

GUIDE TO ARBITRATION PLACES (GAP)

TAIWAN

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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| 2. Judiciary | ● |
| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
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| 8. Compatibility with the Delos Rules | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Taiwan enacted its Arbitration Law in 1961, and since then has established a well-developed legal framework for arbitration through six amendments, including for international arbitrations, with the latest amendment completed in 2015.¹ Although Taiwan is not a member party of either the United Nations or New York Conventions, the spirit of the provisions of both UNCITRAL Model Law on International Commercial Arbitration (“**UNCITRAL Model Law**”) and the New York Convention (“**NY Convention**”) has been included and codified as part of the legal framework in Taiwan. The largest Taiwanese arbitration institution, the Chinese Arbitration Association (CAA), as well as its International Arbitration Center (CAAI), also provides well-established rules and is efficient and impartial in administering cases. This highly regarded arbitration-friendly framework has made Taiwan an ideal jurisdiction for international arbitration.

Key places of arbitration in the jurisdiction?	Taipei, Taichung, Kaohsiung.
Civil law/common law environment? (if mixed or other, specify)	Civil law.
Confidentiality of arbitrations?	Unless otherwise agreed to by the parties, all procedures and documents remain confidential.
Requirement to retain (local) counsel?	There is no requirement to retain local counsel. However, if the arbitration counsel does not have a Taiwan bar license, he/she may not merely use or indicate “attorney at law (lawyer)” in Taiwan without indicating the jurisdiction in which he/she has a bar license. We therefore suggest that arbitration counsel should identify the jurisdiction of his/her bar license so as to avoid disputes.
Ability to present party employee witness testimony?	Parties may present their employees as witnesses, provided that there is no history of an employment relationship between the witness and the arbitrator, and if there is, the arbitrator is required to disclose such relationship, and this relationship may constitute a conflict of interest for the arbitrator under Articles 15 and 16 of the Arbitration Law.
Ability to hold meetings and/or hearings outside of the seat and/or remotely	If agreed by the parties, meetings and/or hearings may be held outside of the seat and/or remotely ² .
Availability of interest as a remedy?	Awards for the recovery of interest can be rendered as a remedy.
Ability to claim for reasonable costs incurred for the arbitration?	Fees charged by the arbitration institution, the arbitral tribunal and/or any expert witness for the arbitration may be determined and allocated by the arbitral tribunal. However, attorney fees may not be deemed part of the arbitration costs.

¹ The Arbitration Law is available at <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0020001> (last accessed on 16 June 2021). A comparison of the law with the UNCITRAL Model Law and the NY Convention has been provided at Annexes 1 and 2 respectively of the chapter.

² Ministry of Justice Administrative Interpretation Fa-Lui-Zih No. 10903512280 (2020).

Restrictions regarding contingency fee arrangements and/or third-party funding?	<p>There is no restriction against contingency legal fee arrangements for arbitration (family and criminal matters, which do not allow contingency fee arrangements, are not arbitrable).</p> <p>Third-party funding is permitted only if the funded client agrees thereto and such funding does not affect the impartial professional evaluation of the attorney under Article 30-2 of the Rules of Professional Attorney Ethics.</p>
Party to the New York Convention?	<p>Although Taiwan is not a member of the NY Convention, the contents of the NY Convention are adopted and codified in Taiwan's Arbitration Law (see the comparison note included in the chart in Question 5.8 below for more detail). The procedure for and requirements to recognize/enforce a foreign arbitral award in Taiwan are basically the same as those set forth in the NY Convention. The only difference is that the applicant shall submit the full text of the foreign arbitration law to the court for recognition per Article 48 I (3) of the Arbitration Law.</p>
Party to the ICSID Convention?	<p>Taiwan has not been a listed member since 1980.</p>
Compatibility with the Delos Rules?	<p>The Delos Rules are substantially compatible with the Arbitration Law.</p> <p>However, the Delos Rules provide the arbitral tribunal the power to grant any interim measures. Those measures issued under the Delos Rules may not be enforceable by the Taiwan courts. The party can only request the court to issue orders for interim measures per Article 39 of the Arbitration Law.</p>
Default time-limitation period for civil actions (including contractual)?	<p>The issue of time bars in Taiwan Law is complicated, and time bars vary in length from 1 to 15 years, depending on the facts and legal grounds. A claimant should consult a Taiwan attorney for proper advice on the time bar on a case-by-case basis. Please see our answer at 5.5 below for further details.</p>
Other key points to note?	<p>Article 21 of The Taiwan Arbitration Law requires an arbitral tribunal to render its award within 9 months (6 months plus a 3-month extension determined by the tribunal if necessary) from formation of the tribunal unless otherwise agreed by the parties. If the arbitral tribunal fails to render an award within the above timeframe, either party may file the subject matter of the arbitration to the court for adjudication unless such arbitration is required by law (see Question 2.6.2 for further details).</p>
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	<p>80.9</p>
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	<p>Not applicable as Taiwan was not evaluated by WJP.</p>

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Taiwan enacted the Commercial Arbitration Law in 1961, and since then the Law has been amended six times. The latest amendment was in 2015. The most significant change was the 3 rd amendment, which also changed the name of the law to “ Arbitration Law ” in 1998.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	1. Taiwan’s Arbitration Law is based substantially on the 1985 version of the UNCITRAL Model Law. 2. Unlike the UNCITRAL Model Law, the Arbitration Law provides that interim measures are granted by the court, rather than by the arbitral tribunal.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	No, there are no specialized courts or judges for arbitration-related matters. The ordinary civil courts handle arbitration-related matters: <ul style="list-style-type: none"> The following courts handle annulment lawsuits to revoke the awards where the place of the arbitration is Taiwan District court / <i>judgment</i> – (appeal) → High court / <i>judgment</i> – (appeal) → Supreme court / <i>judgment</i> – for law review only.³ The following courts handle applications for recognition of foreign awards / enforcement of local awards District court / <i>ruling</i> – (appeal) → District court panel / <i>ruling</i> – (re-appeal) → High court / <i>ruling</i> – for review of manifest error in the application of the law only.⁴
Availability of <i>ex parte</i> pre-arbitration interim measures?	<i>Ex parte</i> pre-arbitration interim measures applied for by the claimant at the competent court is available by law and regulations for arbitration if the properties of the respondents or the subject matter of the claim are located / involved within the territory of Taiwan. Pre-arbitration interim measures are available for arbitrations seated in Taiwan as well as for arbitrations seated elsewhere.
Courts’ attitude towards the competence-competence principle?	The arbitral tribunal may rule on its own jurisdiction, and the competence-competence doctrine is in principle recognized by the courts.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes. ⁵

³ Article 467 of the Code of Civil Procedure.

⁴ Article 486 IV of the Code of Civil Procedure.

⁵ Article 30 V of the Arbitration Law.

<p>Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?</p>	<p>In addition to the grounds set forth in the NY Convention, there are other grounds for annulment of awards under Articles 38 and 40 of the Arbitration Law (see Question 5.3).</p> <p>The court will refuse to recognize a foreign arbitral award / reject the application for recognition of a foreign arbitral award on certain grounds listed under Articles 48~51 of the Arbitration Law (see Question 5.5).</p>
<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>The annulment proceedings usually result in the suspension of the enforcement of an award upon the respondent's request and subject to providing a certain amount of security as determined by the court according to Article 42 I of the Arbitration Law.⁶ (See Question 5.7 below for further details regarding the recognition/enforcement of a foreign arbitral award).</p> <p>If the arbitral award has been annulled, the court will simultaneously revoke any enforcement order with respect to the arbitral award.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Where a foreign arbitral award is annulled at the seat of the arbitration and such annulment cannot be appealed, the court shall refuse to recognise such foreign award upon the other party's motion. (Rather than state that a court "may" refuse enforcement in such a scenario, as Article V(1)(e) of the NY Convention provides, the Arbitration Law provides that the court "shall" refuse to recognize an ultimately annulled foreign award).</p> <p>Where a foreign arbitral award is pending judicial review of an annulment or for suspension of enforceability at the seat of such foreign arbitration, the court may order the applicant in relation to said award to lodge a suitable and fixed security to suspend the local recognition or enforcement proceedings.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Only if the arbitral tribunal orders the hearing to be conducted remotely despite the party's objection due to a lack of adequate technical equipment for participation in such remote hearing may such order constitute a reason to annul the award, and even so, only if the procedural flaws also affect the result of the award.</p> <p>Otherwise, we do not think such an order would affect the recognition or enforceability of an ensuing award if the objecting party has been properly equipped with the remote meeting mechanisms per Article 19 of the Arbitration Law.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>In principle, disputes arising from government procurement and public-private collaboration agreements can be resolved by arbitration. However, the matters that are decided and ruled on at the discretion of the public bodies per the authorization of the law, e.g., such as administrative sanctions⁷ and administrative subsidies,</p>

⁶ Article 42 I of the Arbitration Law: "In the event that a party applies for revocation of an arbitral award, the court may grant an application by said party to stay enforcement of the arbitral award once the applicant has paid a suitable and certain security [to the court]."

⁷ Supreme Court Civil Ruling 91 Tai-Shang-Zih No. 2367 (2002).

	<p>cannot be resolved by arbitration, as they are considered government behaviors.</p> <p>According to Article 122-3 of the Compulsory Enforcement Act,⁸ awards issued against public property for public use and which public property is necessary for the implementation or conduct of public affairs, or awards for the transfer of such property that are against the public interest cannot be enforced.</p>
Is the validity of blockchain-based evidence recognised?	Where the parties agree, blockchain-based evidence will be recognised. However, in the absence of agreement, such evidence may be reviewed under the Code of Civil Procedure or the evidence rules that the arbitral tribunal considers proper to apply, per Article 19 of the Arbitration Law.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	As communication through electronic methods between the parties may be deemed to have created or established an arbitration agreement, the arbitration agreement recorded on a blockchain may also be deemed valid. ⁹ However, the arbitration agreement / award may need to be submitted in writing for the court's further recognition and enforcement per the law (see below).
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	A Taiwanese court is unlikely to consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement per Article 48 of the Arbitration Law and Article 6 of the Compulsory Enforcement Law.
Other key points to note?	Although Taiwanese courts have ruled that domestic <i>ad hoc</i> arbitral awards cannot be enforced, they have recognized and enforced foreign <i>ad hoc</i> arbitral awards. Therefore, a domestic <i>ad hoc</i> award is less effective than a domestic institutional award, as the court may refuse to enforce a domestic <i>ad hoc</i> award, and as such, the enforcement of a domestic <i>ad hoc</i> award is based merely on the voluntary performance of the parties.

⁸ Article 122-3 of the Compulsory Enforcement Act: "Where the public property owned and administered by the debtor is necessary for the implementation of public affairs or the transfer of such property is against the public interest, the creditor may not compulsorily enforce it. In the circumstances prescribed in the preceding paragraph, the enforcement court shall consult the debtor's opinion or conduct other necessary investigation when in doubt."

⁹ Article 1 IV of the Arbitration Law.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

Taiwan's Arbitration Law is based on the 1985 UNCITRAL Model Law. The table at Annex 1 lists the provisions of the 1998 Arbitration Law that were made with reference to said UNCITRAL Model Law. (The 1998 Arbitration Law is substantially the same as the current Arbitration Law.)

The provisions regarding interim measures granted by the arbitral tribunal in the 2006 version Model Law are not adopted by the Arbitration Law, currently, but a party may still obtain interim measures (e.g., an injunction) from courts according to the Code of Civil Procedure per Article 39 of the Arbitration Law.

1.2 When was the arbitration law last revised?

Taiwan enacted the Commercial Arbitration Law in 1961, and since then the Law has been amended six times. The latest amendment was in 2015. The most significant change occurred with the 3rd amendment, which included the change of the law title to the "Arbitration Law" in 1998.

In the 2015 amendment, the amended Article 47 of the Arbitration Law provides: '1. An arbitral award issued within the territory of Taiwan but based on foreign arbitration rules will be regarded as a foreign award, and 2. A foreign arbitral award shall have the same force as a final judgment of a court after being recognized by the court' (this was revised with reference to Article 3 of the NY Convention).

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Although no law directly governs/addresses this issue, it can be interpreted per the notions as set forth in Article 50(2) (one of the grounds for the refusal of recognizing a foreign arbitral award) and by scholarly opinion, as explained below:

- If there is an agreement upon a particular law to govern the arbitration agreement *per se*, the court will adhere to such agreement.
- If there is no such agreement, the law governing the arbitration agreement shall be determined in the following order:
 - (1) If there is an express or implied choice of law in the contract in which the arbitration agreement is set forth, this express or implied law shall govern the arbitration agreement;
 - (2) If there is no choice of law indicated in the contract, the law where the arbitral award was issued shall govern the arbitration agreement.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

According to Article 20 of the Arbitration Law,¹⁰ in the absence of an express designation of a 'seat' in the arbitration agreement, the arbitral tribunal has discretion to decide on the 'seat', which may generally be located where the 'place' or 'venue' is located, and the court will respect such decision.

¹⁰ Article 20 of the Arbitration Law: "The place of arbitration, unless agreed upon by the parties, shall be determined by the arbitral tribunal."

According to Article 21 of the Arbitration Law,¹¹ the tribunal may decide upon any venue that it deems appropriate in the absence of an agreement on the venue. If the parties have agreed on the place, instead of on a specific venue, the tribunal will generally determine a venue located in the agreed place. Also, the reference to a venue in the arbitration clause (which says nothing else about the place or seat of arbitration) may be considered by the Taiwanese authorities as a place or seat of arbitration.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the arbitration agreement is considered to be independent as stipulated in the Arbitration Law. That is, even if the contract is deemed to be invalid, the arbitration agreement may still be ruled valid if it meets the requirements.¹²

2.4 What are formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement must be in writing. Any written documents, documentary instruments, correspondence, facsimiles, telegrams, or any other similar types of communications between the parties evincing *prima facie* the existence of the arbitration agreement shall suffice to satisfy such requirement.¹³

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Firstly, even in the absence of an agreement formally signed by the parties, any written documents, documentary instruments, correspondence, facsimiles, telegrams, or any other similar type of communications between the parties evincing the *prima facie* existence of an arbitration agreement will be deemed to establish the existence of an arbitration agreement.¹⁴ Therefore, if there are such communications, a non-signatory may also be a party to an arbitration agreement.

Secondly, as explained at 2.6.2, in certain circumstances, a governmental entity may not object to a dispute arising in connection with a government procurement contract being sent to arbitration by its supplier, whether or not there is an arbitration agreement.¹⁵

Furthermore, according to the relevant laws and regulations, a third party to an arbitration agreement is bound by and may assert the existence of such agreement in any one of the circumstances below:¹⁶ (i) heirs;¹⁷ (ii) the transferee to a contract containing an arbitration agreement or the obligations or rights thereof;¹⁸ (iii)

¹¹ Article 21 of the Arbitration Law: "In the absence of any stipulation in the arbitration agreement as to how the arbitration is to be conducted, the arbitral tribunal shall, within ten days upon receipt of notice of the [final arbitral] appointment, determine the place (note: it shall mean 'venue' in Chinese) of arbitration as well as the time and date for the hearing, and shall notify both parties thereof...".

¹² Article 3 of the Arbitration Law.

¹³ Article 1 III and IV of the Arbitration Law.

¹⁴ Article 1 IV of the Arbitration Law; it should be similar to the 'implied consent' of the theory on extension of arbitration clause to non-signatories.

¹⁵ It should be similar to the 'state non-signatories' of the theory on extension of arbitration clause to non-signatories.

¹⁶ As for other theories on the extension of an arbitration clause to non-signatories, e.g., (1) piercing the corporate veil, (2) group of companies, (3) group of contracts, (4) extension to corporate officers and directors, (5) shareholder derivative rights, and (5) joint venture relations, are not explicitly applied as part of the regulations or by arbitral tribunals or courts in practice.

¹⁷ Article 1148 of the Civil Code: "An heir shall assume all rights and obligations pertaining to the estate of the decedent at the time of the commencement of the succession, including the status as a party to an arbitration agreement, and thus shall be bound by such agreement."

¹⁸ Articles 299 I, 301, and 303 of the Civil Code; Supreme Court Civil Ruling 87 Tai-Kang-Zih No. 630 (1998); Supreme Court Civil Judgment 97 Tai-Shang-Zih No. 793 (2008).

the beneficial third party to a contract;¹⁹ (iv) a guarantor;²⁰ and (v) a creditor of a party to an arbitration agreement.²¹

2.6 Are there restrictions to arbitrability? In the affirmative:

First, disputes may be settled in which the right or legal relationship of property law in contention can be settled by the party/parties without restriction, and resolution by arbitration is precluded only for disputes involving family law, succession law, or criminal law.²²

Second, arbitration must be related to certain legal relationships or disputes thereto.²³

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Only disputes in connection with family law, succession law, and or criminal law are restricted from resolution by arbitration.²⁴ Disputes governed by anti-trust law or employment law are arbitrable.

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

There is no restriction related to specific persons. Kindly note that there are some disputes for which arbitration is required by law to resolve, such as under Article 85-1 of the Government Procurement Act²⁵ and Article 166 of the Securities and Exchange Act.²⁶

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Yes, irrespective of whether the place of arbitration is inside or outside of the jurisdiction.

According to Article 4 of the Arbitration Law, the court shall stay litigation procedures if the defendant raises an objection that there is a valid arbitration agreement for resolution of the dispute. To be precise, the court

¹⁹ Article 270 of the Civil Code: "If the contract contains an agreement of a third-party beneficiary and an arbitration agreement, the beneficial third party to the contract shall be bound by the arbitration agreement contained therein, as well."

²⁰ Article 742 of the Civil Code: "If the contract entered into between the creditor and debtor contains an arbitration agreement, the guarantor shall also be bound by such agreement." See also Supreme Court Civil Ruling 94 Tai-Kang-Zih No. 993 (2005).

²¹ Article 242 of the Civil Code: "As a creditor may, in order to preserve his right, exercise in his name, any right of the debtor that the debtor neglects to exercise, to exercise the right of the debtor in the contract, such a creditor will be bound by the arbitration agreement, if any." See also Taiwan High Court Civil Judgment 93 Jhong-Shang-Zih No. 59 (2004); Taiwan Taipei District Court Civil Judgment 84 Su-Zih No. 4416 (1995).

²² Article 1 I and II of the Arbitration Law. The Legislative Explanation of Article 1 of the Arbitration Law states as follows: "That is, as the right or legal relationship of the property law in dispute can be resolved by the party/parties without restriction, such dispute is arbitrable, including but not limited to civil liability issues in connection with corporate law, labour, trademark, and unfair competition. However, if the dispute is related to family or succession under the Civil Code, it cannot be resolved by arbitration, even if there is dispute regarding property thereunder. Moreover, as disputes involving the application of the criminal law are related to the public interest, these also cannot be resolved by arbitration."

²³ Article 2 of the Arbitration Law: "No arbitration agreement shall be valid unless it was entered into with respect to a specific legal relationship or a dispute related thereto or arising therefrom."

²⁴ Legislative Explanation of Article 1 of the Arbitration Law.

²⁵ Article 85-1 of the Government Procurement Act provides as follows: "Where mediation for construction works and technical services fails because the governmental entity party to a contract for public procurement does not agree to the proposal or resolution for mediation made by the Complaint Review Board for Government Procurement, the governmental entity may not object to the dispute being sent to arbitration by the supplier under the contract". See also Ministry of Justice Interpretation Fa-Lyu-Zih No. 0960038134 (2007).

²⁶ Article 166 of the Securities and Exchange Act: "Any disputes between/among (1) the stock exchange and securities firms, or (2) securities firms in connection with transactions of securities (including government bonds, corporate stocks, corporate bonds, and other securities approved by the Competent Authority) shall be resolved by arbitration whether or not there is an agreement between the parties to resolve such disputes by arbitration."

will suspend the litigation proceeding and order the plaintiff to submit the dispute to arbitration within a specified time (unless the defendant has proceeded to oral argument on the merits),²⁷ and such litigation shall be regarded as withdrawn when the arbitral award is made.²⁸ If the plaintiff does not bring the dispute to arbitration in time (after the plaintiff being ordered to submit the dispute to arbitration), the court shall dismiss such action.²⁹

However, if the parties only agree that the dispute “can” (instead of “shall”) be brought to arbitration, without limiting the possibility of litigation in the courts, then the procedure adopted for resolving such dispute will depend on the time that the dispute is submitted to arbitration. If the dispute is submitted to arbitration before that dispute is brought to the court, Article 4 I of the Arbitration Law will apply, and the court shall suspend the litigation proceeding in favour of arbitration.³⁰ Conversely, if the litigation is brought before the arbitration, the court will not suspend the litigation proceeding or refer the parties to arbitration.³¹

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

There is no law authorising anti-litigation injunction by arbitrators in Taiwan. However, Article 4 of the Arbitration Law provides that if a party to an arbitration agreement initiates a lawsuit violating the arbitration agreement, the court shall,³² upon the request of the other party, suspend the litigation and order the plaintiff to submit the dispute to arbitration within a specified time.³³ The above law may have a similar effect as the anti-litigation injunction.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

There is neither a law authorising the anti-suit injunction, nor any mechanism by which to intervene in arbitrations seated outside of the jurisdiction in Taiwan.

With respect to anti-suit injunctions requested to restrain the Taiwan court’s ability to hear a case, we believe that an anti-suit injunction will be contrary to Taiwan’s public policy. If one requests the Taiwan court to recognize an anti-suit injunction issued by a foreign court, the Taiwan court will likely refuse the request according to Article 49 of the Non-Contentious Matters Law.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Parties may either retain outside counsel or be self-represented.³⁴ However, if arbitration counsel does not have a Taiwan bar license, he/she may not merely use or indicate “attorney at law (lawyer)” in Taiwan without indicating the jurisdiction in which he/she has a bar license. We therefore suggest that arbitration counsel identify the jurisdiction of his/her bar license, so as to avoid disputes.

²⁷ Article 4 I of the Arbitration Law: “In the event that one of the parties to an arbitration agreement commences a legal action contrary to the arbitration agreement, the court may, upon application by the adverse party, suspend the legal action and order the plaintiff to submit to arbitration within a specified time, unless the defendant proceeds to respond to the legal action.”

²⁸ Article 4 III of the Arbitration Law: “After the suspension referred to in the first paragraph of this Article, the legal action shall be deemed to have been withdrawn at the time an arbitral award is made.”

²⁹ Article 4 II of the Arbitration Law: “If a plaintiff fails to submit to arbitration within the specified time period as prescribed in the preceding paragraph, the court shall dismiss the legal action.”

³⁰ Supreme Court Civil Ruling 106 Tai-Kang-Zih No. 843 (2017)

³¹ Supreme Court Civil Ruling 96 Tai-Kang-Zih No. 300. (2007)

³² Please note that the official English translation of the Arbitration Law uses the word “may”, while it should read as “shall” per the original Chinese Law text.

³³ Article 4 I of the Arbitration Law.

³⁴ Article 24 of the Arbitration Law.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

4.2.1 The court's attitude towards an application to challenge an arbitrator

This will depend upon the circumstances the arbitrator failed to disclose. If it is any of the specific circumstances set forth in Article 15 II (1)~(3) of the Arbitration Law, an arbitrator's failure to disclose may suffice for the court to accept a challenge. As for other circumstances which raise any justifiable doubts as to the impartiality or independence of the arbitrator set forth in Article 15 II(4) of the Arbitration Law, the court will require the challenging party to submit proof showing the arbitrator's lack of impartiality or independence (see explanation below). An arbitrator must be independent and impartial. In the event that any of the following circumstances exist with respect to an arbitrator, such arbitrator must immediately disclose the details thereof:

- A. any of the causes under which, in the event of judicial proceedings, a judge will be required to withdraw from the proceeding per Article 32 of the Code of Civil Procedure;³⁵ (Article 15 II (1) of the Arbitration Law)
- B. the existence or history of an employment or agency relationship between the arbitrator and either party; (Article 15 II (2) of the Arbitration Law)
- C. the existence or history of an employment or agency relationship between the arbitrator and an agent of either party or between the arbitrator and any of the key witnesses; and (Article 15 II (3) of the Arbitration Law)
- D. the existence of any other circumstances which raise any justifiable doubts as to the impartiality or independence of the arbitrator. (Article 15 II (4) of the Arbitration Law)

Either party may apply to have an arbitrator withdraw in any one of the above circumstances, or where an arbitrator is unqualified in accordance with the arbitration agreement between the parties.³⁶

4.2.2 The court's attitude towards failure to disclose in an annulment lawsuit filed due to the challenged arbitrator's continuing participation in making the award

If an arbitrator fails to disclose either of the above four types of conflict of interest as set forth at Article 15 II of the Arbitration Law and appears to be partial or has been requested to withdraw but continues to participate, and the request for withdrawal has not been dismissed by the court, the party may apply to a court to set aside the arbitral award.³⁷ However, the court's granting of such annulment motion is only limited to situations where the challenged arbitrator's participation would likely have influenced the result of the arbitral award.³⁸

³⁵ Article 32 of the Code of Civil Procedure provides as follows: "Any judge shall voluntarily disqualify himself/herself in the following circumstances: 1. When the judge, or the judge's spouse, former spouse, or unmarried spouse is a party to the proceeding; 2. When the judge is or was either a blood relative within the eighth degree or a relative by marriage within the fifth degree, to a party to the proceeding; 3. When the judge, or the judge's spouse, former spouse, or unmarried spouse is a co-obligee, co-obligor with, or an indemnitor to, a party to the proceeding; 4. When the judge is or was the statutory agent of a party to the proceeding, or the head or member of the party's household; 5. When the judge is acting or did act as the advocate or assistant of a party to the proceeding; 6. When the judge is likely to be a witness or expert witness in the proceeding; 7. When the judge participated in making either the prior court decision or the arbitration award regarding the same dispute in the proceeding."

³⁶ Article 16 of the Arbitration Law.

³⁷ Article 40 I (5) of the Arbitration Law.

³⁸ Article 40 III of the Arbitration Law; Supreme Court Civil Judgment 105 Tai-Shang-Zih No. 1886 Civil Judgment (2016); Supreme Court Civil Judgment 98 Tai-Shang-Zih No. 64 (2009)

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

There are four situations in which the courts may be called up on to assist with the constitution of a tribunal:

- (1) In an *ad hoc* arbitration, in the absence of appointment of an arbitrator or of a method of appointment stipulated in an arbitration agreement, each party shall appoint an arbitrator for itself. The two so-appointed arbitrators shall then jointly select and designate a third arbitrator to be the chair, and the arbitral tribunal shall notify the parties, in writing, of the final appointment. However, if the arbitrators fail to agree on a chair within 30 days of their appointment, the court shall make the final (third) appointment upon the application of any party. Moreover, where an arbitration is to be conducted by a sole arbitrator and the parties fail to agree on such arbitrator within 30 days of receipt of the written request to make such appointment by either party, the appointment shall be made by a court pursuant to the application of either of the parties.³⁹
- (2) Where a party has already appointed its own arbitrator, it may issue a written request to the other party urging the appointment of its arbitrator within 14 days of receipt of the request.⁴⁰ If no arbitrator has been appointed within the specified time period, the requesting party may apply to a court to make the appointment.⁴¹
- (3) Where the parties have appointed an arbitrator under an arbitration agreement, and subsequently fail to agree upon a replacement in the event that said arbitrator becomes unable to perform, either party may apply to a court⁴² for appointment of the replacement. If an arbitrator appointed by either party becomes unable to perform, the other party may request the former party to appoint a replacement within 14 days of receipt of the request, and the requesting party may apply to the court to make the appointment if the other party fails to make the appointment within the specified time period.⁴³
- (4) Where the arbitrator appointed by the court is unable to perform, the court may appoint a replacement arbitrator at its own discretion or upon a request by the party. In contrast, the arbitral tribunal does not have the power to do the same. Moreover, if an interim order is issued by the court before the commencement of arbitration, the court shall, upon a petition by the other party, order the party requesting the interim order to submit to arbitration within a prescribed period, or the interim measure granted may be invalidated upon the petition by the other party.⁴⁴

In principle, the appointment of arbitrators by the court as indicated above cannot be challenged by the parties, unless such challenge is based upon the grounds relating to conflicts of interest set forth in the Arbitration Law.⁴⁵

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Yes. The courts are empowered to issue three types of interim measures including: provisional attachment orders, provisional injunctions, and injunctions to maintain a legal status quo, for subject matters in connection with arbitrations. In contrast, the arbitral tribunal does not have the power to do the same.

³⁹ Article 9 of the Arbitration Law.

⁴⁰ Article 11 I of the Arbitration Law.

⁴¹ Article 12 I of the Arbitration Law.

⁴² Article 12 I of the Arbitration Law.

⁴³ Article 13 I–III of the Arbitration Law.

⁴⁴ Article 39 of the Arbitration Law. Three types of interim measures are provided at Articles 522 ~ 538-4 of the Code of Civil Procedure, as discussed below under Question 4.4.

⁴⁵ Article 14 of the Arbitration Law.

If an interim order is issued by the court before the commencement of arbitration, the court shall, upon a petition by the other party, order the party requesting the interim order to submit to arbitration within a prescribed period, or the interim measure granted may be invalidated upon the petition by the other party.⁴⁶

The court may issue a provisional attachment order upon receipt of an *ex parte* request from either party. However, the court may not be permitted to issue a provisional injunction or injunction maintaining a legal status quo without notifying the counterparties or interested parties and requesting them to provide their opinions on such request. Generally, it may be difficult to fulfil the requirements, and the applicant will be required to provide a security bond or bank guarantee per the court's ruling so as to enforce those interim measures.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

If there is no agreement on the procedural rules governing the arbitration, the arbitral tribunal shall apply the Arbitration Law, and where the Arbitration Law is silent as to such procedural rules, the arbitral tribunal may at its own discretion adopt the Code of Civil Procedure *mutatis mutandis* or other rules of procedure, as it deems proper.⁴⁷

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The arbitral proceedings and the deliberations with respect to an arbitral award shall not be made public per the Arbitration Law.⁴⁸ Although the confidentiality of arbitral awards is not explicitly stipulated, the arbitral awards are generally confidential, while parties may include a confidentiality clause in the arbitration agreement or reject to give consent or express their disapproval of disclosure in the consent forms provided by the arbitration institution.⁴⁹

4.5.2 Does it regulate the length of arbitration proceedings?

In the absence of any stipulation in the arbitration agreement as to how the arbitration is to be conducted, the arbitral tribunal shall, within ten days upon receipt of notice of the final arbitral appointment, determine the place of arbitration as well as the time and date for the hearing/s, and shall notify both parties thereof; the arbitral tribunal shall then render an arbitral award within six months after commencement of the arbitration, and the arbitral tribunal may extend the decision period by an additional three months if the circumstances so require. If the arbitral tribunal fails to render an award within the above timeframe, either party may file the subject matter of the arbitration to the court for adjudication unless such arbitration is required by law.⁵⁰

Finally, please note that the above may be varied if the parties' arbitration agreement designates arbitration rules that provide for different timeframes: such an indirect agreement is deemed valid, especially if the arbitral rules are those of a non-Taiwanese arbitral institution.

⁴⁶ Article 39 of the Arbitration Law. The 3 types of interim are stipulated in Articles 522 ~ 538-4 of the Code of Civil Procedure.

⁴⁷ Article 19 of the Arbitration Law. In the case of Taiwanese arbitral institutions, Article 22 of the Regulations Governing the Organization, Mediation Procedures, and Fees of Arbitration Institutions stipulates that local arbitration institutions shall establish rules of ethics. As such, CAA has issued the CAA Code of Ethics for Arbitrators, and CAAI has issued the CAAI Code of Ethics for Arbitrators and Parties.

⁴⁸ Article 23 II, Article 32 I of the Arbitration Law.

⁴⁹ Ministry of Justice Interpretation Fa-Lyu-Zih No. 0960005036 (2007).

⁵⁰ Article 21 I of the Arbitration Law.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The venue of the arbitration hearing, unless agreed by the parties, shall be determined by the arbitral tribunal.⁵¹ In practice, the arbitral tribunal will generally not decide to hold the hearing in a location different / away from the seat / place of the arbitration, as the Taiwanese authorities consider that the venue should basically be located in the place of the arbitration agreed upon by the parties, unless otherwise agreed to by the parties or considered appropriate by the arbitral tribunal in special occasion.

The parties may agree to conduct a hearing remotely.⁵² Even in the absence of such agreement to conduct a remote hearing, if a party objects to a remote hearing, the arbitral tribunal may nonetheless, according to Article 19 of the Arbitration Law, order that the hearing be conducted remotely, provided that proper technical equipment has been provided to the party that raised the objection, and the costs of said remote hearing will be included as part of the arbitration fees.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

The Arbitration Law does not allow arbitrators to issue interim measures, and only authorizes the court to do so under Article 39.⁵³

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The arbitral tribunal shall conduct the necessary investigation of the claims brought by the parties,⁵⁴ and the tribunal may adopt the Code of Civil Procedure *mutatis mutandis* or other rules of procedure that the tribunal deems proper,⁵⁵ including the general provisions for evidence.⁵⁶ The arbitral tribunal may determine whether to accept evidence in accordance with the above-said rules of procedure.

The arbitral tribunal may summon witnesses or expert witnesses to appear before the tribunal for questioning. However, the tribunal may not compel any witness/expert witness to enter into any undertaking. In the event that a witness fails to appear without a sufficiently valid reason upon the summons of the tribunal, the tribunal may seek a court order to compel the witness to appear.⁵⁷

For evidence investigation, the arbitral tribunal may request assistance from a court or other agencies in the conduct of the arbitral proceedings, and the requested court may exercise its investigative powers in the same manner and to the same extent as is permitted in legal actions.⁵⁸

Other than as indicated above, there is no restriction on the presentation of testimony by a party employee under the laws and regulations governing arbitration, unless there is the existence or history of an employment relationship between the arbitrator and such witness.

Moreover, a witness may refuse to testify where the witness is to be examined with regard to a matter that he/she is obligated to keep confidential in the course of performing his/her official duties or conducting business, or where the witness cannot testify without divulging his/her technical or professional secrets.⁵⁹

⁵¹ Article 21 I of the Arbitration Law.

⁵² Ministry of Justice Administrative Interpretation Fa-Lui-Zih No. 10903512280 (2020).

⁵³ Article 39 of the Arbitration Law.

⁵⁴ Article 23 I of the Arbitration Law.

⁵⁵ Article 19 of the Arbitration Law.

⁵⁶ For general principles of evidence taking in the Code of Civil Procedure, please refer to Articles 277 ~ 297 thereof.

⁵⁷ Article 26 of the Arbitration Law.

⁵⁸ Article 28 of the Arbitration Law.

⁵⁹ Article 307 I (4) and (5) of the Code of Civil Procedure.

4.5.6 Does it make it mandatory to hold a hearing?

Unless the parties agree (1) to apply the “Expedited Procedure”,⁶⁰ or (2) not to hold any hearing and that the award may be rendered on the basis of written submissions and documentary evidence,⁶¹ a hearing is required under the Arbitration Law, as failing to hold a hearing may constitute the deprivation of the parties’ right to be heard and their right to present the case, and may also constitute legal grounds on which to annul the arbitration award so-rendered.⁶²

In addition, in the absence of any provision in the arbitration agreement as to how the arbitration is to be conducted, the arbitral tribunal shall, within ten days after receipt of notice of the final arbitral appointment, determine the place of arbitration as well as the time/s and date/s for the hearing/s.⁶³

4.5.7 Does it prescribe principles governing the awarding of interest?

The awarding of interest is not specially prescribed under the Taiwan laws and regulations governing arbitration. Therefore, the Civil Code and Law of Bills will typically apply with respect to the awarding of interest if the governing law of the subject dispute is the Taiwan law.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The arbitration costs are the relevant costs charged by the arbitration institution, the arbitrators and/or expert witnesses for the arbitration. Conversely, attorney fees spent by the parties will not be deemed part of the arbitration cost per Taiwan arbitration practice. Where, however, such attorney fees are included in the arbitration claim by the parties in accordance with the arbitration agreement, the arbitral tribunal will decide on the claim for recovery of such fees to be awarded, as those are part of the arbitration claim, rather than part of the arbitration costs. Finally, if the parties’ arbitration agreement designates arbitration rules that provide for the recovery of attorney fees, such an indirect agreement should be sufficient to enable the arbitrator to adjudicate in this regard, especially where non-Taiwanese arbitral institutions are concerned.

As for arbitration costs, except for the rule stipulating that the party withdrawing an arbitration application shall bear the arbitration costs,⁶⁴ the related laws and regulations merely stipulate that the sharing of arbitration costs shall be ordered in the decision set out in an arbitration award,⁶⁵ and no specific method for allocation of the costs is provided or stipulated. In practice, the arbitrators may adopt the relevant law and regulations governing the allocation of court costs as used in civil litigations, where generally the losing party bears the costs on a *pro rata* basis.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Arbitrators enjoy immunity from civil liability, subject to the following law:

1. Per the Civil Code:

Articles 529 and 535 explicitly state that, under any agreement concerning the performance of services for remuneration, the party dealing with the subject affairs shall

⁶⁰ Article 36 of the Arbitration Law.

⁶¹ Article 19 of the Arbitration Law.

⁶² Articles 40 I (3) of the Arbitration Law.

⁶³ Article 21 I of the Arbitration Law.

⁶⁴ Article 35 I of the Regulations Governing the Organization, Mediation Procedures, and Fees of Arbitration Institutions.

⁶⁵ Article 34 of the Regulations Governing the Organization, Mediation Procedures, and Fees of Arbitration Institutions.

do so with the care of a good administrator (fiduciary duty).⁶⁶ Therefore, only those who fail to exercise their fiduciary duty will be liable for a breach of contract. Accordingly, an arbitrator who provides services for remuneration in the arbitration will not be liable for his/her award issued in good faith, even if said award is subsequently revoked by the court. Per the prevailing opinions of legal scholars and legal practice, a mandate contract or quasi-mandate contractual relationship exists between and among the parties and the arbitrators.⁶⁷

2. Per court decisions:

In litigation involving claims against arbitrators (or arbitral institutions), the courts would respect the arbitrators as authority to make determinations of fact and law, and deny claims filed against an arbitrator/arbitration institution under torts/default,⁶⁸ unless the arbitrators intentionally acted in a manner against the rules of morals, such as by accepting a bribe.⁶⁹

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The offenses that an arbitrator or a participant in an arbitration proceeding may commit are as below:

- Arbitrators: the offenses of demanding, agreeing to accept, or accepting a bribe or other improper benefits even when before he/she has been appointed as an arbitrator,⁷⁰ and the offense of rendering a manifestly unlawful arbitral award. There do not appear to be any court decisions finding such guilty judgment conduct.⁷¹
- Parties: the offense of offering to give a bribe to the arbitrator for his/her breach of duty.⁷²
- Expert witnesses: the offense of breach of trust.⁷³

⁶⁶ Article 529 of the Civil Code: "With regarding to the provisions of Mandate shall apply to any contract concerning the performance of services which does not belong to any kind of other contracts provided for by the act.;" Article 535 of the Civil Code, "The mandatory who deals with the affair commissioned, shall be in accordance with the instructions of the principal and with the same care as he would deal with his own affairs. If he has received the remuneration, he shall do so with the care of a good administrator (fiduciary duty)."

⁶⁷ The MOJ Legal Explanations (88) Fa-Lyu-Zih No. 014034 issued in 1999 and (94) Fa-Lyu-Jyue-Zih No. 0940016194 issued in 2005; the Taiwan High Court Civil Ruling 84 Zai-Kang-Geng-Yi-Zih No. 1 rendered in 1995.

⁶⁸ 1) Default claim against the arbitration institute arising from the arbitrator's determination of the arbitration cost denied, Taiwan High Court Civil Judgment 102 Shang-Geng-Yi-Zih No. 99 (2013), which is maintained by the Supreme Court Civil Judgment 104 Tai-Shang-Zih No. 1145 (2015) and become final; 2) Torts claim against the arbitrator denied by Taiwan High Court Civil Judgment 97 Shang-Zih No. 714 (2008) (final judgment); and 3) Torts claim against the arbitrator denied by Taiwan Taipei District Court Civil Judgment 107 Su-Zih No. 4031(2020) (pending).

⁶⁹ Taiwan High Court Civil Judgment 107 Jhong-Su-Zih No. 10 (2018) (pending).

⁷⁰ Articles 121~123 of the Criminal Code.

⁷¹ Article 124 of the Criminal Code (enacted in 1935) stipulates the criminal penalty for the judge/arbitrator who issues a manifestly illegal judgment/arbitral award. However, we have so far found no guilty judgment from our search of the Judicial Yuan (Taiwan judiciary) database. According to Supreme Court Criminal Judgment 29 Shang-Zih No. 1474, only where a judge / arbitrator intentionally disregards the law and renders a manifestly unlawful arbitral award will such an offense be deemed to have been committed. If the arbitral tribunal issues an award in good faith, even if the court subsequently revokes the same, such revoked award will not result in a finding of this offense.

⁷² Article 122 II of the Criminal Code.

⁷³ Article 342 of the Criminal Code.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes. According to Article 33 II (5) of the Arbitration Law, the parties can agree to waive the requirement for an award to provide reasons.⁷⁴

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

No. The right to seek the annulment of an arbitral award is a statutory inherent right provided to the parties and cannot be deprived merely by mutual agreement.

In addition, there is a practitioner's opinion stating that the condition of the annulment set forth at Article 40 of the Arbitration Law shall be regarded as mandatory provisions, and thus, there is no way for the parties to exclude/waive such provisions by agreement.

5.3 What atypical mandatory requirements apply to the rendering of a valid award at a seat in the jurisdiction?

In addition to the conditions set forth in Article 34 (2) (a) of UNCITRAL Model Law and Article 5 of the NY Convention, the relevant provisions on annulment of arbitral awards in the Arbitration Law are as follows, which differ in some respects from the provisions of the UNCITRAL Model Law:

- Article 38 of the Arbitration Law
 1. *"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 questioned portion of the award may be severed and such severance will not affect the remainder of the award; [This condition has the same meaning/purpose as Article 34 (2) (a) (iii) of the UNCITRAL Model Law.]*
 2. *The reasons for the arbitral award were not stated, as required, unless the omission was corrected by the arbitral tribunal;*
 3. *The arbitral award directs a party to act in a way that is contrary to the law."*
- Article 40 of the Arbitration Law⁷⁵

"A party may apply to a court to set aside the arbitral award in any of the following circumstances:

 1. *The existence of any circumstances stated at Article 38.*
 2. *The arbitration agreement is nullified, invalid, has yet to come into effect, or has become invalid prior to the conclusion of the arbitral proceedings. [This condition has the same meaning/purpose as Article 34 (2) (a) (i) of the UNCITRAL Model Law.]*
 3. *The arbitral tribunal fails to give any party an opportunity to present its case prior to the conclusion of the arbitral proceedings, or any party is not lawfully represented in the arbitral proceedings. [This condition has a broader meaning/purpose than that of Article 34 (2) (a) (ii) of the UNCITRAL Model Law.]*

⁷⁴ Article 33 II (5) of the Arbitration Law: "An arbitral award shall contain the following items: 5. The relevant facts and reasons for the arbitral award, unless the parties have agreed that no reasons shall be stated."

⁷⁵ We need to note that a 2020 Taiwan High Court judgment held that Taiwan courts had no jurisdiction over the annulment litigation against a foreign arbitral award governed by the foreign arbitration rules (ICC arbitration), even though the arbitration was seated in Taiwan. However, said 2020 judgment is now pending on appeal at the Taiwan Supreme Court, and we do not think that the Supreme Court will uphold the High Court judgment, as said judgment violates Article 411 of the Arbitration Law.

4. *The composition of the arbitral tribunal or the arbitral proceedings is contradictory to the arbitration agreement or the law. [This condition has the same meaning/purpose as Article 34 (2) (a) (iv) of the UNCITRAL Model Law.]*
5. *An arbitrator fails to fulfil the duty of disclosure as prescribed at paragraph 2 of Article 15 herein and appears to be partial or has been requested to withdraw but continues to participate, provided that the request for withdrawal has not been dismissed by the court.*
6. *An arbitrator violates any duty in the entrusted arbitration, and such violation results in criminal liability.*
7. *A party or any representative has committed a criminal offense in relation to the arbitration.⁷⁶*
8. *If any evidence or content of any translation upon which the arbitration award relies has been forged or fraudulently altered or contains any other misrepresentations.*
9. *If a judgment in a criminal or civil matter, or an administrative ruling upon which the arbitration award relies, has been reversed or materially altered by a subsequent judgment or administrative ruling.*

The foregoing items 6 to 8 are limited to instances where a final conviction has been rendered or the criminal proceeding may not be commenced or continue for reasons other than insufficient evidence.

The foregoing item 4 concerning circumstances contravening the arbitration agreement and items 5 to 9 referred to at paragraph 1 of this Article are limited to the extent sufficient to affect the arbitral award."

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Except in the event of an annulment lawsuit, an arbitral award is the final decision. There is no appeal proceeding for arbitral awards in Taiwan.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

A distinction must be drawn between local and foreign arbitral awards; additional considerations apply to awards in *ad hoc* arbitrations. We finally discuss below the applicable time-limits for seeking the recognition or enforcement of an award in Taiwan.

5.5.1 Distinction between local and foreign awards with respect to recognition and enforcement

Local award (an award issued in the territory of Taiwan where foreign arbitration rules did not apply) – court enforcement order is required

According to Article 37 I of the Arbitration Law,⁷⁷ a local arbitral award is binding on the parties and has the same force as a final judgment of a court. While such award is unenforceable before the court grants an

⁷⁶ There does not appear to be any court precedent on this issue. However, we may refer to Article 496 I (8) of the Code of Civil Procedure, which provides for the following grounds for retrial: "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." According to Supreme Court Civil Judgment 88 Tai-Zai -Zih No. 6 (1999), said 'criminal punishable acts' include "instigating a witness to commit perjury, or coercing the other party to make statements detrimental to his/her interest".

⁷⁷ Article 37 I of the Arbitration Law: "The award shall, insofar as relevant, be binding on the parties and have the same force as a final judgment of a court."

enforcement order upon the party's application, however, if the parties have agreed in writing, arbitral awards regarding the following matters may be enforced without obtaining a court's enforcement order:⁷⁸

1. Payment of a specified sum of money, certain amount of fungible objects, or securities;
2. Delivery of a specified movable property.

Foreign award – court recognition order is required

According to Article 47 II of the Arbitration Law,⁷⁹ a foreign arbitral award shall have the same force as a final judgment of a court after such foreign award is recognized by the court, and such foreign award shall also be enforceable. The application for recognition of a foreign award must be submitted to the court with the following documents with Chinese translation/s:⁸⁰ (1) the arbitral award; (2) the arbitration agreement; and (3) the full text of the foreign arbitration law and regulations, the rules of the foreign arbitration institution or the rules of the international arbitration institution that were applied in the grant of the foreign arbitral award.⁸¹

However, pursuant to Article 50 of the Arbitration Law, if any of the following circumstances apply, the respondent may request the court to dismiss the application within twenty days from the date of receipt of the notice of the application:

1. The arbitration agreement is invalid as a result of the incapacity of a party according to the law chosen by the parties to govern the arbitration agreement.
2. The arbitration agreement is null and void according to the law chosen to govern said agreement or, in the absence of a choice of law, the law of the country where the arbitral award was made.
3. A party was not given proper notice whether of the appointment of an arbitrator or of any other matter required in the arbitral proceedings, or any other situations that resulted in a lack of due process.
4. The arbitral award is not relevant to the subject matter of the dispute covered by the arbitral agreement or the award exceeds the scope of the arbitration agreement, unless the offending portion can be severed from and not affect the remainder of the arbitral award.
5. 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.
6. The arbitral award is not yet binding upon the parties or has been suspended or revoked by a competent court.

Ad hoc arbitral awards

The court may refuse to enforce a local *ad hoc* arbitral award issued in the territory of Taiwan. The court's reasoning is that: 1) arbitration institutions are established per the approval of relevant governmental authorities and are supervised by such authorities, and 2) the fairness and correctness of an arbitral award must be ensured if such arbitral award is rendered per the rules promulgated by such arbitration

⁷⁸ Article 37 II of the Arbitration Law: "An award may not be enforced unless a competent court has, on application of a concerned party, granted an enforcement order. However, the arbitral award may be enforced without having an enforcement order granted by a competent court if the contending parties so agree in writing and the arbitral award concerns any of the following subject-matters: 1. Payment of a specified sum of money or certain amount of fungible things or valuable securities; 2. Delivery of a specified movable property."

⁷⁹ Article 47 II of the Arbitration Law: "A foreign arbitral award, after an application for recognition has been granted by the court, shall be binding on the parties and shall have the same force as a final judgment of a court, and is enforceable."

⁸⁰ Article 48 II of the Arbitration Law.

⁸¹ Article 48 I of the Arbitration Law.

institutions,⁸² while an *ad hoc* arbitral tribunal award is not, and thus, the court may refuse to enforce a local *ad hoc* arbitral award.⁸³ Nevertheless, the court will recognize a foreign *ad hoc* arbitral award made outside of the territory of Taiwan if such *ad hoc* foreign award is submitted to the court for recognition per the abovesaid statutory requirements under Articles 47 to 50.⁸⁴

5.5.2 No special time limitation will be applied to the application for recognition of foreign awards or the enforcement of local arbitral awards in Taiwan

When faced with an application for recognition or enforcement of an award, the courts will only examine the award formally⁸⁵ and not review its merits and, therefore, whether the claims may have been time-barred.

Ordinary principles of time-limitation apply for an award creditor to seek the recognition and enforcement of their award in Taiwan, and these principles are complicated.⁸⁶ If the approved claim set forth in the award has been extinguished due to expiry of the time limitation, the award debtor may file a debtor's objection lawsuit against the enforcement of the award.⁸⁷

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The introduction of annulment proceedings does not automatically suspend the exercise of the right to enforce an award. Proceedings are suspended only upon the respondent's request. Specifically, according to Article 42 I of the Arbitration Law,⁸⁸ if a party applies for annulment of a local arbitral award (see Question 5.7 below where a party applies for recognition/enforcement of a foreign arbitral award), the court may suspend enforcement of the arbitral award upon such party's request, subject to the applicant providing a certain security. Only if the arbitral award has been annulled shall the court simultaneously revoke any enforcement order with respect to the arbitral award.⁸⁹

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

If a party desires to enforce a foreign award in Taiwan, such foreign award must first be recognized by the court.⁹⁰ If a foreign award has been annulled at its seat, the respondent may request the court to dismiss the

⁸² Taiwan High Court Civil Ruling 99 Tai-Kang-Zih No. 122 (2010).

⁸³ *Id.*

⁸⁴ Taiwan Taipei District Court Civil Ruling 87 Jhong-Sheng-Zih No. 4 (1998); Taiwan Taichung District Court Civil Ruling 98 Jhong-Sheng-Zih No. 1 (2009).

⁸⁵ A formality examination refers to an examination as to whether the documents required by Article 48 I of the Arbitration Law have been provided to the court, and a review to determine the authenticity of these documents. In no event is the court to review the facts and legal holdings in the award.

⁸⁶ Regulations regarding time bars at Taiwan Law are complicated, and time bars vary in length from 1 to 15 years, depending on the facts and legal grounds. However, if a claimant wins an arbitral award or a court judgment, and if the original time bar was less than five years, the time bar is deemed to have re-commenced after the judgment has become final (or the award has been recognized/granted to be recognized) and shall be five (5) years according to Article 137 of the Civil Code. We suggest that the claimant consult a Taiwan attorney for proper advice on the time bar on a case-by-case basis.

Article 137 III of the Civil Code: "If the claim is ascertained by a final judgment on the merits or a grounds of execution having the same effect as a final judgment on the merits, and if the original prescription was less than five years, the prescription is deemed to have re-commenced after interruption and the new time bar period is five (5) years."

⁸⁷ Supreme Court Civil Judgment 103 Tai-Shang-Zih No. 1954 (2014); Taiwan Kaohsiung District Court Civil Judgment 90 Su-Zih No. 3139 (2001).

⁸⁸ Article 42 I of the Arbitration Law: "In the event that a party applies for revocation of an arbitral award, the court may grant an application by said party to stay enforcement of the arbitral award once the applicant has paid a suitable and certain security [to the court]."

⁸⁹ Article 42 II of the Arbitration Law: "When setting aside an arbitral award, the court shall, under the same authority, simultaneously revoke any enforcement order that has been issued with respect to the arbitral award."

⁹⁰ Article 47 II of the Arbitration Law.

claimant's application for recognition of the foreign award within 20 days from receipt of the court's notice of such recognition application.⁹¹ In addition, (1) before the court has issued any order for recognition or completed the enforcement of the foreign arbitral award and (2) if the respondent has introduced an annulment lawsuit or requested suspension of the effect of a foreign arbitral award, the court may suspend the recognition or enforcement proceedings upon the request of the respondent if the respondent provides a certain guarantee.⁹² If the foreign award has been annulled and such annulment cannot be appealed, the court shall dismiss the application for recognition, or revoke the recognition of such foreign award upon request.⁹³

5.8 Are foreign awards readily enforceable in practice?

Yes. Foreign awards are readily enforceable in practice in Taiwan. Although Taiwan is precluded from membership in the relevant international conventions, the Arbitration Law adopts and follows the international treaties and agreements governing and impacting the ready recognition and enforcement of awards issued according to foreign arbitration legislation and conventions, such as the UNCITRAL Model Law and the NY Convention: see the tables at Annexes I and II of this chapter.

Taiwan Courts refuse to recognize foreign awards only on the grounds set out at Articles 49 and 50 of the Arbitration Law,⁹⁴ which are substantially the same as Article 5 of the NY Convention and Article 36 of UNCITRAL Model Law (see Annexes 1 and 2 to this chapter).

Moreover, Taiwan's Judicial Yuan (the Judicial branch of Taiwan's central government), has long been promoting alternative dispute resolution, and thus it is common for foreign arbitral awards to be recognized and enforced in Taiwan, including but not limited to those issued by arbitration institutions of the ICC, the United States, Singapore, Hong Kong, Japan, Korea, Vietnam, Finland, Russia, and the Czech Republic, and also those awarded by foreign *ad hoc* arbitrations as of 2020.

According to the statistics for the period of 2011 to 2019, Taiwanese courts only refused the recognition of foreign arbitration awards in five out of 52 cases.⁹⁵ The reason these foreign arbitral awards were not recognized in Taiwan is that they obviously failed to satisfy at least one of the basic requirements under the law, such as: (1) the applicant is not the claimant party of the award; or (2) the applicant did not submit all of the required documents (see Question 5.5(a) above). From 2011 to 2019, except for applications not satisfying the basic requirements, we did not find any foreign arbitral awards that were not recognized.

If the recognition or enforcement of an arbitral award is contrary to the public order or good morals of Taiwan, the court will refuse to recognize the foreign arbitral award according to Article 49 of the Arbitration Law. However, if the court regards the dispute in the arbitral award as an ordinary commercial dispute, there

⁹¹ Article 50 I (6) of the Arbitration Law: "If a party applies to the court for recognition of a foreign arbitral award which concerns any of the following circumstances, the respondent may request the court to dismiss the application within twenty days from the date of receipt of the notice of the application: (6) If a party applies to the court for recognition of a foreign arbitral award which concerns any of the following circumstances, the respondent may request the court to dismiss the application within twenty days from the date of receipt of the notice of the application: The arbitral award is not yet binding upon the parties or has been suspended or revoked by a competent court." This provision is substantially the same as Article 5 II of the New York Convention

⁹² Article 51 I of the Arbitration Law: "Where a party to an arbitration applies for a judicial revocation of a foreign arbitral award or for suspension of the effect thereof, the court at the request of the respondent may order the same to deposit a suitable and certain security to suspend the recognition or enforcement proceedings prior to issuing any order for recognition or completion of enforcement of the foreign arbitral award." This provision is substantially the same as Article 6 of the New York Convention.

⁹³ Article 51 II of the Arbitration Law: "If the foreign arbitral award referred to in the preceding paragraph has been revoked and such revocation cannot be appealed according to the law, the court shall dismiss any application for recognition or upon request, revoke any recognition of the arbitral award."

⁹⁴ Supreme Court Civil Judgment 89 Tai-Kang-Zih No. 496 (2000).

⁹⁵ Ministry of Justice, 3rd meeting of panel 4 of the National Conference on Judicial Reform, Doc. No. 4-3-審討 2, p.4 (2017); Yearbooks of 2016 to 2019, available at: <https://www.judicial.gov.tw/en/np-1806-2.html>; the precise statistics of 2020 to 2021 are not yet available.

is a high possibility that the court will rule that the award is not contrary to the public order or good morals of Taiwan.⁹⁶

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws or regulations or restrictions?

As disputes for which contingency or alternative fee arrangements are prohibited are non-arbitrable matters (family, succession, and criminal cases) in Taiwan, contingency or alternative fee arrangements are allowed in disputes that can be resolved by arbitration.⁹⁷

Third party funding is permitted in Taiwan, save that where an attorney is involved, per Article 30-2 of the Code of Professional Attorney Ethics, attorneys may not accept attorney's fee through third party funding unless such arrangement is agreed upon by the funded parties and such third-party funding does not affect the impartial professional evaluation of the attorney involved in the matter.⁹⁸

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Per Article 19 of the Arbitration Law, where the parties agree, blockchain-based evidence will be recognised. However, in the absence of such agreement, such evidence may be reviewed under the Code of Civil Procedure or any evidence rules that the arbitral tribunal considers proper. The evidence rules set forth in the Code of Civil Procedure stipulate that the authenticity and the content of the evidence must be proved by the presenting party.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

As communications through electronic methods between the parties may be deemed as having created or otherwise constitute an arbitration agreement, the arbitration agreement recorded on a blockchain may also be deemed valid.⁹⁹ However, it may be required that the blockchain arbitration agreement/award be submitted in writing for the court's recognition and enforcement per Article 48 of the Arbitration Law and Article 6 of the Compulsory Enforcement Act.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

The court may not consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement. A blockchain-based arbitration agreement may be recognized as valid. However, in practice, for both blockchain-based arbitration agreements/awards, the parties may be required to submit the same in writing for recognition or enforcement per Article 48 of the Arbitration Law and Article 6 of the Compulsory Enforcement Act.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys

⁹⁶ Taiwan High Court Tainan Branch Court Civil Ruling 107 Fei-Kang-Zih No. 16 (2018).

⁹⁷ Article 35 II of the Rules of Professional Attorney Ethics.

⁹⁸ Article 30-2 of the Rules of Professional Attorney Ethics.

⁹⁹ Article 1 IV of the Arbitration Law.

authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Articles 4 II and III of the Electronic Signatures Act apply to the Arbitration Law, and therefore an arbitral award may be rendered in an electronic form with secure digital signatures.

However, in practice, an arbitral award is usually submitted in writing for the purposes of recognition and enforcement. The authenticity of an award in digital form might be challenged as it is not something courts are familiar with. Therefore, the rendering of an arbitral award in writing is recommended for avoidance of further disputes in enforcement proceedings.

8. Is there likely to be any significant reform of the arbitration law in the near future?

Presently, no official amendment has been drafted or proposed by the Ministry of Justice. However, the CAA just launched its proposed draft amendment of the Arbitration Law in 2021, which contains the following important amendments:

1. Foreign investment disputes that occur between states and foreign investors under certain treaties, whether or not the same may feasibly be settled, are included and eligible for arbitration in the draft amendment.
2. The introduction of a right to apply for interim measures and preliminary orders issued by the arbitral tribunal, as well as a procedure for an emergency arbitrator to issue interim measures and preliminary orders before the constitution of the arbitral tribunal. Meanwhile, after the issuance of interim measures by arbitral tribunals, the parties may file petitions to the court for enforcement, accordingly.
3. Ad hoc arbitration is explicitly included in the draft amendment and awards therefrom will be eligible for compulsory enforcement.

9. Compatibility of the Delos Rules with local arbitration law

The Delos Rules are substantially compatible with the Arbitration Law.

However, the Delos Rules provide the arbitral tribunal the power to render any interim measures. Those measures issued under the Delos Rules may not be enforceable by the Taiwan courts. The party can only apply to the court to issue orders for interim measures, before and or after the constitution of the arbitral tribunal, per Article 39 of the Arbitration Law.

10. Further Reading

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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	Chinese Arbitration Association International Arbitration Centre (CAAI)
Main arbitration hearing facilities for in-person hearings?	CAA provides meeting rooms and other hearing facilities for in-person hearings.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	CAA provides reprographics facilities in its office, which is the same place where the above-indicated meeting rooms are located.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	CAA arranges, upon request, the court reporting services, including Chinese and English.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	CAA arranges, upon request, interpreters for simultaneous interpretation between foreign languages and Chinese.
Other leading arbitral bodies with offices in the jurisdiction?	<ol style="list-style-type: none"> 1. Taiwan Arbitration Association 2. Chinese Construction Industry Arbitration Association 3. Chinese Real Estate Arbitration Association