

Jurisdiction: TAIWAN

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

(a) Different Jurisdictions between Public Law and Private Law Litigations:

As a country following the European Civil Law tradition, litigations against the Government made in a legal relationship based on Public Law comes under the jurisdiction of Administrative Courts, while litigations between ordinary people or litigations made by private parties against the Government based on a Private Law relationship are within the jurisdiction of Ordinary Courts in Taiwan.

The following analysis is for reference to cases handled in Ordinary Courts only.

(b) Civil Proceedings in the Ordinary Courts

(1) Summary Litigations:

Litigations in the first instance in Taiwan is principally handled under the jurisdiction of District Courts of the Ordinary Court System. Litigation with a claim of value under NT\$500,000 (around US\$15,000), or litigation arising from disputes over cheques or rental issues, etc., shall be under the jurisdiction of a Summary Panel in District Court in the first instance. The judge shall handle the case according to the summary procedure specified in the Taiwan Code of Civil Procedure, 2018. The Second Instance of the summary case is handled under the jurisdiction of an Ordinary Panel in District Court and its petitioner is not entitled to appeal to the Taiwan High Court and the Supreme Court of Taiwan.

(2) Ordinary Litigations:

Litigations with a claim of a value exceeding NT\$500,000 are principally handled by an Ordinary Panel of a District Court. They can appeal to the Taiwan High Court for the Second Instance. However, if the value of the claim of the litigation does not exceed NT\$1,500,000 (around US\$50,000), litigators cannot appeal to the Supreme Court of Taiwan for the third instance. Litigation with a claim of value exceeding NT\$1,500,000 is appealable to the Supreme Court of Taiwan in the third instance. Nevertheless, an appeal to the third instance must be submitted by lawyers appointed by the petitioner and the scope of review of the Supreme Court is limited to whether or not the ruling of the Court of Second Instance had made any mistake in its application of law. The Supreme Court has no authority to review the facts of the case in dispute.

Disputes over intellectual property rights shall be subject to the jurisdiction of Intellectual Property Court.

(c) The Role of Judges in Taiwan's Civil Proceedings

The judge has the authority to preside over the process of litigation proceedings. Litigations shall be initiated by petitioners, and both parties have the duty to clarify facts and provide evidence. In comparison with common law jurisdictions, Taiwan's judges have a greater role in managing the proceeding and deciding the value of evidence given. There is no jury system or civilian judges available in the existing legal system in Taiwan. Judges may take into account testimonies or appraisals provided by other accredited bodies or experts as important references when making their

judgments. Expert witnesses' opinions are especially important in cases which require special knowledge or expertise (e.g. medical disputes, environmental disputes, patent disputes, etc.).

2. Are court hearings open to the public? Are court documents accessible by the public?

(a) Court hearings are open to the public in most cases.

All hearings on civil disputes are principally open to the public, except the following cases, which include (but are not limited to):

- (1) Matrimonial Lawsuits;
- (2) Domestic Violence cases regarding the issuance of protection orders;
- (3) Hearings involving minors;
- (4) Sexual assault cases;
- (5) Hearings involving commercial confidences;
- (6) Cases involving a breach of or hindering national security, or public order and good morals.

(b) Judgements and verdicts are in principle accessible to the public.

Judgements and verdicts are accessible at the website of the Judicial Yuan (Taiwan's Highest Judicial Administration Organization). Members of the public can make searches on the website using the Chinese Language to look for the corresponding materials. However, other documents and information regarding cases involving legal briefs or evidence on civil litigations are not accessible to the public. These materials can only be accessed by the parties involved in the litigation.

3. 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?

(a) All lawyers have the right to appear in court and conduct proceedings on behalf of their client.

All parties of litigations have the right to appoint lawyers as representatives to present in court. However, litigants may attend hearings by themselves, as an appointment of lawyers is not compulsory during the

processes of First Instance and Second Instance. Nevertheless, lawyers must be appointed by the litigants in the Third Instance when appeals are made to the Supreme Court.

Unlike the United Kingdom, there is no differentiation between a barrister and solicitor in the legal profession system in Taiwan.

(b) Examination and Training to Become a Lawyer in Taiwan

In order to become a lawyer in Taiwan, all graduates who obtained adequate credits from legal courses are required to take part in the Bar examinations. After they pass the Bar examination, they must participate in an internship programme under the instruction of an experienced lawyer for half a year. During the internship, they need to attend a one-month long training course offered by the Taiwan Bar Association (TBA). Upon completion, those graduates can join the Bar Association in their district, register at the court, and begin practice as a lawyer.

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

According to the Taiwan Code of Civil Procedure, 2018, the statute of limitations for the right of claim will run, in general, for 15 years from when the term of the payment or other obligation is due, but this may not apply to some situations. For example, the statute of limitations for a rental claim is 5 years, and a claim of payments to lawyers is 2 years.

A statute of limitations is part of the right of defence for the debtor. The statute of limitations in Taiwan means the debtor has the right to refuse the obligations. However, the validity of obligations remains unchanged. So, if the debtor repays the debt, the creditor still has the right to keep the payment. It does not constitute unjust enrichment.

If the debtor does not raise the issue of the statute of limitations, the judge cannot raise the issue, *ex officio*.

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

According to the Taiwan Code of Civil Procedure, 2018, under art 403, the following types of disputes must enter the process of mediation before commencing further proceedings:

- (1) Disputes arising from a relationship of adjacency between real property owners or superficiaries, or other persons using the real property;
- (2) Disputes arising from the determination of boundaries or demarcation of real property;
- (3) Disputes among co-owners of real property arising from the management, disposition, or partition of a real property held in undivided condition;
- (4) Disputes arising from the management of a building or of a common part thereof among the owners of the shared title or persons using the building;
- (5) Disputes arising from an increment or reduction/exemption of the rental of real property;
- (6) Disputes arising from the determination of the term, scope and rental of a superficies;
- (7) Disputes arising from a traffic accident or medical treatment;
- (8) Disputes arising from an employment contract between an employer and an employee;
- (9) Disputes arising from a partnership between the partners, or between the undisclosed partners and the nominal business operator;
- (10) Disputes arising from proprietary rights among spouses, lineal relatives by blood, collateral relatives by blood within the fourth degree of relationship, collateral relatives by marriage within the third degree of relationship, or head of the house or members of the house;
- (11) Other disputes arising from proprietary rights where the price or value of the object in dispute is less than NT\$ 500,000."

Other civil litigations, unless a commitment for arbitration or mediation is made between the parties, are principally entitled to file a lawsuit directly to the court.

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

Usually, after the plaintiff begins the litigation, the court proceeding has two stages. The first is the Preparatory Stage. The second is the Debating Stage. During the Preparatory Stage, the parties shall clarify the facts and provide evidence they want the court to ask or investigate. They also need to tell the court what kind of assertions or defenses they want to raise in the litigation. During the Debating Stage, the parties shall debate over the assertions or defenses that were raised during the Preparatory Stage. After the Debating Stage ends, generally the court will deliver its judgment within one month.

In most cases, it takes a half year to finalize a summary case in each instance. In an ordinary case, it takes one year to finalize a case in the first instance, and it takes two years to finalize a case in the second instance.

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

Yes, however, there is no mechanism in the Taiwan Civil Procedure system called "discovery procedure," such as is mainly used by countries (e.g. the U.K. and the U.S.) with common law jurisdictions.

We have a similar system to the discovery procedure. There are two stages in most civil proceedings. During the first, "Preparatory Stage," all parties must provide their evidence, claims, and defense that will be used in this litigation for the review of the court and the opposing party. If a party fails to provide evidence, claims, and defense at this stage, the judge may refuse to accept that evidence, claims, or defense offered after the preparatory stage.

Both parties have the pressure to disclose all relevant documents to the other party and the court because there are rules of burden of proof. If the party having the burden of proof fails to provide sufficient evidence of a specific assertion or defense, the judge has to make a judgement disfavoring that claim or defense.

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

According to the Taiwan Code Civil Procedure, 2018, art 344:

“A party has the duty to produce the following documents:

- (1) Documents to which such party has made reference in the course of the litigation proceeding;
- (2) Documents which the opposing party may require the delivery or an inspection thereof pursuant to the applicable laws;
- (3) Documents which are created in the interests of the opposing party;
- (4) Commercial accounting books;
- (5) Documents which are created regarding matters relating to the action.

Where the content of a document provided in the fifth subparagraph of the preceding paragraph involves the privacy or business secret of a party or a third person and the resulting disclosure may result in material harm to such party or third person, the party may refuse to produce such document. Notwithstanding, in order to determine whether the party has a justifiable reason to refuse the production of the document, the court, if necessary, may order the party to produce the document and examine it in private.”

Therefore, parties are allowed to refuse to provide the documents requested by the court if the documents involve a party’s privacy or business secrets, and the resulting disclosure may result in material harm to that party or a third person.

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

Both parties shall disclose their evidence at trial during the Preparatory Stage. There is no restriction on the format in the course of preparing evidence, but the person(s) involved may exchange the concerning evidence in either verbal or written form.

There are no stipulations in the Taiwan Code of Civil Procedure, 2018, which require cross examination among the person(s) involved. However, the Taiwan Code of Civil Procedure, 2018, art 320 provides that “a party may move the presiding judge to conduct a necessary examination of a witness or, after informing the presiding judge, conduct such examination himself/herself. The examination provided in the preceding paragraph may be directed to matters concerning the witness’s credibility.”

The Judicial Yuan has issued guidelines for questioning witnesses and ways of questioning specific to civil litigations. These require person(s) questioning witnesses follow the order and steps similar to the cross examination in criminal procedures.

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

According to the Taiwan Code of Civil Procedure, 2018, art 326, it specifies that:

“An expert witness shall be appointed by the court in which the action is pending and the number of expert witnesses shall also be determined by the court.

Before appointing an expert witness, the court may accord the parties an opportunity to be heard; where the parties have agreed on the designation of an expert witness, the court shall appoint such expert witness as agreed-upon by the parties, except where the court considers that such expert witness is manifestly inappropriate. The court may replace an appointed expert witness.”

Experts must take oaths before giving testimony in courts.

Experts giving false testimony are subject to punishments for perjury.

The parties involved may request to disqualify the expert whenever there is a circumstance that constitutes a real conflict of interest pursuant to either the Taiwan Code of Civil Procedure, 2018, arts 32 or 33. However, there is no clearly written code of conduct for the behaviour of the experts under the existing system of laws.

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Ying-Lei, Charles, Chang is the attorney-in-charge of the Prudentia Law Firm (Taiwan). He received his LLM degree from the Harvard Law School, and his PhD degree from the National Taiwan University. He is registered as a lawyer both in Taiwan and New York State (USA). He has published several articles on Taiwan environmental law. His research includes comparisons between common law and civil law, the economic analysis of law,

and the sociological analysis of law. As an adjunct associate professor, he teaches in Anglo-American law at the Ming-Chuan University of Taiwan. He specializes in contract law, administrative law, business law and the law of cross-border inheritance between Taiwan and other jurisdictions.

11. What interim remedies are available before trial?

Generally, the Taiwan Code of Civil Procedure, 2018, provides the following major methods for interim remedies, including:

(1) Provisional Attachment

Provisional Attachment prevents debtors transferring their property or taking out money from their bank account, which may hinder creditors from satisfying their claims. The creditor may request the court to issue a decree to freeze the debtor's assets prior to the process of litigation.

(2) Provisional Injunction

Provisional Injunction is a court order requested by creditors with non-monetary claims to restrict debtors from changing conditions of a property when litigation is pending or in progress. For instance, a buyer of a house may request a court order to restrict a seller from damaging, destroying or transferring the ownership of the said house in the course of a litigation between the two parties.

(3) Preliminary Injunctive Relief

Preliminary Injunctive Relief is a temporary court order to prevent any serious detriment from happening during a litigation by requesting the court to issue an interim order before the final adjudication is made. For example, a mother or a minor may request an interim order that requires the father to pay a certain amount of alimony as a safety net for the livelihood and maintenance of the children during a divorce proceeding.

12. What remedies are available at trial?

Remedies available at trial include (but are not limited to):

- Specific Performance;
- Monetary Judgment;
- Declaration;
- Injunction;

Specific Performance is the primary method in Taiwan Code of Civil Procedure, 2018, and Taiwan Compulsory Enforcement Act, 2019.

For example, Person A sells a house to Person B, but then Person A refuses to transfer the ownership of the house after Person B has already made payment. Person B is then entitled to request the court to issue an order to compel transfer of ownership from Person A to Person B. However, this does not apply to a situation where the house is sold again by Person A to Person C. Then, Person B is prevented from receiving title to the house. Person B, at this point, may claim compensation for a breach of contract from Person A.

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

Creditors may request from the court a compulsory enforcement subsequent to the judgment becoming final and binding.

(a) Monetary Claim

If the claim of the creditor is monetary, then the creditor may ask the court to seize the debtor's property. There are many methods; however, these are the three most used:

- (1) If there is real estate property, the court may have it auctioned off and collect the amount owed by the debtor and deliver it to the creditor.
- (2) If the property is deposits (cash) in a bank account, the court may order the bank to allow the creditor to withdraw the money the debtor owed.
- (3) The court can order the workplace of the debtor to collect a certain amount of the wages to repay the creditor until the debt is fully satisfied.

There is no specific order to these three methods of enforcement. Also, the court must be cautious on the proportionality issues and cannot use a small claim to seize a property of a much higher value.

(b) Non-Monetary Claim

For a non-monetary claim, Specific Enforcement is the major method. For example, if the seller of a house agrees to the sale, then later on refuses to transfer the title and deliver the house to the buyer, the buyer may ask the court to evict the seller and request the land registry to

register the house and issue a new deed to the buyer without the seller's cooperation.

However, certain claims are not suitable for Specific Enforcement. For instance, if a violinist agrees to play violin for someone every night, and then refuses to fulfil this promise, the one who pays for the service may not ask the court to force the violinist to play. The court may only impose default surcharges until the obligation is fulfilled.

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

All costs, including court costs, fees for an expert witness, and inspection fees charged by the courts, shall be assumed by the losing party, but the two parties shall bear their own attorney fees.

When the successful party is awarded a monetary payment, 5% interest shall be charged, starting from the day the obligation becomes effective, to the day of the fulfillment of obligations.

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

The losing party may submit an appeal through a Rehearing Proceeding. A rehearing can only be made under the following circumstances, specified in the Taiwan Code of Civil Procedure, 2018, art 496: "

- (1) Where the application of law is manifestly erroneous;
- (2) Where the reason for the judgment manifestly contradicts the main text;
- (3) Where the court which entered the judgment is not legally constituted;
- (4) Where a judge who should have disqualified himself/herself from the case by operation of law or by decision has participated in deciding the case;
- (5) Where the parties are not legally represented in the action;
- (6) Where a party has misrepresented that he/she did not know the opposing party's domicile/residence when initiating the action,

except where such opposing party has ratified the relevant litigation proceeding;

- (7) Where a judge participating in deciding the case committed a criminal offense or received disciplinary sanction as a result of breaching his/her duties concerning the action which may affect the result of the original judgment;
- (8) Where a party's agent, or the opposing party, or the opposing party's agent engaged in criminally punishable acts of any kind concerning the case which may affect the result of the original judgment;
- (9) Where the tangible evidence based on which the judgment was entered was fabricated or altered;
- (10) Where the witness, expert witness, interpreter, or statutory agent, after signing a written oath, gave false representation with regard to his/her testimony, expert testimony, interpretation, or statement, based on which the judgment was entered;
- (11) Where the referenced civil, criminal, administrative judgment, or any other decision or administrative disposition, based on which the judgment was entered, was amended by a subsequent final decision or administrative disposition with binding effect;
- (12) Where a party discovers that the same claim has been disposed of by a prior final and binding judgment or a settlement or mediation, or that the applicability of such judgment or settlement or mediation is available;
- (13) Where a party discovers tangible evidence which has not been considered or which becomes available, on condition that taking into consideration such tangible evidence will result in a more favorable decision to such party."

16. Are contingency or conditional fee arrangements permitted between lawyers and clients? Is third-party funding permitted?

According to the Taiwan Attorney Regulation Act, 2010, art 34 "An attorney shall not take by assignment rights at issue, to which his client is a party." The Ministry of Justice explains that a proportional (percentage) fee violates this

regulation. Therefore, it is illegal if an attorney fee is calculated as a percentage of the amount awarded by the court.

In addition, the Taiwan Code of Ethics for Lawyers, 2009, art 35 provides that attorneys should report to their clients clearly the amount of attorneys' fees they will charge as payments, and the method of calculation for such payments which will be used in the course of handling of legal affairs. Attorneys are prohibited to make any negotiations on additional fees from legal litigations with clients who face domestic disputes, criminal charges, or juvenile delinquency charges based upon the results of the litigation. This means attorneys in these types of cases may only charge a fixed fee or fixed per-hour fee and cannot ask for an additional fee on winning the case. However, in other cases, attorneys may charge additional fees.

It is completely lawful for a payment of court and attorneys' fees to be made by a third party in Taiwan.

According to the Taiwan Legal Aid Act, 2015, persons meeting the following requirements are eligible to apply for legal aid provided by the government for dealing with attorneys' fees in the following situations:

- (1) Those who are qualified as low-income residents, or middle-to-low-income residents under the Social Relief Act, 2015;
- (2) Those whose families are qualified as Families in Hardship as described in the Act of Assistance for Families in Hardship, 2014, art 4, para 1;
- (3) Those whose disposable assets and monthly disposable income are below a specific standard as declared by a competent authority.

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

Members of the public in Taiwan may file class actions in accordance with the Taiwan Code of Civil Procedure, 2018, the Taiwan Consumer Protection Act, 2015, or the Securities Investor and Futures Trader

Protection Act, 2015. The requirements for representative actions are as follows:

- (1) Taiwan Code of Civil Procedure, 2018 art 44-1 para 1: “Multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by said association’s purpose as prescribed in its bylaws, appoint such association as an appointed party to sue on behalf of them.”

Taiwan Code of Civil Procedure, 2018, art 44-2 para 1: “When multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from themselves in accordance with the provision of Article 41 to sue for the same category of legal claims, the court may, with the consent of the appointed party, or upon the original appointed party’s motion which the court considers appropriate, publish a notice to the effect that other persons with the same common interests may join the action by filing a pleading within a designated period of time specifying: the transaction or occurrence giving rise to such claim; the evidence; and the demand for judgment for the relief sought. Those persons so joining shall be deemed to have made the same appointment in accordance with the provisions of Article 41.”

Taiwan Code of Civil Procedure, 2018, art 44-3 para 1: “An incorporated charitable association or a foundation may initiate, with the permission of its competent governmental business authority and to the extent permitted by the purposes as prescribed in its bylaws, an action for injunctive relief prohibiting specific acts of a person who has violated the interests of the majority concerned.”

- (2) Taiwan Consumer Protection Act, 2015, article 50 para 1: “Where numerous consumers are injured as a result of the same incident, a consumer advocacy group may take assignment of claims from 20 or more consumers and bring litigation in its own name. Consumers may terminate such assignment before the close of oral

arguments, in which they shall notify the court.”

- (3) Taiwan Securities Investor and Futures Trader Protection Act, 2015, art 28 para 1: “For protection of the public interest, within the scope of this Act and its articles of incorporation, the protection institution may submit a matter to arbitration or institute an action in its own name with respect to a securities or futures matter arising from a single cause that is injurious to multiple securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders. The securities investors or futures traders may withdraw the empowerment to submit a matter to arbitration or institute an action prior to the conclusion of oral arguments or examination of witnesses and shall provide notice to the arbitral tribunal or court.”

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

Most final adjudications that are made by foreign jurisdictions will be enforced after obtaining approval of recognition from Taiwan’s courts in accordance with the Taiwan Code of Civil Procedure, 2018, art 402, unless the following circumstances apply:

- (1) Where the foreign court lacks jurisdiction pursuant to Taiwan’s laws;
- (2) Where a default judgment is rendered against the losing defendant, except in the case 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 Taiwan’s laws;
- (3) Where the performance ordered by such judgment or its litigation procedure is contrary to Taiwan’s public policy or morals;
- (4) Where there exists no mutual recognition between the foreign country and Taiwan.

Therefore, final adjudications made by foreign jurisdictions are enforceable unless one of the four circumstances listed above applies.

19. What are the main forms of alternative dispute resolution? Which are the main alternative dispute resolution organisations in your jurisdiction?

In Taiwan's alternative dispute resolution procedures, the most important are mediation and arbitration. The guiding law for arbitration is the Arbitration Act, 2015. The government recognizes several organizations that have the authority to arbitrate. These include:

- (1) The Chinese Arbitration Association;
- (2) The Taiwan Arbitration Association;
- (3) The Chinese Construction Industry Arbitration Association;
- (4) The Chinese Estate Arbitration Association and others.

Even though Taiwan is not a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, it still follows the rules specified in the New York Convention and recognizes foreign arbitral awards in the Taiwan Arbitral Act, 2015, chapter 7.

Regarding mediation, the most relevant law is the Taiwan Township and County-Administered City Mediation Act, 2009. According to this law, each township and district government should establish a mediation committee to handle everyday disputes. In addition to the above-mentioned committees, there are other mediation boards and committees within the government. For instance, each city or county government shall set up a consumer dispute mediation committee and according to the Taiwan Government Procurement Act, 2019, the Public Construction Commission shall also set up a mediation committee to resolve disputes regarding governmental procurement.

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

The legal system of Taiwan has been facing the problem of long waiting times for processing of litigations due to the accumulation of a tremendous number of cases. For this reason, The Judicial Yuan has been working hard to promote alternatives for dispute resolutions for better tackling of such disputes.

Mediation and arbitration are the major alternatives for dispute resolutions. Currently, there is a proposal for reforming the dispute resolutions regarding medical malpractice. If such a bill is passed, the authority will establish a Commission of Mediation for Medical Disputes in each county or city and will form a panel of experts to set up special investigation teams for resolution of medical disputes.

Such a team may also have the responsibility to suggest reforms of medical procedures to the involved hospitals, clinics or medical service providers, and to ascertain any actions which should be taken to prevent the reoccurrence of similar incidents.

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

Chinese cultural emphasis on “harmony” has sometimes outweighed the value of rights protection. It has to some extent caused obstacles to the formation of rule of law.

When observing Taiwan's dispute resolution procedures, one will discover that mediation procedures are especially highlighted and promoted by the authority even until the stage of litigation. The judges still try to persuade the litigants to unwillingly accept reconciliation, when the litigants really don't want it. I personally think that this culture, upholding mediation and reconciliation as the best way of solving disputes and keeping harmony, leads to a mentality where people will not respect others' rights and will also not value their own rights. What is even worse is that people have the idea that, even though an agreement is clearly written in a contract, they do not strictly need to abide by it. This causes tremendous problems, especially in business, because both parties lack clear guidance regarding their behaviour. People may change the agreement at will and this prevents Taiwan from becoming a society with a rule-of-law culture. This is where, if a foreigner wants to do business in Taiwan, they must take special notice, and this is where Taiwan must improve its legal system and culture.

22. What changes in dispute resolution practices have been implemented in light of current events? Are there any “new normal” practical tips in your jurisdiction parties should be aware of when resolving legal disputes?

Litigation Procedure in Taiwan is notorious for being too slow and ponderous; Taiwanese judges lack practical experience in doing business or the commercial field. Therefore, resolving disputes through litigation can become an endless nightmare for both litigating parties. For example, there is a famous dispute in Taiwan over the ownership of Pacific Sogo Department Store. The dispute started its long litigation journey in 2002, and court procedures continue to this day. Beyond being too slow, the cumbersome procedures and judges' lack of relevant knowledge relating to the dispute have been heavily criticized.

The Taiwanese government has been working on judicial reform intermittently for many years. Part of the judicial reform is to streamline dispute resolution processing. Two recent laws have been enacted for this purpose. The first is the Labor Incident Act and the second is the Commercial Case Adjudication Act. A quick introduction is as follows:

In 2018, Taiwan enacted the Labor Incident Act, which requires each court level to establish special labor court divisions to handle labor disputes. According to this law, both parties shall go through a mediation proceeding presided over by the labor court division. If the parties fail to reach a settlement, they move on to the litigation proceeding. There are some special procedural mechanisms to alleviate the litigation difficulties for laborers. For example:

- (a) The court shall actively explain procedural rights to the laborer. For instance, according to the Labor Incident Act, art. 48, the court shall actively tell the laborers that they can apply for a temporary injunction to ask their employer to continue paying their salaries if the court finds that the laborers have

difficulty in sustaining their living while litigating over salary payments;

- (b) Article 37 is an example of when the courts shall alleviate a laborer's burden of proof. The Article specifies that if there is a dispute, certain payments shall be considered as part of the base salary. The court will presume the payments are included as base salary unless the employer can prove otherwise. Taiwan's government also issued a regulation in 2019 regarding providing legal fee assistance and living expenses to laborers during the labor dispute procedure. The laborer can apply for monetary assistance, according to this regulation.

In 2020, Taiwan enacted the Commercial Case Adjudication Law. It is supposed to be implemented on July 1, 2021. The purpose of this law is to increase the professionalism of the courts and facilitate commercial dispute resolutions. According to this law, distinct commercial courts shall be established. Commercial litigation proceedings will differ somewhat from other civil litigations in the following manner:

- (a) Prior to commercial litigation, mediation is compulsory;
- (b) Commercial litigations can only be initiated with the help of lawyers; and
- (c) Where normal civil litigations has three instances, District Court, High Court, and Supreme Court, finalization of commercial disputes has just two instances, Commercial and Supreme Court. The first instance requires Commercial Courts to investigate relevant factual evidence concerning the dispute. During the second instance, the Supreme Court can only review whether there are mistakes in the application and interpretation of legal rules by the Commercial Courts

The Taiwanese government has endeavored to reform its judicial systems, trying to elevate the efficiency and professionalism of litigation procedures. However, most judges have achieved their positions through judicial examinations after graduating from law school, and possibly, several years of additional study in cram schools. Most of them do not have

practical working experience before becoming judges. Therefore, their lack of practical experiences is a fundamental problem. They have real difficulty grasping and resolving the issues within the disputes. Beyond the above-mentioned issues, the rapidly growing number of cases has overwhelmed the judicial system, creating an immense burden on the judges, who are then forced to make hasty decisions. Also, civil servant pension reforms leave judges with less retirement funds and this has caused many experienced judges to leave their positions to work as litigation attorneys, which lessens the number of the judiciary. These factors prevent Taiwan's judicial system from satisfactorily resolving disputes. The arbitration system may be a better way to resolve disputes in Taiwan, as both parties can select arbitrators with practical experience regarding the disputes, and the adjudication proceedings are faster than litigation proceedings.

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