key Points for the Court to Promote Mediation
21 Section 77-14(1) of the Code of Civil Procedure
22 Section 268 of the Code of Civil Procedure
23 Sections 342(1) and 343 of the Code of Civil Procedure
24 Section 344(1) of the Code of Civil Procedure
25 Section 344(2) of the Code of Civil Procedure
26 Section 242(3) of the Code of Civil Procedure
27 Sections 267 and 268 of the Code of Civil Procedure

Under the Code of Civil Procedure, parties may request the court to make inquiries that in their opinion are necessary, or make such inquiries themselves with the permission of the court[28]. In practice, some judges examine the witness themselves, and others let the parties examine the witness directly, depending on the judge's discretion and style.

11. What are the rules that govern the appointment of experts? Is there a code of conduct for experts?

Under the Code of Civil Procedure, experts are appointed by the court. Before the appointment, the court may seek the parties' opinion on the candidates. If the parties have agreed on an expert, the court should appoint such expert, except where the court considers that the appointment of such expert is grossly inappropriate[29]. After an expert is appointed, the court may sua sponte replace the expert if necessary[30]. The parties may appoint an expert; however, the opinion made by such expert has no legal effect under Taiwanese law.

Before giving expert testimony, an expert should make a written oath indicating that he/ she will give just and truthful testimony and is willing to be charged with perjury for intentionally giving any false statement[31]. Instead of oral testimony, an expert may present written testimony subject to the court's order[32].

12. What interim remedies are available before trial?

A provisional attachment, a provisional injunction and an injunction for maintaining a temporary status quo are some of the interim remedies available before trial. A provisional attachment is an interim remedy for monetary claims or claims that can be changed to monetary claims[33]. A provisional injunction is an interim remedy for non-monetary claims[34]. An injunction for maintaining a temporary status quo is an interim remedy used to prevent material harm or imminent danger or other similar events[35].

No provisional attachment or provisional injunction is to be granted by the court unless it would be impossible or extremely difficult to satisfy the claim by compulsory execution in the future[36]. Further, where necessary, for the purposes of preventing material harm or imminent danger or other similar circumstances, an application may be made for an injunction to maintain a temporary status quo with regard to the legal status in dispute[37].

Other than the aforesaid interim remedies, there is an interim measure for evidence preservation. Where the evidence may become lost, destroyed or difficult to be adduced in court, or with the consent of the opposing party, a party may move the court to preserve evidence. Furthermore, in order to secure the legal rights and interests, a party may move for expert testimony, inspection or preservation of documentary evidence to ascertain the current status of a matter or an object[38]. The motion for evidence preservation may be made before or after filing a lawsuit[39].

13. What does an applicant need to establish in order to succeed in such interim applications?

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28 Section 320(1) of the Code of Civil Procedure
29 Section 326(1) and (2) of the Code of Civil Procedure
30 Section 326(3) of the Code of Civil Procedure
31 Section 334 of the Code of Civil Procedure
32 Section 335(1) of the Code of Civil Procedure
33 Section 522(1) of the Code of Civil Procedure
34 Section 532(1) of the Code of Civil Procedure
35 Section 538(1) of the Code of Civil Procedure
36 Sections 523(1) and 532 (2) of the Code of Civil Procedure
37 Section 538(1) of the Code of Civil Procedure
38 Section 368(1) of the Code of Civil Procedure
39 Section 369(1) of the Code of Civil Procedure

To successfully obtain a provisional attachment, a provisional injunction or an injunction for maintaining a temporary status quo, the applicant must satisfy the respective requirements thereof: the type of claim and the urgency and necessity for securing such claim. Please see question 12.

14. What remedies are available at trial?

Remedies available at trial include monetary relief, declaratory relief, revocation relief and Actspecific performance. Specific performance is very rare and is not available to all types of claims.

15. What are the principal methods of enforcement of judgment?

To enforce monetary claims where there is more than one creditor, all the creditors can participate in the distribution of the debtor's property[40]. To enforce against movable property, the method may be attachment, auction or sale[41]. To enforce against real estate, the method may be attachment, auction or compulsory administration[42]. To enforce a claim for delivery of movable property, the court may deliver such property to the creditor[43]. To enforce a claim for delivery of real estate, the court may remove the possession thereupon by the debtor and deliver the real estate to the creditor[44].

16. Are successful parties generally awarded their costs? How are costs calculated?

Court fees should be eventually borne by the losing party[45]. As to the attorneys' fees, for litigation proceedings at the third instance, attorneys' fees are deemed as part of the court fees, and the recoverable amount is determined by the court[46]. For actions relevant to proprietary rights, the recoverable amount determined by the court should not exceed 3% of the value of the subject matter or NTD 500,000, whichever is lower; for actions not relevant to proprietary rights, the recoverable amount may not exceed NTD 150,000. However, for litigation proceedings at the first and second instances, attorneys' fees are not considered as part of the court fees and are not recoverable, unless otherwise agreed by the parties.

17. What are the avenues of appeal for a final judgment? On what grounds can a party appeal?

A District Court judgment may be appealed to the High Court, and a High Court judgment may be appealed to the Supreme Court. An appeal to the Supreme Court must be based on an erroneous application or violation of laws and regulations by the High Court. For a final and binding judgment, a rehearing action may be initiated subject to certain circumstances, e.g. where the application of law is manifestly erroneous; the rationale manifestly contradicts the judgment; the court which entered the judgment is not legally organised; a disqualified judge has participated in the judgment; one party was not legally represented in the action; a piece of crucial evidence was fabricated or altered; one party discovers evidence which has not been considered or which becomes available after the final and binding judgment is rendered[47].

18. Are contingency or conditional fee arrangements permitted between lawyers and clients?

Contingency or conditional fee arrangements are not permitted for certain types of cases, such as family, juvenile and criminal cases[48]. Other than the above, such arrangements are permissible.

19. Is third-party funding permitted? Are funders allowed to share in the proceeds awarded?

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40 Section 31 of the Compulsory Enforcement Act
41 Section 45 of the Compulsory Enforcement Act
42 Section 75(1) of the Compulsory Enforcement Act
43 Section 123(1) of the Compulsory Enforcement Act
44 Section 124(1) of the Compulsory Enforcement Actspecific
45 Section 78 of the Code of Civil Procedure
46 Section 466-3(1) of the Code of Civil Procedure
47 Section 496(1) of the Code of Civil Procedure
48 Section 35(2) of the Lawyer's Rules of Ethic

Section 157 of the Criminal Code reads: "A person who for the purpose of profits, instigates, or invites and guarantee for wining for a lawsuit for the others shall be sentenced to imprisonment for less than one year, short-term imprisonment, or a fine of no more than fifty thousand yuan." In addition to this section, there are no specific laws or regulations forbidding third-party funding or the sharing of proceeds in Taiwan. As long as the third-party funding does not constitute the scenario under Section 157, it should be permissible. However, if a party's attorney is such a third party who provides funds and shares in the proceeds awarded, the portion shared may be deemed as a contingency or conditional fee, and will have to be subject to relevant restrictions. (See question 18.)

20. May parties obtain insurance to cover their legal costs?

Parties may procure insurance to cover their legal costs if such insurance is available to them.

21. May litigants bring class actions? If so, what rules apply to class actions?

Litigants may bring class actions under the laws of Taiwan, especially for consumer disputes and environmental disputes.

Regarding consumer disputes, where numerous consumers are injured as a result of the same incident, a consumer advocacy group may sue in its own name if 20 injured consumers or more have assigned their claims to the group[49].

Regarding environmental disputes, take the Air Pollution Control Act ('APCA') as an example: where a public or private entity violates the APCA or the relevant regulations and the competent authority is negligent in administration, the aggrieved persons or public interest groups may file a lawsuit against the competent authority to seek a ruling from the administrative court to order the competent authority to carry out its duties[50]. Other similar laws and regulations concerning environmental class actions include section 72(1) of the Water Pollution Control Act, section 72(1) of the Waste Disposal Act and section 59(1) of the Marine Pollution Control Act.

22. What are the procedures for the recognition and enforcement of foreign judgments?

A final and irrevocable foreign court judgment or decree can be recognised and enforced by a court judgment in Taiwan. Pursuant to Section 402 of the Code of Civil Procedure, a final and binding judgment rendered by a foreign court shall be recognised, except in the following circumstances:

(a) where the foreign court lacks jurisdiction pursuant to Taiwanese law;

(b) where a default judgment is rendered against the losing defendant, except where the notice or summons of the initiation of action had been legally served in a reasonable time in the foreign country or had been served through judicial assistance provided under Taiwanese law;

(c) where the content of the judgment or its litigation procedure is contrary to the public order or good morals of Taiwan; or

(d) where there exists no mutual recognition between the foreign country and Taiwan (i.e. where judgments given by the courts in Taiwan are not reciprocally recognised by the courts of the foreign country concerned).

Courts in Taiwan generally apply the principle of international comity in discerning whether reciprocal recognition exists. The existence of diplomatic ties is not an absolute factor when determining reciprocal recognition.

Recognition and enforcement of foreign judgments in Taiwan is subject to the court trial process, which includes courts of three levels: the District Court, High Court and Supreme Court.

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[49] Section 50(1) of the Consumer Protection Act
[50] Section 81(1) of the Air Pollution Control Act

23. What are the main forms of alternative dispute resolution?

The primary forms of alternative dispute resolution in Taiwan are arbitration and mediation.

24. Which are the main alternative dispute resolution organisations in your jurisdiction?

Arbitration associations are the main alternative dispute resolution organisations in Taiwan. Currently, there are four arbitration associations in Taiwan: the Chinese Arbitration Association, Taipei ('CAA'), the Taiwan Construction Arbitration Association, the Chinese Construction Industry Arbitration Association, and the Chinese Real Estate Arbitration Association. Among them, the CAA is the one with the longest history and capable of handling international arbitration.

Mediation may be conducted under the direction of the court by one to three court-appointed mediators[51], or may be conducted by the local mediation committee established in accordance with the Mediation Act for City, County and Township[52] or by the private sector such as the Mediation Centre of the CAA. For disputes regarding the performance of government procurement contracts, parties may apply for mediation with the Complaint Review Board for Government Procurement in the city/county government or the Public Construction Commission[53].

25. Are litigants required to attempt alternative dispute resolution in the course of litigation?

As explained in question 6, certain types of disputes are subject to compulsory mediation before litigation. Such disputes include those arising from adjacency of real estate, determination of boundaries or demarcation of real estate, co-ownership of real estate, rentals of real estate, superficies, traffic accidents, medical treatments, employment contracts, partnerships, proprietary rights between spouses or certain relatives, and proprietary rights where the value of the subject matter is less than NTD 500,000[54].

26. Are there any proposals for reform to the laws and regulations governing dispute resolution currently being considered?

There has been continuing discussion on the reform of the Arbitration Act and accordingly proposals are floated from time to time. There is also discussion on whether mediation for disputes under the Government Procurement Act may be conducted by the private sector.

27. Are there any features regarding dispute resolution in your jurisdiction or in Asia that you wish to highlight?

Sections 13–15 of the Cross-Strait Bilateral Investment Protection and Promotion Agreement between China and Taiwan ('Cross-Strait BIA') concern dispute resolution. According to the Cross-Strait BIA, where an investor of a party (i.e. Taiwan or China) enters into a commercial contract with a natural person, juridical person or any other organisation of the other party, the contract may include an arbitration clause. Where no arbitration clause is included, the parties to the contract may consult with each other to submit the dispute to arbitration should a dispute occur[55]. The working group of the Cross-Strait Economic Cooperation Committee may assist to resolve investment disputes[56].

Investors from Taiwan and China may utilise the dispute resolution mechanisms under the Cross-Strait BIA to resolve investment disputes.

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51 Section 406-1(2) of the Code of Civil Procedure
52 Section 1 of the Mediation Act for City, County and Township
53 Section 85-1(1) of the Government Procurement Act
54 Section 403(1) of the Code of Civil Procedure
55 Section 14(2) and (3) of the Cross-Strait BIA
56 Section 15(2) of the Cross-Strait BIA

1. 在民事诉讼方面，法院系统的结构是怎样的？

台湾民事诉讼采取“三级三审”制。“三级”指三个法院等级：地方法院、高等法院和最高法院。“三审”指一个案件首先经地方法院审判（第一审），对地方法院之判决结果不服时，可上诉至高等法院（第二审），再有不服时，可上诉至最高法院（第三审）。案件的事实及法律争议由第一审和第二审法院作实质审判，只有原判决出现法律法规适用不当或违反法律法规时，才能上诉至第三审；原判决无前述情事时，不得上诉至第三审；只有诉讼标的价值达到一定数额时，才能向最高法院提起上诉。

2. 法官在民事诉讼中的角色是什么？

台湾民事诉讼中，法官的角色具有职权进行主义的若干特点。某些情况下，法官会积极主导诉讼程序。比如，法律规定，如果法官无法基于诉讼双方提交的证据作出判决时，为找出事实真相，可依职权调查证据[1]；法官应指导诉讼双方就争论问题之事实和法律为适当且完全之辩论[2]。法官应要求或引导诉讼双方进行事实上或法律上之陈述、提交证据或作出其它陈述[3]。以上这些体现了职权进行主义的特点。

3. 庭审是否向公众开放？公众是否能够查阅法庭文件？

庭审原则上是对公众开放的[4]，但某些情况除外，比如有关申请保护令的案件[5]、涉及商业秘密[6]、青少年[7]、性侵犯[8]、家事事件[9] 和调解[10]的案件。

法庭文件（包括双方提交的文件、法院调查之证据、庭审记录和专家意见书）不对公众公开。只有当事人、诉讼代理人、参加人和其他经法庭许可的案件有关人员才能查看法庭文件[11]。

4. 所有律师均有权代表其委托人出庭并参加诉讼吗？如果不是，律师职业的结构是怎样的？

台湾并没有诉务律师和事务律师之分。不论案件是什么类型或涉及哪个专业，持有政府颁发的合法资格证且其资格未被撤销或被命令暂停执业的律师均可以代表委托人出庭进行诉讼[12]。

律师为在特定地区执业，必须加入该地区的地方律师公会[13]。目前，台湾有 16 家地区性律师公会。换言之，尽管律师可以代表委托人进行辩诉，但想要在某个地区出庭，必须加入相应地区的律师公会。

5. 提起民事请求的时效期为多久？

除非法律规定了更短的期限，提起民事诉讼请求的时效期为自请求权可行使之时起 15 年[14]。

下列是时效期限较短的一些示例：

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1 《民事诉讼法》第 288 条第 1 项
2 《民事诉讼法》第 199 条第 1 项
3 《民事诉讼法》第 199 条第 2 项
4 《法院组织法》第 86 条
5 《家庭暴力防治法》第 12 条第 3 项
6 《营业秘密法》第 14 条第 2 项
7 《少年事件处理法》第 34 条
8 《性侵害犯罪防治法》第 18 条
9 《家事事件》第 9 条
10 《民事诉讼法》第 410 条第 2 项
11 《民事诉讼法》第 242 条第 1、2、6 项以及《民事阅卷规则》第 2 条
12 《律师法》第 3、4 和 5 条
13 《律师法》第 11 条第 1 项
14 《民法》第 125 和 128 条

(a) 如果请求的是付息、分红、租金、赡养费、退职金或其他一年或不及一年的定期给付债权，其各期给付请求权的时效期限为五年[15]；

(b) 如果请求的是：

(i) 运送费；

(ii) 执业医师、药剂师、护士、律师、注册会计师、公证人或技师的报酬；或

(iii) 商家或制造商供应的商品或产品的代价；其时效期限为两年[16]；

(c) 侵权诉讼的时效期限为自请求权人发现损害并知晓赔偿义务人时起两年。但是，任何情况下诉讼时效期限都不超过发生侵权之后 10 年[17]。

6. 有哪些诉前程序是当事人在提起诉讼之前必须遵守的？

通常情况下，不存在民事诉讼开始之前必须遵守的诉前程序，但对于某些诉讼事项，法律要求在诉讼程序开始之前进行强制调解。上述事项包括不动产相邻关系、不动产界线或界标的确定、不动产共同所有权、不动产的租金、地上权、交通事故、医疗、雇佣合同、合伙关系、夫妻或特定亲属间的财产权以及标的价值低于 50 万新台币的其他财产权引起的争议[18]。起诉前或诉讼程序进行中，得因当事人一方之声请而进行调解[19]。法院通常建议在提起诉讼之前先进行调解[20]。

7. 案件进入审理之前要经过哪些典型的民事程序？有什么样的时间表？

提起诉讼时，除了提交诉状说明诉讼对方和标的之外，原告需要预付裁判费，否则，法院可驳回其诉。争议涉及财产权时，将按照诉讼标的的价值计算裁判费；争议未涉及财产权时，第一审裁判费为 3 千新台币[21]。

某些案件需要在开始诉讼程序之前进行强制调解，具体见问题 6。

通常情况下，第一审和第二审的诉讼程序分别需费时六个月和八个月，而第三审则费时六至十二个月。

8. 当事人是否必须向其他当事人和法院披露相关文件？

法院可命令双方就特定事项表明并提交证据[22]。如果对方当事人持有被视为证据的文件，另一方可要求法院命令对方当事人提供所述文件[23]。法律要求双方提供以下文件：为另一方利益而作之文件、商业会计资料以及与本次诉讼有关事项所作之文件[24]。

9. 是否有关于特权文件的规则或允许当事人不披露特定文件的任何其他规则？

民事诉讼中，双方有义务提出与本次诉讼有关事项所作之文件。但是，如果该等文件涉及一方或第三方的个人隐私或商业秘密，披露之后会给有关当事人造成重大损害，持有所述文件的当事人可拒

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15 《民法》第 126 条
16 《民法》第 127 条
17 《民法》第 197 条第 1 项
18 《民事诉讼法》第 403 条第 1 项
19 《民事诉讼法》第 404 条第 1 项、405 条第 1 项、420-1 条第 1 项、463 和 481 条及《法院加强办理民事调解事件实施要点》第 9 条
20 《法院加强办理民事调解事件实施要点》第 8 条
21 《民事诉讼法》第 77-14 条第 1 项
22 《民事诉讼法》第 268 条
23 《民事诉讼法》第 342 条第 1 项和 343 条
24 《民事诉讼法》第 344 条第 1 项

绝提供该等文件[25]。即使该等文件经提供后，法院可依声请或依职权裁定禁止原有权查看法庭文件的人员阅览、复制或摄影该等文件[26]。

10. 当事人在审理之前是否交换书面证据？或是否提供口述证据？对方是否有权盘问证人？

一方向法院提交任何文件时，需要将该文件的副本一份提供给对方当事人[27]。因此，在庭审之前或审理过程中，双方可通过提交文件交换书面证据。有些证据可以口头提供，比如证人或专家证词。

根据《民事诉讼法》，双方可请求法院对证人为必要之发问，或征得法院许可后自行发问[28]。实际上，有些法官自行讯问证人，有些则让诉讼双方诘问证人，这取决于法官之自由裁量和行事方式。

11. 关于专家任命的规则是怎样的？是否有专家行为准则？

根据《民事诉讼法》，鉴定人由法院选任。选任鉴定人之前，法院可就其人选征询双方意见。如果双方已经合意指定某位鉴定人，则法院须选任该名鉴定人，除非法院认为该人选显不适当[29]。鉴定人选任之后，如有必要，法院可依职权撤换之[30]。双方可合意选任鉴定人；但是，根据台湾法律，该等鉴定人发表的意见不具有法律效力。

在鉴定前，鉴定人应具结，表明其作出的鉴定是公正、真实的，如果有意作出任何虚假陈述，愿意因伪证罪接受法律的制裁[31]。除了口头说明，鉴定人可按照法院命令作出鉴定书[32]。

12. 案件审理前可获得哪些临时救济？

假扣押、假处分和定暂时状态之处分是审前可获得的临时救济。假扣押是针对金钱请求或可以转变成金钱请求的请求采取的临时救济[33]，假处分是针对非金钱请求采取的临时救济[34]，而定暂时状态之处分则是用来防止造成重大损害或避免急迫之危险或其它类似事件的临时救济[35]。

除非今后无法或很难透过强制执行来履行所述请求，法院一般不会准予假扣押或假处分[36]。此外，在必要的时候，为了防止造成重大损害或避免急迫之危险或其它类似情况，可以就争执之法律关系声请定暂时状态之处分[37]。

除了以上所述的临时救济，还可声请证据保全。如果证据可能会灭失、遭到破坏或难以作为呈堂证供，或征得对方当事人的同意，一方可声请法院保全证据。此外，为了保护合法权利和利益，一方可声请鉴定，勘验或保全书面证据，以证实事或物的现状[38]。证据保全之声请可在提起诉讼之前或之后提出[39]。

13. 申请人需要确立些什么才能成功申请此类救济？

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25 《民事诉讼法》第 344 条第 2 项
26 《民事诉讼法》第 242 条第 3 项
27 《民事诉讼法》第 267 和 268 条
28 《民事诉讼法》第 320 条第 1 项
29 《民事诉讼法》第 326 第 1、2 项
30 《民事诉讼法》第 326 条第 3 项
31 《民事诉讼法》第 334 条
32 《民事诉讼法》第 335 条第 1 项
33 《民事诉讼法》第 522 条第 1 项
34 《民事诉讼法》第 532 条第 1 项
35 《民事诉讼法》第 538 条第 1 项
36 《民事诉讼法》第 523 条第 1 项和 532 条第 2 项
37 《民事诉讼法》第 538 条第 1 项
38 《民事诉讼法》第 368 条第 1 项
39 《民事诉讼法》第 369 条第 1 项

要成功声请假扣押、假处分或定暂时状态之处分，申请人必须分别满足各种临时救济所对应的请求种类，和所述请求的迫切性和必要性。（见问题 12）

14. 案件审理时可获得哪些救济？

案件审理时可获得的救济包括金钱赔偿、确认宣告、撤销救济和行为不行为义务履行。行为不行为义务履行很少见，且并不是所有的请求类型都可以采用。

15. 执行判决的主要方式有哪些？

如果金钱请求权的债权人不止一人，执行时所有债权人可参与债务人财产的分配[40]。要执行动产，可以选择查封、拍卖或变卖等方式[41]。执行不动产时，可以选择查封、拍卖或强制管理等方式[42]。执行动产交付请求权时，法院可将所述财产交付给债权人[43]。执行不动产交付请求权时，法院可解除债务人的占有并将不动产交予给债权人占有[44]。

16. 胜诉方是不是一般会被判获得诉讼费用赔偿？诉讼费用如何计算？

诉讼费用最终都由败诉方承担[45]。至于律师费，对于第三审诉讼程序，律师费被视为诉讼费用的一部分，胜诉方可获补偿之律师费金额由法院裁定[46]。对于与财产权相关的诉讼，法院裁定的金额不得超过诉讼标的价值的 3% 或 50 万新台币，以低者为准。对于与财产权无关的诉讼，则不得超过 15 万新台币。但是，对于第一审和第二审诉讼程序，律师费不被视为诉讼费用的一部分，除双方另有约定外，胜诉无法获得律师费补偿。

17. 对最终判决有哪些上诉途径？当事人能够以什么理由提起上诉？

地方法院判决之后，可向高等法院提起上诉；高等法院判决之后，可向最高法院提起上诉。只有高等法院之判决属法律法规适用不当或违反法律法规时，才能向最高法院提起上诉。对于终局确定的判决，特定情况下可以提出再审，比如，法律适用显有错误；判决理由与判决结果显有矛盾；判决法院之组织不合法；应回避之法官参与了判决；诉讼过程中，一方当事人未经合法代理；一份关键证据属于伪造或被篡改；一方当事人找到在判决时未经斟酌的证据或作出终局确定判决后才发现证据[47]。

18. 是否允许律师和委托人之间存在胜诉酬金或按条件收费的安排？

某些类型的案件不允许胜诉酬金或按条件收费安排，比如家事事件、青少年和刑事案件[48]。在以上所述案件之外，这种安排是允许的。

19. 是否允许第三方资助？资助人是否可分享胜诉收益？

《刑法》第 157 条规定：“意图渔利、挑唆或包揽他人诉讼者，处一年以下有期徒刑、拘役或五万元以下罚金。” 除了这项规定，台湾不存在严禁第三方资助或共享收益的特殊法律或法规。只要第三方资助不构成第 157 条项下的情况，都是允许的。但是，如果一方的律师即是提供资金和共享收益的第三方，则共享的部分可能会被视为胜诉酬金或按条件收费，而受到有关限制。（见问题 18）

20. 诉讼当事人是否可为其诉讼费用投保？

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40 《强制执行法》第 31 条
41 《强制执行法》第 45 条
42 《强制执行法》第 75 条第 1 项
43 《强制执行法》第 123 条第 1 项
44 《强制执行法》第 124 条第 1 项
45 《民事诉讼法》第 78 条
46 《民事诉讼法》第 466-3 条第 1 项
47 《民事诉讼法》第 496 条第 1 项
48 《律师伦理规范》第 35 条第 2 项

如果有这方面的保险，诉讼当事人可以为其诉讼费用投保。

21. 诉讼人是否可提起集体诉讼？如果可以，哪些规则适用于集体诉讼？

根据台湾法律，当事人可以提出集体诉讼，尤其是涉及到消费争议和环境争议时。消费者争议方面，如果许多消费者因同一事件受害，消费者保护团体可以在受让 20 人以上消费者损害赔偿请求权后以自己名义起诉[49]。

环境争议方面，以《空气污染防制法》为例：如果公营或私营实体违反了《空气污染防制法》或有关法令而主管部门管理失职时，受害人或公益团体可起诉主管部门，要求行政法院判令主管部门履行其职责[50]。关于环境争议集体诉讼的其它类似法律法规包括《水污染防治法》第 72 条第 1 项、《废弃物清理法》第 72 条第 1 项和《海洋污染防治法》第 59 条第 1 项。

22. 外国判决通过哪些程序予以承认和执行？外国法院作出终局且不可撤销的判决或判令可以通过台湾的法院判决承认和执行。

根据《民事诉讼法》第 402 条，外国法院作出的终局确定判决应被承认，但有下列情况者除外：

(a) 根据台湾法律，所述外国法院不具有管辖权；

(b) 败诉的被告未应诉而被作出缺席判决，但如果开始诉讼的通知或命令已于合理时间在该国依法送达，或依台湾法律协助送达，则不在此限；

(c) 判决内容或诉讼程序有悖于台湾的公共秩序或善良风俗；或

(d) 该外国和台湾之间无相互承认（即，台湾法院作出的判决不被该外国承认）。

在判断两国是否相互承认时，台湾法院一般遵循国际礼让原则。外交关系的建立不是判断相互承认的绝对因素。

在台湾，承认和执行外国判决需要经过法院审判程序，这包括三级法院：地方法院、高等法院和最高法院。

23. 替代争议解决的主要形式是什么？

台湾替代争议解决机制的主要形式包括仲裁和调解。

24. 在您所在的司法管辖区有哪些主要的替代争议解决机构？

台湾的主要替代争议解决机构是仲裁协会。目前，台湾有四家仲裁协会：中华民国仲裁协会（“CAA”）、台湾营建仲裁协会、中华工程仲裁协会和中华不动产仲裁协会。其中，中华民国仲裁协会历史最为悠久，且能够处理国际仲裁案件。

调解可由法院指定的一至三名调解员按照法院的指示进行[51]，或由根据《乡镇市调解条例》组建的地方调解委员会[52]或由中华民国仲裁协会的调解中心等民间机构进行。如果争议涉及政府采购合同的履行，双方可向市政府/ 县政府的采购申诉审议委员会或公共工程委员会申请调解[53]。

25. 在诉讼过程中诉讼人是否必须尝试替代争议解决办法？

如问题 6 所述，某些类型的争议在提起诉讼之前需要进行强制调解。这类争议包括不动产相邻关系、不动产界线或界标的确定、不动产共同所有权、不动产的租金、地上权、交通事故、医疗、雇佣合

49 《消费者保护法》第 50 条第 1 项
50 《空气污染防制法》第 81 条第 1 项
51 《民事诉讼法》第 406-1 条第 2 项
52 《乡镇市调解条例》第 1 条
53 《政府采购法》第 85-1 条第 1 项

同、合伙关系、夫妻或特定类亲属间的财产权以及标的价值低于 50 万新台币的其他财产权引起的争议[54]。

26. 当前是否有改革争议解决法律法规的建议在审议中？

关于《仲裁法》修正的讨论在持续进行中，因此会不时发布修正建议。同时，目前正在讨论《政府采购法》相关争议之调解是否能够由民间机构来执行。

27. 关于您所在司法管辖区或者亚洲地区的争议解决，是否有任何特殊情况需加以强调？

《海峡两岸投资保护和促进协议》第 13-15 条提到了争议解决。根据《海峡两岸投资保护和促进协议》，如果一方（即台湾或中国大陆）的投资者和另一方的自然人、法人或任何其它组织签订了贸易合同，所述合同可包含仲裁条款。如无仲裁条款，发生争议时，合同双方可于争议发生后协商提交仲裁[55]。两岸经济合作委员会的工作小组可协助解决投资争议[56]。

台湾和中国大陆的投资者可以利用《海峡两岸投资保护和促进协议》规定的争议解决机制来解决投资争议。

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54 《民事诉讼法》第 403 条第 1 项

55 《海峡两岸投资保护和促进协议》第 14 条第 2、3 项

56 《海峡两岸投资保护和促进协议》第 15 条第 2 项