



Introduction to Methods of Dispute Resolution in Taiwan

1. Litigation system in Taiwan

In Taiwan, different litigation systems apply depending on the nature of a particular case.

① Civil/Criminal Litigation

A three-tier court system¹, where cases are heard by the District Courts, High Court (and its branches), and Supreme Court, is used for civil and criminal case.

② Administrative Litigation

A two-tier court system², where cases are heard by the District Administrative Litigation Divisions, High Administrative Courts, or the Supreme Administrative Court is used for administrative cases.

③ Intellectual Property Litigation

Cases concerning certain intellectual property rights and commercial cases are conducted at the Intellectual Property and Commercial Court.

Further, different procedures (for instance, prior mediation) may apply under the abovementioned framework for cases that are special in nature, such as labor cases and family cases. As judicial reforms have been implemented in Taiwan in recent years, introducing the Grand Chamber system, Citizen Judge system, etc. and various other changes, it is advisable for Japanese companies to pay full attention to the related systems when engaging in legal action in Taiwan.

2. Period of legal action and alternative dispute resolution methods

When a commercial dispute arises in Taiwan, alternative dispute resolution procedures (ADR) including arbitration and mediation are also often used in addition to resolution through the courts, etc. In particular, as legal proceedings in Taiwan might be time-consuming and reaching a final judgment may take years or even more than a decade, ADR is frequently utilized for resolving commercial disputes where efficiency is of particular importance.

¹In Taiwan, this is called the "three-levels-three-instances-system". This means that there are three levels of courts, so there can be up to three trials for a case.

²In Taiwan, this is called the "three-levels-two-instances-system". This means that there are three levels of courts, but only two trials for a case. For ordinary cases, trials are conducted at a High Administrative Court for the lower court judgment, and the Supreme Administrative Court for the final court judgment, but for summary cases, trials are conducted at a District Administrative Litigation Division for a lower court judgment and a High Administrative Court for the final court judgment.

3. Recognition of Foreign Judgments / Arbitral Awards

① Recognition of Foreign Judgments

Under the Code of Civil Procedure of Taiwan, enforcement of a final and binding judgment rendered by a foreign court is generally recognized by Taiwanese courts, except where there is a certain statutory event, being (i) where the foreign court lacks jurisdiction pursuant to the Taiwan laws; (ii) where a default judgment is rendered against the losing defendant³; (iii) where the performance ordered by such judgment or its litigation procedure is contrary to Taiwan public policy or morals; or (iv) where there exists no mutual recognition between the foreign country and Taiwan; see Article 402 of the Code. As a condition precedent to the enforcement of a foreign judgment, it is necessary to follow procedures to obtain permission to enforce the foreign judgment.

② Recognition of Foreign Arbitral Awards

Although Taiwan has not ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (so-called New York Convention), under the Arbitration Law, Taiwanese courts recognize enforcement of a foreign arbitral award in principle, except where there is a certain statutory event, being (i) where the recognition or enforcement of the arbitral award is contrary to the public order or good morals of Taiwan; or (ii) where the dispute is not arbitrable under the laws of Taiwan, etc.; see Articles 49 and 50 of the said Law. As a condition precedent to the enforcement of a foreign arbitral award, it is necessary to follow procedures to obtain recognition of the foreign arbitral award. There are cases where arbitral awards rendered in Japan, Hong Kong, Singapore, United States and other countries were recognized by courts of Taiwan. As such, it is often seen that arbitration agreements, providing for arbitration in Hong Kong or Singapore, etc. are used in international transactions with Taiwanese companies.

As foreign judgments and foreign arbitral awards are often recognized in Taiwan, provisions that allow arbitration in a foreign country or grant jurisdiction to a foreign court are frequently included in contracts for international transactions with Taiwanese.

4. Cases where a legal action is filed in Taiwan contrary to the agreed foreign arbitration or agreed foreign jurisdiction

① Case where legal action is filed in Taiwan despite an agreement on arbitration in a foreign country

In these cases, a court in Taiwan will first determine whether the arbitration agreement is mandatory (i.e. it has been agreed to resolve a dispute only by arbitration) or voluntary (i.e. it has been agreed to allow both arbitration and court proceedings).

If it is interpreted that the arbitration agreement is voluntary, and that a trial can be conducted at a Taiwanese court for such case, then the court would continue to conduct the trial for the case.

On the other hand, if it is interpreted that the arbitration agreement is mandatory, then the Taiwanese court will respect the arbitration agreement, and may suspend the legal action, and order the plaintiff to submit to arbitration (see Article 4, paragraph 1 of the Arbitration Law).

② Case where legal action is filed in Taiwan despite an agreed jurisdiction of a foreign court

In these cases, a court in Taiwan will first determine whether such agreement grants the foreign court exclusive jurisdiction or not.

³Since there are no official diplomatic relations between Japan and Taiwan, and so the procedure of service in a foreign country cannot be used, when a Japanese court intends to serve process on a defendant in Taiwan with no place for service in Japan, it must serve by publication.

However, it should be noted that even if the defendant in Taiwan fails to respond to a court summons in such a case and the plaintiff wins the case in a Japanese court, there is a risk that a court in Taiwan may determine the judgment to be “a default judgment rendered against the losing defendant”.

If it is interpreted that only non-exclusive jurisdiction has been agreed, and that the Taiwanese court also has jurisdiction, then the court would continue to conduct a trial for the case.

On the other hand, if it is interpreted that the agreement grants exclusive jurisdiction to the foreign court, then the Taiwanese court will respect such agreed jurisdiction in principle, and may dismiss such legal action (see Article 249, paragraph 1 of the Code of Civil Procedure). However, as an exception, it is considered that a Taiwanese court may continue to conduct a trial for cases where exclusive jurisdiction is granted under the Code of Civil Procedure⁴, or other cases where the law stipulates otherwise.

5. Conclusion

Although there are certain common features, there are also significant differences between the litigation systems in Taiwan and Japan, and Japanese companies involved in a dispute related to Taiwan are recommended to consult lawyers with full knowledge of local laws.

Atsumi & Sakai and A&S Fukuoka LPC include Taiwanese lawyers (a.k.a. “台灣律師” equivalent to Japanese lawyers (*bengoshi*)) in their ranks and have built strong relationships with law firms in Taiwan. Please do not hesitate to contact us if you need legal support regarding disputes related to Taiwan.

End.

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Atsumi & Sakai has an outward-looking approach to its international practice, and has several foreign lawyers with extensive

⁴ Based on public interest considerations, specific courts have statutory jurisdiction for specific types of cases, which cannot be altered by agreement between parties.

experience from leading international law firms, providing its clients with the benefit of both Japanese law expertise and real international experience.

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Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (a company incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), and has established an affiliate office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan). We also have a partnership with A&S Fukuoka LPC in Japan (partner: Yasuhiro Usui, a lawyer admitted in Japan) and an affiliate office in Frankfurt operating as Atsumi & Sakai Europa GmbH - Rechtsanwälte und Steuerberater, a corporation registered in Germany providing legal and tax advisory services (local managing directors: Frank Becker, a lawyer, and Miyuki Hanaoka a tax advisor, both admitted in the Federal Republic of Germany).

* Atsumi & Sakai is not regulated by the Solicitors Regulation Authority for England and Wales.

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