

Arbitration

in 55 jurisdictions worldwide

Contributing editors: Gerhard Wegen and Stephan Wilske

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Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Taiwan is not a contracting state to the New York Convention.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

As of 1 June 2012, Taiwan has concluded bilateral investment agreements with 23 countries.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The Taiwan Arbitration Act (as last amended on 20 December 2009), formally named the Commercial Arbitration Act, came into force on 24 December 1998, after the reform of the arbitration law in Taiwan. The Taiwan Arbitration Act (TAA) does not distinguish between domestic and foreign-related arbitration proceedings, except for the arbitration language, whereby in foreign-related arbitration cases, the parties may agree on the language of arbitration (TAA, article 25(1)).

An award is considered a foreign award if the award was rendered outside of the territory of Taiwan or was made pursuant to foreign arbitration law or regulation, the arbitration rules of foreign arbitration institutions, or the arbitration rules of international arbitration institutions.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

When the former law, titled the Commercial Arbitration Act, was reformed and renamed as the Arbitration Act, the legislators expressly specified in the legislative remarks that the Taiwan Arbitration Act was based on the UNCITRAL Model Law. Nonetheless, a close scrutiny will reveal that there are some differences between the Taiwan Arbitration Act and the UNCITRAL Model Law. For example, articles 21(1) and (3) of the Taiwan Arbitration Act stipulate a time frame within which an arbitral tribunal shall render an award. If the tribunal fails to comply with such a time frame, except for cases subject to mandatory arbitration, any of the parties may launch a lawsuit with the court or request the court to resume the

suspended litigation proceedings. In addition, the grounds for setting aside an award (TAA, article 40(1)) and the time limitation for a party to launch an action to set aside an award (TAA, article 41(2)) as provided in the Taiwan Arbitration Act are not exactly the same as those provided in the UNCITRAL Model Law.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

While the Taiwan Arbitration Act acknowledges the principle of party-autonomy, the Taiwan Arbitration Act provides certain mandatory provisions, such as:

- an arbitrator shall be a natural person (TAA, article 5) satisfying the qualifications and restrictions as stipulated under articles 6 and 7 of the Taiwan Arbitration Act. A qualified candidate may apply for registration with an arbitration institution as arbitrator after having been trained and having obtained certification unless otherwise provided by the Taiwan Arbitration Act (TAA, article 8(1));
- an arbitrator shall be independent and impartial and shall maintain the confidentiality of the arbitration (TAA, article 15(1)). An arbitrator has certain statutory duties to disclose any potential bias to the parties (TAA, article 15(2));
- the arbitral tribunal shall give each party a full opportunity to present his or her case (article 23);
- the deliberations for making an award by the arbitral tribunal shall be confidential (article 32(1));
- provisions related to the setting aside of an arbitral award, for example, the time limitation (TAA, article 41(2)) and the grounds (TAA, article 40(1)) for a party to set aside an award, the revocation by the court of any enforcement order in the event where the court sets aside an arbitral award (TAA, article 42(2), etc; and
- provisions related to the recognition and enforcement of foreign arbitral awards.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The Taiwan Arbitration Act does not provide any guidance as to the choice of substantive law. The parties can freely decide on the law applicable to the merits of the case. In practice, if the parties do not have any agreement on the substantive law, the arbitral tribunal will decide on the law applicable to the merits of the case in accordance with the Law Governing the Choice of Law in Foreign-related Civil Matters.

The arbitral tribunal can decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the tribunal to do so (TAA, article 31).

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent arbitral institution in Taiwan is the Chinese Arbitration Association, Taipei (CAA), which provides a wide-range of dispute settlement administration services, including arbitration, mediation and other alternative dispute resolution proceedings.

The Chinese Arbitration Association, Taipei

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The fees levied by the CAA are calculated on the basis of the amount in dispute and already include the fees to be paid to the arbitrators. In comparison with the fees levied by some international arbitration institutions, such as ICC, SIAC, HKIAC, etc, the fees charged by the CAA are very moderate.

Arbitration agreement**8 Arbitrability**

Are there any types of disputes that are not arbitrable?

Only disputes that can be settled by the parties are arbitrable (TAA, article 1(2)). The following types of disputes are considered not arbitrable: family law matters, criminal law matters, antitrust law matters and competition law matters. Disputes over the validity of patent rights are not arbitrable either. Regarding disputes arising from securities transactions executed under Taiwan Securities and Exchange Act, the proviso of article 166(1) of the Taiwan Securities and Exchange Act requires mandatory arbitration: 'Any disputes arising between the stock exchange and securities firms, or between securities firms shall be resolved by arbitration regardless whether there is an agreement to arbitration between the parties or not.'

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The parties may conclude an arbitration agreement before or after the dispute arises. A valid arbitration agreement shall meet all of the following requirements (TAA, articles 1 and 2).

- the arbitration agreement shall be in writing, including any written documents, instruments, correspondences, facsimiles, telegraphs or other similar types of communications between the parties;
- the parties can only enter into an arbitration agreement in respect of a dispute that can be settled by the parties pursuant to the law, designating one or an odd number of arbitrator(s) as the arbitral tribunal for the dispute; and
- the arbitration agreement shall relate to a specific legal relationship and the dispute arising therefrom.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Article 4 of the TAA confirms that the arbitration agreement is independent of and separated from the underlying contract. Therefore, the avoidance, rescission or termination of the underlying contract does not affect the validity of the arbitration agreement.

After an arbitration agreement has been validly concluded between the parties, the insolvency or loss of legal capacity of the parties to the arbitration agreement thereafter does not invalidate the arbitration agreement. After a party is declared insolvent or legally incapable, an administrator will be appointed and the administrator, acting on behalf of the party, is bound by the arbitration agreement contained in the underlying contract entered into by the party.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

A third party can be bound by an arbitration agreement in exceptional situations, for example, assignment of contractual rights or obligations or succession. If an insurer is entitled to enforce an insured's rights against a third party, the insurer will be bound by the arbitration agreement concluded between the insured and the third party.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Taiwan Arbitration Act does not expressly stipulate whether and how a third party may be joined in an existing arbitration proceeding. Since an arbitration is consensual by its very nature, if all the existing parties and the third party agree to the joinder of the third party to the existing arbitration proceeding, in principle, the third-party participation would be allowed. Lacking such agreement, the majority view under Taiwan law is that the third party does not have the right to join an existing arbitration proceeding if any of the existing parties disagrees to the joinder; likewise, the existing parties cannot compel a third party to join an existing arbitration proceeding if the third party refuses to join.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

It is not recognised in Taiwan under the law and regulation related to arbitration to extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company on the basis of the 'group of companies' doctrine, nor have we seen any court precedent recognising the extension of an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company under such doctrine.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Taiwan Arbitration Act does not expressly stipulate the requirements for a valid multiparty arbitration agreement. However, articles 9(5) and 18(3) of the Taiwan Arbitration Act anticipate the possibility of multiparty disputes by stating that:

- where a party to the arbitration consists of more than two persons, and they are unable to agree on the appointment of an arbitrator, the arbitrator shall be appointed by a majority vote. In the event of a tie, the appointment shall be decided by drawing lots; TAA, article 9(5); and
- if there are several respondents, unless otherwise agreed by the parties, the arbitral proceedings for a dispute shall commence on the date when the first written notification is served on any one of the respondents; TAA, article 18(3).

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

According to a letter issued by the Judicial Yuan of Taiwan in 1993, government officers, including active judges, may not act as arbitrators. Article 6 of the Taiwan Arbitration Act provides for the qualifications with which an arbitrator shall comply and article 7 of the Taiwan Arbitration Act stipulates situations where a person cannot act as an arbitrator. Under the Taiwan Arbitration Act, arbitrators need not be selected from a list of arbitrators.

The parties' agreement on requirements for arbitrators based on nationality and professional skills will be recognised by the courts. It is not clear whether or not the parties' agreement on requirements for arbitrators based on religion or gender will be recognised by the courts or not owing to the lack of related precedents.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

In standard arbitration proceedings, if the parties do not agree on the choice of an arbitrator or the procedure for choosing an arbitrator, the default rule is to have a tribunal composed of three arbitrators: the claimant and the respondent shall each appoint one arbitrator, and the two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal (TAA, article 9(1); CAA Arbitration Rules, article 16(1)).

In expedited arbitration proceedings administered by an arbitration institution, the case shall be heard by a sole arbitrator appointed by the arbitration institution (TAA, article 36(1); CAA Arbitration Rules, article 44(1)).

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

A party may apply for the withdrawal of an arbitrator in any one of the following circumstances: (TAA, article 16)

- where the arbitrator does not meet the qualifications agreed by the parties;
- the existence of any causes as stipulated under article 32 of the Taiwan Code of Civil Procedure that would require a judge to withdraw from a judicial proceeding;
- 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 an agent of a party or between the arbitrator and a key witness; and
- the existence of any other circumstances that raise any justifiable doubts as to the impartiality or independence of the arbitrator.

Article 17 of the Taiwan Arbitration Act further elaborates on the procedures for challenging an arbitrator as follows:

- a party intending to request for the withdrawal of an arbitrator shall do so within 14 days of knowing the cause for withdrawal. Such party shall submit a written application stating the reasons for the withdrawal to the arbitral tribunal;
- the arbitral tribunal shall make a decision within 10 days upon receipt of such application, unless the parties have agreed otherwise;

- where a party wishes to challenge a decision made by the arbitral tribunal, such party shall apply for a judicial ruling within 14 days of receiving notice of the arbitral decision. A party cannot further challenge the ruling rendered by the court;
- if both parties request for the withdrawal of an arbitrator, the arbitrator shall withdraw; and
- an application to withdraw a sole arbitrator shall be submitted to the court directly.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The Taiwan Arbitration Act does not expressly stipulate the relationship between parties and arbitrators. Academics hold different views in respect to this issue, including status theory, contract theory and quasi-contract theory. Taiwanese court precedents on this issue are rare.

Article 15 of the Taiwan Arbitration Act requires that arbitrators, both the presiding arbitrator and the party-appointed arbitrators, shall be independent and impartial. In disputes involving property rights, the arbitration fee charged by an arbitration institution is based on the price or value of a claim and a certain percentage of the arbitration fee will be given to the arbitrators by the arbitration institution. Expenses of making copies, translation, arbitrators' transportation and accommodation and other necessary expenses will be charged separately based on actual costs (articles 25, 28 and 29 of the Rules on Arbitration Institution, Mediation Procedures and Fees jointly promulgated by the Executive Yuan and Judicial Yuan of Taiwan).

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The Taiwan Arbitration Act is silent on the immunity of arbitrators from liability. There is also a lack of jurisprudence on this issue. However, the academics generally hold that arbitrators shall be responsible for intentional acts and gross negligence.

Jurisdiction

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Before a defendant submits any arguments on the merits of the case, the defendant may file a motion with the court to stay the court proceedings (TAA, article 4(1)).

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

The Taiwan Arbitration Act recognises the 'competence-competence' doctrine. A party who intends to object to the jurisdiction of the arbitral tribunal shall submit the objection before he or she submits any arguments on the merits of the case (TAA, article 22).

Arbitral proceedings**22 Place and language of arbitration**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

The place of arbitration, unless otherwise agreed by the parties, shall be determined by the arbitral tribunal.

In foreign-related arbitration cases, the parties may agree on the language of arbitration. Otherwise, the default language for the arbitral proceedings shall be Chinese.

23 Commencement of arbitration

How are arbitral proceedings initiated?

Article 18(2) of the Taiwan Arbitration Act explicitly stipulates that unless otherwise agreed by both parties, the arbitral proceedings for a dispute shall commence on the date when the written notice of arbitration is served on the respondent.

24 Hearing

Is a hearing required and what rules apply?

The Taiwan Arbitration Act does not expressly stipulate whether a hearing is required. Unless otherwise agreed by the parties, the arbitral tribunal may decide to have a hearing or to make an award on the basis of written submissions and documentary evidences only. However, in practice, the arbitral tribunal will decide to have at least one hearing in most cases, unless otherwise agreed by the parties.

Article 49 of the CAA Arbitration Rules provides that in expedited proceedings, the parties may agree that the arbitral tribunal shall make an award on the basis of written submissions and documentary evidences only, without a hearing.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The Taiwan Arbitration Act is silent on the rules of evidence. The parties may agree on a set of rules of evidence, for example, the IBA Rules. However, in practice, the IBA Rules are rarely adopted by the parties in domestic arbitration. If there is no agreement between the parties regarding the rules of evidence, the arbitral tribunal may adopt the Taiwan Code of Civil Procedure *mutatis mutandis* or other rules of procedure that it deems proper. The parties and a party's officers are allowed to testify.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The arbitral tribunal, if necessary, may request assistance from a court or other agencies in the course of the arbitral proceedings. For example, the arbitral tribunal may request a court to assist it in taking evidence (TAA, article 28(1)).

27 Confidentiality

Is confidentiality ensured?

Article 15(1) of the Taiwan Arbitration Act expressly requires that arbitrators shall keep all matters confidential. Article 6 of the CAA Arbitration Rules also requires that, unless otherwise agreed by the parties or required by the applicable law, the administrators of the CAA shall keep all matters confidential.

Interim measures**28 Interim measures by the courts**

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Before and after arbitration proceedings, any of the parties may apply to the court with proper jurisdiction for orders of interim measures. The court enjoys an exclusive jurisdiction to render such orders, except in the situation expressly provided in article 36(1) of the CAA Arbitration Rules, where it should be emphasised that the parties must agree on the interim measures to be taken:

At the request of either party, the arbitral tribunal may take any interim measures as agreed by the parties in respect of the subject-matter of the dispute for purposes of the conservation of the perishable goods or providing immediate protection, such as ordering the sale or their deposit with a third person of the goods or other interim measures as the tribunal considers appropriate.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Neither the Taiwan Arbitration Act, nor the CAA Arbitration Rules, provides for the mechanism of an emergency arbitrator prior to the constitution of an arbitral tribunal.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

At the request of either party, the arbitral tribunal may take any interim measure as agreed by the parties in respect of the subject-matter of the dispute for purposes of the conservation of the perishable goods or providing immediate protection, such as ordering the sale or their deposit with a third person of the goods or other interim measures as the tribunal considers appropriate (CAA Arbitration Rules, article 36(1)).

Awards**31 Decisions by the arbitral tribunal**

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

When there is more than one arbitrator, any award of the arbitral tribunal shall be made by a majority of the arbitrators (TAA, article 32(2)).

32 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Taiwan Arbitration Act is silent on whether an arbitrator may issue a dissenting opinion. An explanatory letter issued on 25 November 1996 by the Ministry of Justice of the Executive Yuan of Taiwan provided that an award shall not include any dissenting opinion. However, article 38(1) of the CAA Arbitration Rules provides that the dissenting opinion of an arbitrator may be recorded on the record of deliberation.

33 Form and content requirements

What form and content requirements exist for an award?

An award shall be in writing and signed by every arbitrator participating in the deliberation. If any arbitrator refuses to or cannot sign the award for any reason, the arbitrators who sign the award shall state the reason for the missing signature.

An award shall contain all of the following:

- the names and addresses of the parties. Where a party is a legal person or other organisation or government department, its name and place of office, place of business or place of public service;
- the names and addresses of the legal representatives or the authorised representatives in the arbitration, if any;
- the name, nationality and addresses of the interpreter, if any;
- the holding of the tribunal;
- the facts and reasons, unless the parties have agreed that no facts and reasons are required to be stated in the award; and
- the date on which and the place where the award was made.

34 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Article 33(1) of the Taiwan Arbitration Act and article 41(1) of the CAA Arbitration Rules both provide that the final award shall be made within 10 days after the closure of the hearings. Article 41(2) of the CAA Arbitration Rules further provides that if the arbitral tribunal fails to render a final award within one month after the closure of the hearings, CAA may send a notice of reminder. If the arbitral tribunal fails to render its final award within three months after the closure of the hearings, CAA may make the names of the arbitrators public in the Arbitration Journal published quarterly by CAA. Nevertheless, if the arbitral tribunal fails to render its final award within the time limit prescribed in article 21 of the Taiwan Arbitration Act or within the time limit as agreed by the parties, CAA may make the names of the arbitrators public in its Arbitration Journal immediately without giving a prior notice of reminder.

35 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

If any of the parties intends to set aside an arbitral award, the party shall initiate an action within 30 days from his or her receipt of the arbitral award (TAA, article 41(2)).

The arbitral tribunal may correct, on its own initiative or upon request, any clerical, computational or typographic errors or any other similar obvious mistakes in the award (TAA, article 35). No specific time limit is provided for such correction.

36 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

An arbitral tribunal may issue a final award, partial award and interim award. If the parties reach a settlement before the arbitral tribunal renders an award, the arbitral tribunal will render a settlement agreement. The settlement agreement has the same effect as an award, namely the same effect as a final court judgment (TAA, article 44).

37 Termination of proceedings

By what other means than an award can proceedings be terminated?

Arbitral proceedings can be terminated under any of the following situations:

- when the parties reach a settlement before the arbitral tribunal renders a final arbitral award;
- in the circumstances set out by article 21(1) of the Taiwan Arbitration Act, which provides that:
If the arbitral tribunal fails to render an arbitral award within the time limit specified in Article 21(1) of the Taiwan Arbitration Act, except in the case of mandatory arbitration, any of the parties may refer the dispute to the court or proceed with the previously initiated (and suspended) litigation proceedings and the arbitral proceedings shall be deemed terminated thereafter; and
- in the event that a majority consensus of the arbitrators cannot be reached, where the arbitral proceedings are then deemed terminated (TAA, article 32(4)).

38 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

In terms of cost allocation in arbitration, the arbitral tribunal usually follows the rules for cost allocation in domestic court proceedings, namely the 'loser-pays' rule.

However, the 'loser-pays' rule does not apply to attorneys' fees and in-house fees.

39 Interest

May interest be awarded for principal claims and for costs and at what rate?

Interest may be awarded. Where the Taiwan Civil Code is applicable, the interest rate is 5 per cent per annum, unless otherwise agreed by the parties or provided by the applicable law (Taiwan Civil Code, article 203).

Proceedings subsequent to issuance of award**40 Interpretation and correction of awards**

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal may correct, on its own initiative or upon request, any clerical, computational or typographic errors or any other similar obvious mistakes in the award (TAA, article 35). No specific time limit is provided for such correction.

41 Challenge of awards

How and on what grounds can awards be challenged and set aside?

If any of the parties intends to set aside an arbitral award, the party shall initiate an action with the court with proper jurisdiction within 30 days from his or her receipt of the arbitral award (TAA, article 41(2)).

The grounds on which an award can be challenged include:

- (i) the arbitral award concerns a dispute not contemplated by the terms of the arbitration agreement, or exceeds the scope of the arbitration agreement, unless the offending portion of the award may be severed and the severance will not affect the remainder of the award;
- (ii) the reasons for the arbitral award were not stated as required, unless the omission was corrected by the arbitral tribunal;
- (iii) the arbitral award directs a party to act contrary to the law;
- (iv) the existence of any circumstances provided in article 38 of the Taiwan Arbitration Act;
- (v) the arbitration agreement is null, invalid or has yet to come into effect before the conclusion of the arbitral proceedings;
- (vi) the arbitral tribunal fails to give a party the opportunity to present its case before the conclusion of the arbitral proceedings, or if a party is not represented by a duly appointed and authorised representative in the arbitral proceedings;

- (vii) the formation of the arbitral tribunal or the arbitral proceedings does not comply with the arbitration agreement or the law;
- (viii) an arbitrator breaches the duty of disclosure and is obviously partial, or continues to participate in the arbitration after being requested to withdraw, provided that the request for withdrawal has not been dismissed by the court;
- (ix) an arbitrator violates an arbitration duty that constitutes a criminal offence in relation to the arbitration;
- (x) a party or its representative has committed a criminal offence in relation to the arbitration;
- (xi) any evidence or translation, upon which the award is based, is forged or fraudulently altered or contains any other misrepresentations; or
- (xii) a civil or criminal decision or an administrative ruling, upon which the award is based, has been reversed or materially altered by a subsequent decision or administrative ruling.

Items (ix) to (xi) are limited to instances where the final conviction has been rendered or the criminal proceeding may not be commenced or continued for reasons other than insufficient evidence. Item (vii) concerning circumstances contravening the arbitration agreement and items (viii) to (xii) are limited to the extent sufficient to affect the arbitral award.

42 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

Arbitral awards are not appealable.

However, a party may launch a lawsuit to set aside an arbitral award with a district court if any of the grounds for setting aside exists. The decision rendered by the district court is appealable to the high court. If the amount in dispute is NT\$1,5 million or more, the losing party may appeal to the Supreme Court. Therefore, there are three levels in total, namely the district court, the High Court and the Supreme Court. The time required at each level varies depending on the extent of complexity of the case concerned.

The amount of the court costs at the court of first instance is calculated in accordance with the following table. The following amounts are cumulative.

Below NT\$100,000	NT\$1,000
Up to NT\$1 million	NT\$110 for each NT\$10,000 inclusive
Up to NT\$10 million	NT\$99 for each NT\$10,000 inclusive
Up to NT\$100 million	NT\$88 for each NT\$10,000 inclusive
Up to NT\$1 billion	NT\$77 for each NT\$10,000 inclusive
Above NT\$1 billion	NT\$66 for each NT\$10,000 inclusive

In matters of appeal to a court of second or third instance, an additional five-tenths of the court costs charged by the court of first instance shall be taxed.

43 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

An arbitral award can be regarded as a foreign award if: (i) it is made outside of the territory of the Taiwan; or (ii) it is made within the territory of the Taiwan but in accordance with foreign arbitration law or regulation, the arbitration rules of foreign arbitration institutions, or the arbitration rules of international arbitration institutions.

The grounds for refusal of recognition or enforcement of a foreign arbitral award are provided in articles 49 and 50 of the Taiwan Arbitration Act.

Article 49 of the Taiwan Arbitration Act provides that:

- the court shall issue a dismissal with respect to any application submitted by a party for recognition of a foreign arbitral award, if such award contains one of the following elements:
 - the recognition or enforcement of the award would be contrary to the public policy of Taiwan; or
 - the subject matter of the dispute is not capable of settlement by arbitration under the laws of Taiwan; and
- the court may issue a dismissal order with respect to an application for recognition of a foreign arbitral award if the court of the country where the arbitral award is made or whose laws govern the arbitral award does not recognise or enforce arbitral awards of Taiwan.

Under article 49 of the Taiwan Arbitration Act, the courts have the power to dismiss an application for recognition of a foreign arbitral award even in the absence of any request from the opposite party.

Article 50 of the Taiwan Arbitration Act further stipulates that if a party applies to the court for recognition of a foreign arbitral award, which concerns any of the following circumstances, the opposite party may request the court to dismiss the application within twenty days from the date of receipt of the notice of the application:

- the arbitration agreement is invalid as a result of the incapacity of a party according to the applicable laws;
- the arbitration agreement is null and void according to the governing law as agreed by the parties or, in the absence of choice of law by the parties, the law of the country where the arbitral award was made;
- a party is not given proper notice either of the appointment of an arbitrator or of any other matter required in the arbitral proceedings, or any other situations that give rise to lack of due process;
- the arbitral award is not relevant to the subject matter of the dispute covered by the arbitration agreement or exceeds the scope of the arbitration agreement, unless the offending portion can be severed from and that will not affect the remainder of the arbitral award;
- the composition of the arbitral tribunal or the arbitration procedure contravenes the arbitration agreement or, in the absence of an arbitration agreement, the law of the place of the arbitration; or
- the arbitral award is not yet binding upon the parties or has been suspended or revoked by a competent court.

Taiwan courts tend to decide in favour of enforcing awards.

44 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The Taiwan Arbitration Act is silent on the enforcement of a foreign award that has already been set aside by the courts of the place of arbitration. The court's attitude in this regard is not clear because of the lack of relevant precedents.

45 Cost of enforcement

What costs are incurred in enforcing awards?

In matters arising from proprietary rights, if the amount or value of the enforcement is less than NT\$5,000, the cost for enforcement of an award is waived. If the amount or value of the enforcement is NT\$5,000 or more, the cost for enforcement of an award is 0.8 percent of the amount or value of the enforcement.

Update and trends

The procedure for challenging arbitrators is one of the most debated areas of arbitration practice in Taiwan. Article 17 of the Taiwan Arbitration Act provides that if the parties have not agreed on the procedures for challenging arbitrators, the process begins when the challenging party submits a written application to the arbitral tribunal within 14 days of learning the grounds for the challenge. However, the Taiwan Arbitration Act does not expressly stipulate whether the arbitral tribunal that decides on the party's application for challenging the arbitrator, should include the arbitrator being challenged and whether the arbitral proceedings should be suspended while the said challenge is pending. Taiwanese courts have taken contrary stances on these two issues, leaving them highly contentious and unsettled. This has caused legal uncertainty and imposed unnecessary risks on arbitral parties. There have been proposals to amend relevant provisions of the Taiwan Arbitration Act. It is worth observing how the Act will be amended.

Of all the recent judgments and rulings issued by Taiwanese courts regarding arbitral awards, *Jin Cheng Feng Construction Co Ltd v National Taiwan University Hospital Bei-Hu Branch* (the *Jin Cheng Feng* case, Taiwan High Court Civil Ruling 99 Fei Kang Zi No. 122 (2010)) has drawn the most widespread concern. It is the first case in which a party has moved for compulsory execution in a Taiwanese court of a domestic ad hoc award. The Taiwan Taipei District Court (Taipei District Court) overruled the motion on the grounds that an arbitral award made in ad hoc arbitration does not command the same enforceability as a final court judgment and, therefore, cannot serve as the basis for compulsory execution. The Taipei District Court reasoned that because the ad hoc arbitral tribunal, which was established under ad hoc

arbitration, did not satisfy the definition of an arbitration institution under article 54 of the Taiwan Arbitration Act, the arbitral award rendered by the ad hoc arbitral tribunal did not have the same legal effect as a final court judgment. Therefore, the award could not serve as a proper legal basis for *Jin Cheng Feng Construction Co Ltd's* (*Jin Cheng Feng*) motion for compulsory execution (Taiwan Taipei District Court Civil Ruling 98 Shen Zhong Zhi Zi No. 6 (2009)). *Jin Cheng Feng* appealed. A tribunal of three judges at the Taipei District Court heard the case and upheld the Taipei District Court's first ruling. *Jin Cheng Feng* further appealed to the Taiwan High Court, which also upheld the Taipei District Court's ruling and dismissed the appeal.

In the *Jin Cheng Feng* case, the Taiwanese courts made a distinction between arbitral awards made in ad hoc arbitration and those made in institutional arbitration by denying the enforceability of arbitral awards made in ad hoc arbitration. This distinction clearly contradicts the generally accepted international practice. Ad hoc and institutional are the two basic forms of arbitration. Most countries permit both forms and do not draw any distinction between the validity of arbitral awards made in ad hoc arbitration and that of those made in institutional arbitration, with the exception of Taiwan. The Taiwanese court's decision in the *Jin Cheng Feng* case is unique in that the court permitted ad hoc arbitration while denying the enforceability of arbitral awards made in ad hoc arbitration. This decision deviates from generally accepted international practice and casts doubt on whether Taiwanese courts have a proper understanding of ad hoc arbitration. Moreover, such decision could negatively affect Taiwan's request that Chinese courts offer the same treatment for awards made in Taiwan as they do for those made in Hong Kong and foreign countries.

Other**46 Judicial system influence**

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

The Taiwan Arbitration Act recognises the doctrine of party autonomy. In the absence of an agreement on the procedural rules governing the arbitration, the arbitral tribunal shall first apply the Taiwan Arbitration Act. If the Act is silent on a procedural matter, the arbitral tribunal may adopt the Taiwan Code of Civil Procedure *mutatis mutandis* or other rules of procedure that it deems proper. Although, literally speaking, there is no order of precedence between applying the Taiwan Code of Civil Procedure *mutatis mutandis* and applying other rules of procedure that it deems proper, in practice, the arbitral tribunal often refers to the provisions under the Taiwan Code of Civil Procedure. As such, in the absence of an agreement on the procedural rules governing the arbitration and where the Taiwan Arbitration Act is silent, in practice, the Taiwan Code of Civil Procedure would have substantial influence on the arbitration proceedings.

Unless otherwise expressly agreed by the parties, it is not likely that the arbitral tribunal will adopt US-style discovery. Written witness statements are not rare but, where possible, the arbitral tribunal would usually invite witnesses to attend the hearing so that the arbitral tribunal can have the opportunity to ask them questions directly.

A party's officers may testify but they are not required to take an oath.

47 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Taiwan is not a signatory state to the 1958 New York Convention. Counsels are advised to take this into consideration if enforcement proceedings outside the territory of Taiwan might be required.

When the arbitration institution pays out the fees to an arbitrator, it will withhold 20 per cent of the arbitrator fees as withholding tax. However, the reimbursement of out-of-pocket expenses, including transportation and accommodation, etc, is not subject to withholding tax.

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