

## **International Arbitration Law and Practice: Taiwan**

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### **1. General**

#### **1.1 Prevalence of Arbitration**

According to the statistics of the Judicial Yuan of Taiwan, there were 93 awards rendered in Taiwan in 2015, 123 awards rendered in 2014, and 114 awards rendered in 2013. See the Judicial Yuan's Annual Statistics: <http://www.judicial.gov.tw/juds/goa/goa02.htm>. The statistics show that the number of cases referred to arbitration as an effective method of dispute resolution have remained relatively stable during the last three years. Furthermore, the Arbitration Act of Taiwan was recently amended in support of recognition and enforcement of foreign arbitral awards in Taiwan (see Section 1.2 Trends below).

#### **1.2 Trends**

In December 2015, Paragraph 2 of Article 47 of the Arbitration Act of Taiwan was amended. The amended article expressly provides that foreign arbitral awards recognised by Taiwanese courts have the same legal effect as that of a final judgment, and shall be enforceable. Before the 2015 amendment, Paragraph 2 of Article 47 read: "After recognition by a court ruling, a foreign arbitral award is enforceable." The Supreme Court of Taiwan ruled in 2014 that even though a foreign arbitral award may be enforceable after being recognised by a court decree, such award is different from a domestic arbitral award which has the same effect as a court judgment. It further concluded that a foreign arbitral award would not have the effect of *res judicata*. See Supreme Court Civil Decree 103 Tai-Kan-Zi No 850 (2014). However, after the 2015 amendment, it is clear that foreign arbitral awards recognised by Taiwanese courts have the effect of both *res judicata* and enforceability as a final judgment.

#### **1.3 Key Industries**

Amongst all the types of international commercial contracts, construction contracts use arbitration as an effective method of dispute resolution most commonly. The merits of arbitration, including professionalism, cost-effectiveness and the nature of time-saving, contribute to the reasons why arbitration is used quite often for resolution of disputes involving construction contracts.

#### **1.4 Arbitral Institutions**

There are four arbitration institutions in Taiwan: Chinese Arbitration Association, Taipei ("CAA"), Taiwan Construction Arbitration Association ("TCAA"), Chinese Construction Industry Arbitration Association ("CCIAA"), and Chinese Real Estate Arbitration Association ("CREAA"). Among the four local arbitration institutions, CAA is the one most often used for both domestic and international arbitration. In addition to local arbitration institutions, ICC is the one most commonly used by parties for international arbitration.

### **2. Governing Law**

#### **2.1 Governing Law**

Arbitration in Taiwan is mainly governed by the Arbitration Act. It was established in 1961 with the original name of the "Commercial Arbitration Act". The Commercial Arbitration Act was amended significantly in 1998 and its name changed to the "Arbitration Act". The 1998 Arbitration Act was largely patterned after the UNCITRAL Model Law and then slightly amended in 2002, 2009 and 2015. However, discrepancies still exist as compared to the amendment of the UNCITRAL Model Law in 2006. Some discrepancies between the Arbitration Act and the UNCITRAL Model Law are as follows:

- Classification: while the 2006 UNCITRAL Model Law classifies arbitration as “international” or “non-international,” the Arbitration Act classifies arbitration as “foreign” or “domestic,” similar to the 1958 New York Convention.
- Arbitration Agreement: the 2006 UNCITRAL Model Law no longer requires that arbitration agreements be made in writing. See Article 7 (Option II) of the UNCITRAL Model Law. However, the Arbitration Act still retains the requirement of an arbitration agreement to be “in writing” See Paragraph 3 of Article 1 of the Arbitration Act.
- Interim Measures and Preliminary Orders: the 2006 UNCITRAL Model Law explicitly confirms arbitral tribunals’ power in granting interim measures and preliminary orders. See Chapter IV A of the UNCITRAL Model Law. In contrast, there is no particular provision in the Arbitration Act empowering the arbitral tribunals to grant such orders. However, pursuant to Article 19 of the Arbitration Act which indicates that the parties may agree on the arbitration procedure under the doctrine of party autonomy, the arbitral tribunal may grant such measures or orders if the parties have agreed on the arbitral tribunal’s capacity to do so. See Article 19 of the Arbitration Act.
- Time Limit of Arbitration: there is no specific time limit for arbitral tribunals to render their awards under the 2006 UNCITRAL Model Law, while a six-month time limit is imposed upon tribunals rendering awards by the Arbitration Act. The six-month time limit may be extended to nine months if deemed necessary by the tribunal; any further extension is subject to the tribunal and the parties’ consent Paragraph 1 of Article 21 of the Arbitration Act.
- Service of Process: under the 2006 UNCITRAL Model Law, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his or her place of business, habitual residence or mailing address, and the communication is deemed to have been received on the day it is so delivered See Clause A of Paragraph 1 of Article 3 of the UNCITRAL Model Law. Under the Arbitration Act, the service of process in an arbitration is subject to the applicable rules of court proceedings under the Taiwanese Code of Civil Procedure. Article 27 of the Arbitration Act. For example, pursuant to Paragraph 1 of Article 145 of the Taiwanese Code of Civil Procedure, if a communication is to be served abroad, it must be done by the competent authority of that country or the embassy or other diplomatic missions of Taiwan. The service of process in the 2006 UNCITRAL Model Law is more flexible than that of the Arbitration Act.

## **2.2 Changes to National Law**

In December 2015, Paragraph 2 of Article 47 of the Arbitration Act was amended. After the amendment, foreign arbitral awards recognised by Taiwanese courts have the effect of both *res judicata* and enforceability as a final judgment (see Section 1.2 Trends above).

## **3. Arbitration Agreement**

### **3.1 Enforceability**

Pursuant to the Arbitration Act, an arbitration agreement shall be made in writing, including any document, instrument, certificate, letter, telefax, telegram, or other similar types of communication between the parties. See Paragraph 3 of Article 1 of the Arbitration Act. The reference to “any other similar types of communication” provides the flexibility to include new forms of communication made possible by technological development. Additionally, according to Article 2 of the Arbitration Act, an arbitration agreement is not enforceable to the extent that the arbitration agreement does not relate to a particular legal relationship between the parties or a legal dispute arising out of such a relationship.

### **3.2 Arbitrability**

Paragraph 2 of Article 1 of the Arbitration Act provides that a dispute which may be settled by the parties in accordance with Taiwanese law can be filed for arbitration. This allows almost all disputes of a civil or commercial nature, whether sounding in tort, contract, or quasi-contract, to be arbitrable, except the following:

- Certain disputes arising out of domestic relations, such as grounds for divorce under family law.
- Validity of patent or trade mark rights: registration of patent and trade mark rights in Taiwan can only be granted or revoked by the government. Whether such grant or revocation is lawfully

obtained in accordance with the Taiwanese Patent Act or Trademark Act can only be reviewed by the governmental authority in charge, currently the Intellectual Property Office under the Ministry of Economic Affairs, and, ultimately, by an administrative court. An arbitrator does not have the authority to make an award regarding the validity of a patent or a trade mark. With that said, a claim for damages relating to patent or trade mark rights may be resolved by arbitration since such claim can be settled under Taiwanese law.

- Scrutiny and approval under the Fair Trade Act: Taiwan's Fair Trade Act is a comprehensive statute addressing issues ordinarily covered by the law of antitrust and unfair competition in other countries. The Fair Trade Commission is the administrative authority in charge of implementing the Fair Trade Act, such as scrutiny and approval of cartel among competitors. An arbitrator does not have the authority to make an award regarding statutory approvals under the Fair Trade Act.

### **3.3 National Courts' Approach**

An arbitration agreement is not enforceable unless it meets the requirements under the Arbitration Act. Paragraph 3 of Article 1 of the Arbitration Act requires an arbitration agreement to be in writing. Article 2 of the Arbitration Act requires the arbitration agreement to be related to particular legal relationship between the parties or legal disputes arising from such a relationship.

When the enforceability of an arbitration agreement is challenged by a party in the arbitration proceedings, the arbitral tribunal has the power to decide whether the arbitration agreement is valid under the doctrine of Kompetenz-Kompetenz. However, if a party files a lawsuit against the arbitration agreement, the court, upon request of the other party, may rule to suspend the court proceedings and request that the claimant file for arbitration within a certain time limit.

### **3.4 Validity**

Article 3 of the Arbitration Act adopts the principle of "separability" by providing that the validity of an arbitration clause must be determined independently and should not be affected by the invalidity, revocation, rescission or termination of the main contract containing such clause. This article merely codified a rule long-recognised by arbitration practice in Taiwan and mirrors Paragraph 1 of Article 16 of the 2006 UNCITRAL Model Law.

## **4. The Arbitral Tribunal**

### **4.1 Limits on Selection**

There are statutory qualifications for arbitrators under the Arbitration Act. According to Article 6 of the Arbitration Act, a natural person can be an arbitrator if he or she is reputable and fair, possessing legal or other professional knowledge or experience, and has one of the following qualifications:

- they have been a judge or public prosecutor;
- they have practised for more than five years in the professions of law, accounting, architecture, engineering or other business-related professions;
- they have acted as an arbitrator in a domestic or foreign institutional arbitration;
- they have been an assistant professor, or of a higher position, for more than five years in domestic or foreign colleges or universities certified by the Taiwan government; or
- they have expert knowledge or techniques in a special field and have worked in that field for more than five years.

In addition to the foregoing qualifications, Article 8 of the Arbitration Act imposes an obligation on arbitrators to attend "training and lectures", except individuals who have practised for certain periods of time, such as individuals who have been judges or public prosecutors, or who had been registered as arbitrators before the Arbitration Act came into effect and have participated in actual arbitration cases as arbitrators.

Article 7 of the Arbitration Act enumerates several categories of individuals who may not act as an arbitrator, including persons who have committed particular criminal offences.

In any event, the statutory qualifications for arbitrators apply only to domestic arbitration. They do not affect international arbitration, even if the seat of the arbitration is in Taiwan.

#### **4.2 Default Procedures**

If the parties' chosen method for selecting arbitrators fails, the Arbitration Act shall apply. Paragraph 1 of Article 9 of the Arbitration Act provides that, in the event that an arbitration agreement fails to prescribe the arbitrator(s) and/or the procedure for appointing arbitrator(s), each party shall appoint one arbitrator, and the two arbitrators thus appointed shall jointly appoint the third arbitrator, who will serve as the chairman of the tribunal. Under certain circumstances, a Taiwanese court may assist in the selection of arbitrators as described in Section 4.3 Court Intervention below.

#### **4.3 Court Intervention**

On a number of occasions, a Taiwanese court may assist the parties in the composition of the arbitral tribunal. When a party fails to appoint an arbitrator after being given a 14-day notice by the other party to do so, the other party may request that the arbitration institution or the court appoint such an arbitrator. See Paragraph 1 of Article 12 of the Arbitration Act. If the arbitration agreement requires an arbitration institution to appoint an arbitrator, and that institution fails to appoint an arbitrator after being given a 14-day notice to do so, the appointment may be made by the court upon request of the party who gave the 14-day notice. See Paragraph 2 of Article 12 Arbitration Act. Moreover, the court may, upon request of the party, appoint an arbitrator if:

- the two party-appointed arbitrators fail to appoint the third arbitrator within thirty days; or
- the arbitration agreement requires the arbitration to be conducted by a sole arbitrator, and the parties fail to agree upon the candidate within thirty days after a party's receipt of the other party's notice for selecting the sole arbitrator. See Paragraphs 2 and 3 of Article 9 of the Arbitration Act.

If, however, the foregoing two situations arise in the context of an institutional arbitration, the appointment will be made by the arbitration institution instead of the court. See Paragraph 4 of Article 9 of the Arbitration Act.

#### **4.4 Challenge and Removal of Arbitrators**

A party to an arbitration may challenge an arbitrator in situations enumerated in Paragraph 1 of Article 16 of the Arbitration Act. The grounds for challenge are very extensive, including any fact which could create a "justifiable concern" with regard to the arbitrator's independence or impartiality (see Section 4.5 below). The tribunal must rule on a challenge within ten days, and if any party disagrees with the tribunal's ruling, that party may file a complaint before the Taiwanese court for review of the ruling within 14 days. See Article 17 of the Arbitration Act. Challenge of a sole arbitrator should be made directly before the Taiwanese court. See Paragraph 6 of Article 17 of the Arbitration Act.

#### **4.5 Arbitrator Requirements**

Paragraph 1 of Article 15 of the Arbitration Act requires arbitrators to be independent and fair in handling arbitral cases. In addition, Paragraph 2 of Article 15 explicitly provides for an arbitrator's obligation to disclose any fact which could create a justifiable concern over his/her independence or impartiality, as follows:

- the existence of any of the circumstances requiring a judge not to participate in a judicial proceeding under Article 32 of the Taiwanese Code of Civil Procedure;
- the existence or history of an employment or agency relationship between the arbitrator and a party;
- the existence or history of an employment or agency relationship between the arbitrator and a counsel of a party or between the arbitrator and a key witness; or
- the existence of any other circumstances which create a "justifiable concern" over the arbitrator's independence or impartiality.

The violation of Paragraph 2 of Article 15 by an arbitrator qualifies as a reason for a party to file an annulment action toward the award if the arbitrator has been obviously biased but (i) fails to disclose the matters leading to his/her bias, or (ii) continues to participate after a ruling on challenge is made in favour of the challenging party.

## **5. Jurisdiction**

### **5.1 Matters Excluded from Arbitration**

The Arbitration Act allows almost all disputes of a civil or commercial nature, whether grounding on tort, contract, or quasi-contract, to be arbitrable, except disputes arising out of certain domestic relations, validity of patent or trade mark rights, and grant of statutory approval subject to the Fair Trade Act. See Section 3.2 Arbitrability above.

### **5.2 Challenges to Jurisdiction**

Article 22 of the Arbitration Act adopts the principle of Kompetenz-Kompetenz, providing that any dispute regarding the jurisdiction of the tribunal shall be decided by the tribunal itself.

### **5.3 Circumstances for Court Intervention**

If a party files a lawsuit against an arbitration agreement, the court, if upon request of the other party, finds that there is a valid arbitration agreement between the parties, the court may rule to suspend the court proceedings and order that the claimant file for arbitration within the time limit.

Lack of jurisdiction could be a reason for the Taiwanese court to set aside or refuse to enforce an arbitral award. According to Paragraph 1 of Article 38 of the Arbitration Act, the court will reject an application for enforcement when the arbitral award concerns a dispute not within 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. Subparagraphs 1 and 2 of Paragraph 1 of Article 40 of the Arbitration Act also provides that a party may file an annulment action to the court where any circumstances stated in Article 38 exist or where the arbitration agreement is nullified, invalid, or has yet to come into effect, or has become invalid before the arbitral hearing ends.

### **5.4 Timing of Challenge**

The parties can challenge the jurisdiction of the arbitral tribunal by filing an annulment action after the award is rendered according to Subparagraphs 1 and 2 of Paragraph 1 of Article 40 of the Arbitration Act. The jurisdiction of the arbitral tribunal can also be challenged when a party applies for enforcement of the award according to Paragraph 1 of Article 38 of the Arbitration Act.

### **5.5 Standard of Judicial Review for Jurisdiction/Admissibility**

To respect the discretion of an arbitral tribunal, the standard of judicial review of admissibility and jurisdiction is usually deferential. The lack of admissibility or jurisdiction may constitute a circumstance under Article 40 of the Arbitration Act and cause the award to be set aside by a court. However, the court cannot intervene in determining substantive issues of the award.

### **5.6 Breach of Arbitration Agreement**

Article 4 of the Arbitration Act provides that if a party files a lawsuit in violation of an arbitration agreement, the court shall, upon the request of the other party, suspend the proceeding and order the claimant to file for arbitration unless any debate on the merits of the case has been made. If the claimant fails to file for arbitration within the time limit, the court will dismiss the case.

### **5.7 Third Parties**

Although no particular provision in the Arbitration Act regulates the participation of a third party in the arbitration, Article 19 of the Arbitration Act reads that: "Where the parties do not agree on the arbitration procedure, the Arbitration Act should apply. Where there are no relevant provisions in the act regarding the procedural matter, the arbitral tribunal may apply the Code of Civil Procedure *mutatis mutandis*, or may proceed with the arbitration in a way it deems appropriate." In 2006, the Supreme Court of Taiwan confirmed that an arbitral tribunal could apply the articles regarding third-party participation in the Taiwanese Code of Civil Procedure *mutatis mutandis* through Article 19 of the Arbitration Act (Supreme Court Judgment 95 Tai-Shang-Zi No 2277 (2006)). Pursuant to Paragraph 1 of Article 58 of the Code of Civil Procedure, a third party may apply to participate in a litigation proceeding if his or her legal interest is likely to be affected by the result of the proceeding.

## **6. Preliminary and Interim Relief**

### **6.1 Types of Relief**

There is no provision preventing the arbitral tribunal from granting interim measures or preliminary orders. Furthermore, pursuant to Article 19 of the Arbitration Act, the parties may agree on the arbitration procedure under the doctrine of party autonomy. The arbitral tribunal may grant such measures or orders if the parties have agreed on the arbitral tribunal's capacity to do so.

## **6.2 Role of Courts**

A party to an arbitration agreement may apply for provisional relief from a Taiwanese court, both before and after the filing of the Request for Arbitration. Provisional relief under Taiwanese law includes (1) provisional attachment, a seizure of a debtor's assets to secure the enforcement of a monetary claim, and (2) provisional injunction, an order to act or refrain from acting in a specific manner to preserve the status quo or secure the enforcement of a non-monetary claim (see Articles 522-538 of the Code of Civil Procedure).

If a party to an arbitration agreement applies for a provisional attachment or provisional injunction before commencing with the arbitration, the other party may request that the court order the applicant to file for arbitration within a specified period of time. If the applicant fails to do so, the relief will be revoked by the court (see Article 39 of the Arbitration Act).

## **6.3 Security for Costs**

The national law of Taiwan does not allow for the courts and/or the arbitral tribunal to order security for costs.

# **7. Procedure**

## **7.1 Governing Rules**

Pursuant to Article 19 of the Arbitration Act, the Arbitration Act should apply if the parties have not agreed on the arbitration procedure. Where there are no relevant provisions in the Act regarding the procedural matter, the arbitral tribunal may apply the Taiwanese Code of Civil Procedure *mutatis mutandis*, or may proceed with the arbitration in a way it deems appropriate. However, the tribunal is not obliged to apply the Taiwanese Code of Civil Procedure to an arbitration proceeding.

## **7.2 Procedural Steps**

Pursuant to Paragraph 1 of Article 18 of the Arbitration Act, the claimant is required to send a written notice of the request for arbitration. The arbitration will formally commence when the respondent receives the request for arbitration (see Paragraph 2 of Article 18 of the Arbitration Act). According to Paragraph 1 of Article 25 and Article 36 of the Rules on Arbitration Institutions, Mediation Procedures and Fees, the arbitration fee should be paid by the claimant upon filing for arbitration. The arbitration proceedings will be conducted pursuant to the agreement between the parties or by ways the arbitral tribunal deems appropriate.

## **7.3 Powers and Duties of Arbitrators**

The tribunal has the power to decide whether the arbitration agreement is valid under the doctrine of *Kompetenz-Kompetenz* (see Article 22 of the Arbitration Act); summon the witnesses and expert witnesses to the hearings (see Paragraph 1 of Article 26 of the Arbitration Act); seek assistance from the courts or authorities when necessary (see Paragraph 1 of Article 28 of the Arbitration Act); and apply equitable principles when explicitly agreed upon by the parties (see Article 31 of the Arbitration Act).

Since party autonomy is a fundamental principle of arbitration, theoretically, besides the powers enumerated above, additional powers of the arbitrators may be agreed upon by the parties. For example, it is possible that the arbitral tribunal may be empowered by the parties to grant interim measures or preliminary orders, even though there is no particular provision addressing this issue under the Arbitration Act.

As for the arbitrators' duties, the Arbitration Act explicitly imposes the obligation of confidentiality, impartiality (see Paragraph 1 of Article 15 of the Arbitration Act) and disclosure of potential conflicts (see Paragraph 1 of Article 15 of the Arbitration Act) on the arbitrators. Besides the foregoing, the arbitrators should allow both parties to present their statements sufficiently and conduct investigations when necessary (see Paragraph 1 of Article 23 of the Arbitration Act); and arrive at the decision within the time limit of six months

or nine months, if extended (see Paragraph 1 of Article 21 of the Arbitration Act).

## **7.4 Legal Representatives**

According to Article 24 of the Arbitration Act, either party may, in writing, appoint representatives to appear before the arbitral tribunal to make statements on its behalf. Although there is no specific provision setting qualifications or requirements for a representative under the Arbitration Act, where the representative is a lawyer to advise on Taiwanese law, he or she must be a member to the applicable bar association in Taiwan (see Paragraph 1 of Article 11 of the Lawyer's Act). Nonetheless, it is common that foreign counsels represent clients in international arbitration proceedings in Taiwan on a fly-in-fly-out basis.

## **8. Evidence**

### **8.1 Collection and Submission of Evidence**

The Arbitration Act does not set the rules on the collection and submission of evidence. However, Article 19 of the Arbitration Act provides that, where the parties have not agreed on the arbitration procedure, the Arbitration Act should apply; where there are no relevant provisions in the Act regarding the procedural matter, the arbitral tribunal may apply the Taiwanese Code of Civil Procedure *mutatis mutandis*, or may proceed with the arbitration in a way it deems appropriate. Therefore, in the event that the parties have agreed on the collection and submission of evidence, such an agreement should be reasonably respected. If there is no such agreement, the tribunal may apply the Taiwanese Code of Civil Procedure *mutatis mutandis*.

### **8.2 Rules of Evidence**

The types of evidence adopted by arbitration in Taiwan include examination of witnesses, expert testimony, documentary evidence, inspection, and examination of the parties. It is subject to the tribunal's discretion to determine applicable rules of evidence.

### **8.3 Powers of Compulsion**

Paragraph 1 of Article 23 of the Arbitration Act reads: "The arbitral tribunal shall ensure that each party has sufficient opportunities to present its claims, and the arbitral tribunal shall conduct necessary investigations on the claims by the parties." If the evidence provided by the parties is not sufficient for the tribunal to make decisions, the tribunal may conduct necessary investigations.

The arbitral tribunal may request witnesses or expert witnesses to appear at the hearing according to Paragraph 1 of Article 26 of the Arbitration Act. In the event that a witness fails to appear without a justified reason, the arbitral tribunal may ask the court to compel the witness to appear (see Paragraph 2 of Article 26 of the Arbitration Act). In addition, Article 28 of the Arbitration Act provides that the arbitral tribunal may request assistance from a court or other authorities in the arbitral proceedings, including evidence investigation.

## **9. Confidentiality**

Unless otherwise agreed upon by the parties, arbitration proceedings and deliberations of an arbitral award are confidential (see Paragraph 2 of Article 23 and Paragraph 1 of Article 32 of the Arbitration Act). As to the context of arbitral awards, the Ministry of Justice suggested that unless the parties agree to disclose the award or the disclosure is required by law, the context of arbitral awards should be kept confidential (Ministry of Justice (83) Fa-Lu-Chueh-Tzi No 16216 (1994)).

## **10. The Award**

### **10.1 Legal Requirements**

An arbitral award shall contain the following items (see Paragraph 2 of Article 33 of the Arbitration Act):

- names and residence or domicile of the individual parties;
- names and domiciles or residences of the statutory agents or representatives, if any, of the parties;
- names, nationalities and residences or domiciles of the interpreters, if any;
- the main text of the decision;

- the relevant facts and reasons for the arbitral award, unless the parties have agreed that no reasons need to be stated; and
- the date and place of the arbitral award.

The original copy of the award should be signed by the arbitrator(s) who deliberated on the award. If an arbitrator refuses to or cannot sign the award, the arbitrators who have signed the award should put a note on the reasons for the missing signature(s) (see Paragraph 3 of Article 33 of the Arbitration Act).

## **10.2 Types of Remedies**

The Arbitration Act itself does not set any restrictions on the types of remedies that an arbitral tribunal may or may not award. Monetary damages are preferred over specific performance in Taiwan, since it is very difficult to enforce an award granting specific performance, especially in cases involving breach of contract.

## **10.3 Recovering Interest and Legal Costs**

The costs of arbitration should be borne by the losing party, and the arbitral tribunal will make a ruling on how the costs should be borne in the final award (see Paragraph 1 of Article 34 of the Rules on Arbitration Institutions, Mediation Procedures and Fees). Unless specifically agreed to by the parties, attorney's fees are not allowed to be recovered from the losing party.

## **11. Review of an Award**

### **11.1 Grounds for Appeal**

No appeal against arbitral awards is allowed under the Taiwanese law. However, Article 38 and Article 40 of the Arbitration Act enumerate grounds for a party to apply to a court to set aside an award:

- the arbitral award concerns a dispute not within the scope of the arbitration agreement, or exceeding the scope of the arbitration agreement; however, only the offending portion of the award will be set aside if that offending portion may be severed from the rest of the award;
- the reasons for the arbitral award were not stated, if such a statement is required, unless the omission has been corrected by the arbitral tribunal;
- the arbitral award directs a party to act contrary to the law;
- the arbitration agreement is not duly formed, is invalid, or has yet to come into effect or has become invalid prior to the conclusion of the arbitral hearings;
- the arbitral tribunal fails to give either party an opportunity to present its case prior to the conclusion of the arbitral hearings, or if any party is not lawfully represented in the arbitral proceedings;
- the composition of the arbitral tribunal or the arbitral proceedings violates the arbitration agreement or the law;
- an arbitrator fails to fulfil the duty of disclosure prescribed in Paragraph 2 of Article 15 of the Arbitration Act and appears to be biased or has been challenged but continues to participate after a ruling on challenge is made in favour of the challenging party;
- an arbitrator violates any duty during the arbitration and such a violation carries criminal liability;
- a party or its representative has committed a criminal offence in relation to the arbitration;
- evidence or contents of any translation upon which the arbitration award is based were forged or fraudulently altered or contain any other misrepresentations; and
- a civil or criminal judgment or an administrative ruling upon which the arbitration award is based has been reversed or materially altered by a subsequent judgment or administrative ruling.

In cases where the plaintiff alleges the last five grounds listed above or that the composition of the arbitral tribunal or the arbitral proceedings violates the arbitration agreement in the sixth ground above, the award will not be set aside unless that violation is material enough to affect the result of the award.



The foregoing grounds for setting aside an arbitral award are applicable only to awards made in Taiwan. Although a foreign award cannot be set aside in accordance with the Taiwanese Arbitration Act, a Taiwanese court may refuse to recognise or enforce it upon the showing of certain statutory grounds in accordance with Article 49 and Article 50 of the Arbitration Act.

### **11.2 Excluding/Expanding the Scope of Appeal**

Parties may not agree to exclude or expand the scope of appeal or challenge under the national law.

### **11.3 Standard of Judicial Review**

In 2011, the Supreme Court of Taiwan opined that it is at the arbitrators' discretion to decide on the substantive issues of an arbitral award (see Supreme Court Civil Judgment 100 Tai-Shang-Zi No 671 (2011)). Therefore, the standard of judicial review is usually deferential.

## **12. Enforcement of an Award**

### **12.1 New York Convention**

Taiwan is not a signatory to the New York Convention due to its unique political circumstances in the international community. That said, the Arbitration Act was largely patterned after the New York Convention – Articles 49 and 50 of the Arbitration Act are nearly identical to Article V of the New York Convention. Other bilateral agreements signed by Taiwan may contain provisions related to the recognition and enforcement of arbitral awards, such as the Agreement for Liberalisation, Promotion and Protection of Investment between Taiwan and Japan, and the Treaty of Friendship, Commerce and Navigation between Taiwan and the US.

### **12.2 Enforcement Procedure**

According to Paragraph 2 of Article 37 of the Arbitration Act, a domestic award may not be enforceable unless a competent court has granted an enforcement order. However, the arbitral award may be enforced without having an enforcement order if the parties so agree in writing, and if the arbitral award concerns any of the following circumstances:

- payment of a specified sum of money or other substitutes or securities; or
- delivery of a specified movable property.

The enforcement of foreign arbitral awards should be subject to Paragraph 2 of Article 47 of the Arbitration Act, which reads that "a foreign arbitral award, after recognised by the court, have the same force as a final judgment of a court, and is enforceable." Unless there is any ground for not enforcing the awards under Articles 49 and 50 of the Arbitration Act, including but not limited to public policy and non-arbitrable disputes, the court should recognise and enforce the award.

### **12.3 Approach of the Courts**

For a domestic arbitral award, unless it is successfully set aside by a party according to Article 40 of the Arbitration Act, it is enforceable after an enforcement ruling is granted by the court. (See Paragraph 2 of Article 37 of the Arbitration Act.) For a foreign arbitral award, after being recognised by the court, it is enforceable after an enforcement ruling is granted by the court (see Paragraph 2 of Article 47 of the Arbitration Act). Generally, the court does not review the substantive issues of an arbitral award when deciding on the recognition and enforcement of the arbitral award.