

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

TAIWAN

Responses submitted by:

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Taiwan is a civil code country.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

The adjudication in Taiwan, both for criminal and civil, is adversarial in nature. In criminal matters, the Public Prosecutors represent the state to file the criminal charges.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Law school graduates who pass a national exam and complete a two-year training course will be appointed as the judges or prosecutors. While there is a draft bill, if enacted, introducing a “quasi-jury” system into the criminal trial proceeding in the future, currently there is no jury system in Taiwan. Under the proposed new system, the “quasi-juror” will be selected by random by the court that hears the case from the data base prepared in advance. During the selection proceeding, the Prosecutor and the defense lawyer shall be present and give opinions.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

There are specialized courts for juvenile, marriage-parental matters, and administrative matters.

5. Is arbitration an option and when? If so, what rules are typically used?

As a regime for dispute resolution, the arbitration is optional and subject to the parties’ agreement. Taiwan is not a party to the 1958 New York Convention. The arbitration rules employed in Taiwan are quite similar to the ICC rules.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes, the court would do so, but the pending lawsuit will be suspended and await the outcome of the arbitration.

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7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

After a civil lawsuit is lodged, a pre-hearing mediation is mandatory.

8. What is the process for pre-hearing fact discovery (if any)?

(a) *Are there provisions for mandatory document disclosures?*

Yes. The Civil Procedure Code provides certain situations where the plaintiff, the defendant and a third party shall produce and deliver the documents to the court.

(b) *Is there provision for oral examinations of the parties or others?*

No. There is no pre-trial oral examination available in Taiwan.

(c) *Are there limits on the length of oral examinations?*

N/A.

(d) *Are witness statements or summaries to be provided before the hearing?*

No. There is no need for the witness to provide a written statement before the hearing.

9. What is the process for pre-hearing expert disclosure (if any)?

There is no pre-hearing disclosure, discovery, available in Taiwan.

(a) *Are expert reports or written summaries required to be exchanged? - NA*

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts? - NA*

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing? - NA*

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10. Are there other notable discovery rules?

No. In principle, no pre-hearing discovery is available. However, if there is suspicion that certain evidence, either witness or documentary proof, will be unavailable (e.g., the witness is seriously ill, or the document might be destroyed), the plaintiff may petition the court to “preserve” such evidence before filing the lawsuit.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

There is no pre-hearing conference available in Taiwan. However, before the formal trial proceeding, the court will hold one or more preliminary hearing(s) for the parties to submit their arguments and evidence. The purpose of such preliminary hearing is to do the needed preparation for the following trial proceeding.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

The defendant may petition the court to dismiss the case before holding any hearing when and if the claim filed and asserted by the plaintiff appears to “obviously lack legal ground.” In practice, though, the chance of success for the court to accept such petition is extremely low.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

There is no such rule. The admissibility of the evidence shall be decided after the preliminary hearing is held.

14. What is the standard for admissibility of expert evidence?

The factors that the court would take into account regarding the admissibility of expert evidence include impartiality, relevance, and qualification of the expert.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

The court has the discretion to appoint the expert unless the parties have agreed otherwise.

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16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

In Taiwan there is no “privilege protection” regime similar to that in the United States, except that the lawyer may refuse to give testimony on matters/situations which he is required to keep in confidence.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

A witness may refuse to give testimony if he, as a professional, is under legal obligation to keep it in confidence, or such disclosure will jeopardize the witness’s own confidential information relating to his technics or profession.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The trial court will make the decision.

19. Briefly describe the trial process?

(a) *Are there opening submissions, in what form and of what length?*

The judge will open the proceeding, and request the parties to give a verbal submission on the arguments and evidence.

(b) *What is the order of presentation of witnesses?*

The court will inquire the parties’ opinion and then decide the order of presentation.

(c) *Who conducts examination and in what order?*

The judge will conduct the examination, but the lawyers will do so if the court so allows.

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(d) *What is the process for closing submissions?*

The lawyers of both side will give verbal presentation at the last “verbal debate proceeding.”

20. Please identify any other notable trial procedures.

Compared to the civil proceeding in the United States, the court in Taiwan has broader discretion in maneuvering the process, and the parties, especially the plaintiff, have narrower “power” in seeking the evidence. Subject to certain exception, the court will hold the first hearing within 1-2 months after the civil complaint is received, but the proceeding before rendering the final judgment may take 1.5 years or longer.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The party who wishes to prove his right and argument shall bear the burden of proof. In a civil lawsuit for damages compensation, the aggrieved plaintiff shall prove the causation and damage suffered unless the laws provide otherwise. There are no detailed “evidence rules” in Taiwan, and the court adopts the rule of “moral conviction” as the standard in evaluating and deciding the evidence.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

The damages shall be compensatory in nature, and the punitive damage is only allowable in some areas, e.g., intentional patent infringement et al.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

It depends on the specific law and regulation that approves the punitive damage. Normally, the requirement will be willful misconduct or intentional infringement of the doer.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

All claims shall be subject to the “statutory limitation,” which will be 15 years unless the laws provide otherwise. There is no regulation on the time to respond to the claim. In rare situations a “waiver” will be deemed if no response is made

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within a reasonable time span.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

The Civil Procedure Code provides various “factors” to decide which court has the jurisdiction. For a foreign defendant, Taiwan court will take jurisdiction if said defendant has (1) domicile (presence) in Taiwan, (2) attachable assets in Taiwan, or (3) agreed to perform a contract in Taiwan. To some extent, the “convenient forum” is one of the factors that the court will take into account when determining the jurisdiction.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes, the parties may request the court to notify a third party to “intervene” in the proceeding when such third party has a legal interest in the dispute. If the court so agrees and issues a notice to the third party, such a third party will be deprived of the right to challenge the validity of the court judgment unless he follows the court’s notice to “intervene” in the proceeding by attending the hearing and filing submission.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

No. All parties shall bear their own legal cost, i.e., legal charges for lawyers.

28. Are contingency fees allowed?

Yes, the contingency fees arrangement is acceptable except in matters relating to marriage and parental dispute.

29. Is third party funding of claims permitted? Under what circumstances?

No. It is not permissible.

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30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

The class action is acceptable for product liability, which is provided under the Consumer Protection Act and the claim is damages compensation.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

The claims can be filed by consumer protection associations established for more than 3 years with 500 or more members if there are 20 or more consumers who suffer damage due to the identical incident.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

On average it may take 4 to 6 weeks for the court to commence the investigation hearing after a lawsuit is commenced, and the court may need 10 -18 months to complete the trial and render the decision. The complexity of the facts and the necessity for complicated appraisal may prolong the proceeding.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

The party who fails at the first instance of trial is entitled to lodge an appeal with the high court, and the losing party may appeal to the Supreme Court. The trial proceeding at the high court level is heard by a judge panel composed of 3 judges. The appellate proceeding before the Supreme Court is handled by a judge panel composed of 5 judges.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Yes, some of the hearing rooms have been equipped with facility for electronic trials.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The judge at district court and the high court has the discretion to allow the lawyers to give statement with the assistance of graphics, computer, and power point presentation.

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36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

No, there is no such distinction in Taiwan.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

There is a "comparative negligence" regime in the Civil Code of Taiwan. The court will evaluate the negligence between the tortfeasor and the aggrieved victim and decide the percentage of the damage that each shall bear. As such, the plaintiff's negligence in causing the damage or its expansion will in fact reduce the liability of the defendant.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

The law in Taiwan is silent on how to serve a notice issued by a foreign court. However, if the judgment rendered by a foreign court is to be enforced in Taiwan, the service of a complaint issued by said foreign court shall be done through the regime of "letters rogatory" (i.e., assistance to be provided by a local court) unless the defendant has answered the lawsuit.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No, there is no such prohibition in Taiwan.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

A person lodging a civil lawsuit in Taiwan shall pay a litigation fee to the court to commence the proceeding. Said litigation fee is roughly equivalent to 1% of the claim. If, however, the parties reach a settlement, the plaintiff may refund from the court 2/3 of said fees. Such may encourage the parties to settle the dispute.

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41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

No.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

No.