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-Abstract-

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Chapter 32

TAIWAN

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I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Taiwan is a civil law country, where rules of law are codified. Case judgments are used as persuasive evidence or to interpret ambiguities in the written law. In deciding cases, the court will rely on, in order of hierarchy: the Constitution, codes, statutes, and then ordinances.

Civil and criminal matters are adjudicated under a three-tier system. District courts are the courts of first instance and established in each county and city. The High Court is the court of first appeal, located in Taiwan's major cities. The Supreme Court is the court of final appeal for civil and criminal cases. It exclusively reviews issues of law and will not examine issues of fact. In administrative suits, the high administrative courts are the courts of first instance, dealing in factual issues. The Supreme Administrative Court is the court of appeal and only examines questions of law.

Specialist tribunals are categorised into special courts, special courtrooms, and special divisions. The Intellectual Property Court ('IP Court') established in July 2008 has jurisdiction over specific civil, criminal and administrative offences relating to intellectual property rights. Its proactive and consistent decisions played an integral role in removing Taiwan from the US Special 301 Report 'Watch List' on 16 January 2009. The IP Court aims to increase the court system's efficiency, and to enhance the professionalism and skill of its judges in adjudicating IP cases. However, the IP Court will not serve as the court of final appeal; the Supreme Court retains such authority.

The Finance Courtroom was formed under the Taipei district court system in August 2008. It is a specialised court in charge of high-profile cases relating to finance. Its subject matter jurisdiction includes banking, securities and futures trading, money laundering, trusts, insurance and agricultural finance cases, where the illegal gains exceed

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NT$100 million, as well as large claims approved by the president of the relevant district court.

The special divisions are formed under the district courts, and adjudicate disputes arising from medical procedures, labour relations, finance and taxation, international trade, and maritime matters. Disputes are first screened by the reviewing division, then tried by the adjudication division.

Taiwan also has a well-developed alternative dispute resolution system, as discussed in Section VI.

II THE YEAR IN REVIEW

In April 2008 Taiwan's Supreme Court discussed issues concerning foreign judgments. The first was on judgments awarding punitive damages. The general rule under Taiwan law is that a foreign judgment must not contravene the public policy or good morals of Taiwan. 'Public policy' has been defined as basic legislative intent or legal ideology, societal values or basic principles. The Taiwanese Civil Code does not provide for punitive damages in contract or civil torts cases. However, the Consumer Protection Act and Fair Trade Act both stipulate treble damages for certain violations. Therefore, the Supreme Court held that a foreign judgment that awards punitive damages is not per se unenforceable. If the facts of the case conform to the elements for treble damages set forth in the special laws, arguments may be made that a punitive judgment award does not contravene Taiwan's public policy.

The second issue concerns foreign judgments in unilateral or default verdicts. The Taiwan courts will not recognise a foreign judgment against a defendant who did not appear in court and was not legally served with notice in a reasonable time. This rule is to safeguard the defendant's right to a fair proceeding. Under Taiwan law, whether the defendant 'appeared in court' is determined by whether he or she was able to mount a defence. For example, it is sufficient that under an objective standard the defendant could have known of the suit, could have prepared for trial, and could have exercised the right to defend himself or herself. Therefore, Taiwan law does not require that defendants be served with legal notice or be physically present at trial to recognise and enforce a foreign judgment against them.

III COURT PROCEDURE

i Overview of court procedure

Litigation in Taiwan is divided into civil, criminal and administrative areas with corresponding court systems (see Section I). The respective governing laws are the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Procedure, along with the relevant administrative orders.

Cases entering civil, criminal and administrative proceedings are divided into regular and summary procedures. Provisional remedy proceedings may be instigated before trial.

The IP Court follows the Intellectual Property Court Organisation Act and the Intellectual Property Case Adjudication Act. The IP Court is the only court that may try civil, criminal and administrative cases.

ii Procedures and time frames

When a court's administrative department receives a complaint, the computer system randomly assigns cases to a specific presiding judge. Large claims may be assigned by the president of the relevant district court. In normal proceedings the judge will receive the assignment and issue the first hearing notice within one or two months of the complaint being submitted.

Generally, civil, criminal and IP Court cases in the first instance must be completed within 16 months, civil and criminal High Court cases within two years, and Supreme Court cases within one year. In the administrative courts, the time limit is 18 months for the first instance, and nine months for appeals. In practice, however, the duration of a trial depends on its complexity.

Emergency and interim measures are provided for in the relevant procedural rules. A party may apply for perpetuation of evidence in civil, criminal and administrative proceedings. Provisional attachment and provisional deposition measures are available in civil and administrative trials. Additionally, civil courts allow for interlocutory decrees, criminal courts will authorise search and seizure, and administrative courts may stay the enforcement of an administrative order.

The courts should decide on urgent or interim applications within one or two weeks of the application being made. Sometimes the court finds it necessary to hold a hearing. In granting such applications, the court will consider whether the applicant would otherwise suffer irrevocable harm or major damage, or whether an emergency situation exists. To enforce an urgent or interim order granted by the court, the applicant must provide a security bond (except in criminal cases).

The orders are generally valid until revoked or lifted by the court. Interim measures may also be converted and become part of the final enforcement order.

iii Class actions

While Taiwan law does not provide for class actions per se, there are similar concepts. The first is 'appointment of party', where multiple victims suffering from the same event appoint one or more persons from among themselves to represent them in the court proceedings.

Another approach is for the victims to transfer their right of claim to an organisation, which will then file suit in its own name. Such organisation (e.g., consumer protection organisations, securities investor or futures trader organisations) must be authorised under relevant laws and regulations to carry out such actions.

iv Representation in proceedings

Litigants in Taiwan are generally free to represent themselves in proceedings. Attorney representation is not required in the courts of first instance or first appeal unless otherwise stipulated by law. Legal entities can also take a *pro se* approach.

When a case is in final appeal, the parties must have legal representation. Persons lacking the requisite mental capabilities to defend themselves must also have legal representation in all proceedings. The court provides public defenders to those who cannot retain representation for themselves.

v *Service out of the jurisdiction*

The Code of Civil Procedure does not specifically address how a natural person may be served outside the jurisdiction. Whether a summons and statement of claim can be served outside the jurisdiction depends on the location of the person's domicile, residence, office, or place of business; or in the instance of a corporation, its headquarters or principal place of business. If any of the above are located within the jurisdiction, there is no need for service outside of the jurisdiction.

The Code of Civil Procedure requires service of process to be administered by the court clerk, disregarding whether the party to be served is within or outside the jurisdiction. Service made by a private individual will be invalid. In principle, the initiating documents (i.e., statement of claim or notice of appeal) must be filed with the court, which will then carry out the service of process. In practice, the court clerk delegates the process to the court's execution officers or post office staff. For other pleadings, the parties must file the original document with the court and send a copy to the opposing party.

Generally, the summons, statement of claim and other court documents must be served personally on the party (e.g., defendant). In certain instances, the documents may be served on persons other than the party to the litigation. Examples include service on statutory agents of a person without capacity to litigate (e.g., minor), or service on the housemate or employee of the intended recipient if such recipient is unavailable. If a party refuses to receive the service without legal grounds, service may be effected by leaving the document at the place of service.

Where a party to the litigation is a corporate entity or unincorporated association, the recipient should be its statutory representative or the person authorised by the corporation or association to receive service.

Where service is made in a foreign country, the competent authorities of such foreign country, or the relevant Taiwanese (i.e., Republic of China) embassy or consulate, or other authorised Taiwanese institutes or organisations in that foreign country will serve the documents. Owing to the unique diplomatic status of Taiwan, often there would be no embassy or consulate in the foreign country. In such a situation, the litigant should ascertain whether there is a treaty between the foreign country and Taiwan to ensure the service of process is valid and effective.

Where service cannot be effected using the above methods, the document may be sent via registered and receipt-requested mail. If the foregoing is not feasible, the litigant can file a petition for service by publication. Service by publication outside the jurisdiction will become effective 60 days after the publication.

vi *Enforcement of foreign judgments*

Courts will enforce a foreign judgment that is final unless:

a the foreign court lacks jurisdiction over the case under Taiwan law;

b the judgment is a default judgment, and the non-attending Taiwanese party was not legally served with notice in reasonable time under Taiwan law;

c the performance ordered by the judgment is contrary to the public policy or good morals of Taiwan; or

d the foreign jurisdiction has refused to recognise Taiwan court judgments as a whole.

In practice, for the past three years Taiwan courts have recognised all the foreign judgments brought before it, and has only refused to enforce a judgment when it falls within the above exceptions.

vii Assistance to foreign courts

Taiwan courts will assist foreign courts in either civil or criminal proceedings on a reciprocal basis. A foreign court must issue a letter rogatory, and submit the request through the Taipei Cultural and Economic Office or Taiwan Embassy. Any requesting document appearing in a foreign language must be accompanied by a Chinese-language translation.

There are no clearly defined rules for the type of assistance that may be provided, but the courts will not honour requests that contravene Taiwan law. Common areas of assistance are service of process and evidence investigation. For service of process, the request should detail the name, nationality, residence or place of business of the recipient. For evidence investigation, the request should contain the parties' names, the form of evidence, information on the persons to be investigated, and for criminal cases, a summary of the facts. In addition to the above general guidelines, Taiwan has entered into a reciprocal agreement with the United States.

Taiwan also provides assistance in international money-laundering and terrorist financing cases. In addition to being a founding member of the Asia-Pacific Group on Money Laundering ('APG'), Taiwan was the first Asian nation to pass special legislation against money laundering. Taiwan is also a member of the Egmont Group. The Investigation Bureau under the Ministry of Justice continues to work closely with overseas financial intelligence agencies to exchange information on suspicious financial activity.

viii Access to court files

Most court proceedings in Taiwan are open to the general public unless specifically designated as private. For example, cases dealing with sexual misconduct, marital relations, family disputes or where a party is a minor are generally closed to the public. Also, a proceeding may be held in private upon the request of the parties and at the discretion of the presiding judge. Common examples are cases involving trade secrets and personal privacy.

The general public is not privy to the pleadings or evidence in ongoing proceedings. In civil suits, only the persons permitted by the parties and persons with legal interests in the outcome of the suit may access the court documents with the court's approval. In criminal suits, only the accused and his or her lawyer may access the court documents.

For completed proceedings, the Law and Regulations Retrieving System of the Judicial Yuan (found online at http://jirs.judicial.gov.tw/Index.htm) makes certain court rulings and judgments available.

ix Litigation funding

Generally, the court will order the unsuccessful litigant to pay court fees. Attorneys' fees are not considered part of the costs. The unsuccessful litigant would have to pay the actual amount of court fees already paid by the prevailing party.

Courts generally have the power to award interest in their judgments. If the dispute arises from a contract where the parties had agreed to an interest rate, that rate will be

applied. Absent a prior agreement, the court will award a 5 per cent interest rate unless otherwise stipulated by law.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

In Taiwan, the Attorney Law prohibits attorneys from representating parties where they have handled the same matter while serving as a judge, prosecutor, judicial officer or judicial police. Moreover, an attorney who has served as judicial officer may not practise in the court jurisdiction of his previous post for three years. Additionally, an attorney must decline a case if there is spousal, matrimonial (within three degrees), or familial relationship (blood relations within five degrees) between the attorney and any judicial officer involved in that case. An attorney must also decline where the attorney or an attorney in his or her firm has been employed by or has rendered services to the prospective counterparty.

Under the Regulations on Attorney Ethics, an attorney may not represent a party whose interest conflicts with an existing client, or a party who is the counterparty to an existing client (unless permitted by the client). Additionally, if the attorney or an attorney in his or her firm has handled the same matter in the capacity of a public servant or arbitrator, he or she should decline the case. Also, attorneys may not accept engagements where personal, financial or business concerns may affect his or her judgement in the case. Attorneys are also prohibited from representing multiple defendants or plaintiffs in a single matter where there exist conflicting interests as between the clients.

Attorneys within the same firm may not accept engagements from parties whose interests conflict with the firm's existing clients unless the clients consent. If the attorney becomes aware of the conflict after he or she has accepted the engagement, he or she must immediately contact that client and take appropriate action. In such circumstances, with the clients' permission, the firm may use a Chinese wall to serve the clients' interests.

ii Money laundering, proceeds of crime and funds related to terrorism

There are no specific laws or regulations in Taiwan directed at the lawyer's role in money laundering or dealing in crime or terrorist-related proceeds. However, the Attorney Self-Discipline Code allows attorneys to disclose otherwise confidential client information when the information concerns criminal intentions or plans, or extension of past criminal activities which may damage another's person or property.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

In Taiwan there are no definite provisions addressing 'attorney-client privilege' or 'work product immunity'. However, an attorney called as a witness in civil or criminal proceedings can refuse to testify on his or her client's confidential matters.

For civil cases, attorneys called as witnesses may refuse to testify on matters they must keep confidential in the course of performing their duties or conducting their business. For criminal cases, a witness who is or was a medical professional, legal professional,

accountant or their assistant, and who has learned confidential matters relating to another as a result of such occupation may refuse to testify when examined, unless the permission of such other person is obtained.

While there are no special rules of privilege applicable to in-house lawyers or foreign lawyers, they may refuse to testify if it would disclose matters they must to keep confidential in the course of performing their duties or conducting their business.

There is a trend in Taiwan towards increased attorney-client privilege protection. To safeguard the right of litigants as set forth in Article 16 of the Constitution, the Council of Grand Justices' Constitutional Interpretation No. 654 of 23 January 2009 states that Article 23(III) of the Detention Act, which requires meetings between a detained defendant and a lawyer to be supervised, is unconstitutional. This Interpretation also states that information gained from the recordings of such meetings shall no longer be admissible as evidence after 1 May 2009. We believe this Interpretation represents a clear trend to promote constitutional values and greater privilege protections in legal practice.

ii Production of documents

Regardless of the burden of proof, the litigant in a civil proceeding and third parties must provide: (1) documents to which such party has referred in the course of the litigation; (2) documents that the requesting party may demand or inspect under applicable laws; (3) documents that are created in the interests of the requesting party; (4) commercial accounting books; and (5) documents that are created concerning matters pertinent to the action. If the content of a document included in (5) involves the privacy or business secret of the party or a third person and the disclosure may cause material harm to such party or third person, the party may refuse to produce such document.

However, to determine whether the party has a justifiable reason to refuse the production of the document, the court, if necessary, may order the party to produce the document and examine it in private. In criminal proceedings, the court has wide discretion to order the parties to provide documents in their possession.

If the court finds that the disputed fact to be proved by the produced documents is material and that a party's motion for production of documents is just, it shall order the opposing party to produce the documents. If the opposing party disobeys an order to produce documents without a justifiable reason, the court may, at its discretion, deem such party's allegation with regard to such document or the fact to be proved by such document true. However, if the court considers the document unnecessary, the court may dismiss the party's motion. The Supreme Court verdicts have long held that unnecessary evidence means that if there is no relevance between such evidence and the disputed fact to be proved, or if the fact to be proved is clear to the court.

Since Taiwan does not have comprehensive evidence rules, courts have the discretion, within the bounds of reason, to determine the relevance between the evidence and the disputed fact. There is no test of relevance which can be inferred from the court decisions because court rulings necessarily depend on specific facts and circumstances.

A public document shall be produced in its original copy or in a notarised photocopy; and a private document shall be produced in its original copy, although, if only the effect or explanation of such document is disputed, it may be produced in a photocopy form. Therefore, if a private document to be produced is stored overseas, it shall be brought

into a Taiwan court for the purpose of litigation unless only the effect or explanation of such documents is disputed between the litigious parties, but not the existence of such document.

Notwithstanding the above, the court may still order the production of the original copy of a document. If the order for production of the original copy is disobeyed or the original copy cannot be produced, the court may, at its discretion, determine the evidentiary weight of the photocopy of the document as produced.

Sometimes, a document to be introduced as documentary evidence may be held by a third party, but under the control of a litigant. In this situation, a requesting party may move the court to order either the controlling litigant or such third party to produce such documents.

To request a third party to produce documents, a requesting party shall specify the classes of documents requested, the disputed facts to be proved by such documents, the content of such documents, the fact that such documents are in the third party's possession, and the reason why the third party has a duty to produce such documents. In terms of the controlling litigant's obligation, the court may order the controlling party to provide necessary assistance in specifying the types and the content of the documents held by the third party.

A litigant needs to produce all documents held by its subsidiary or parent company if all of these documents belong to the litigant and are held by the subsidiary or parent simply in the interest of the litigant, and the court grants a production order against the litigant upon the requesting party's motion.

On the other hand, if all of these documents to be produced belong to a litigant's subsidiary or parent company, as the subsidiary and parent company are third parties, the litigant shall not be obliged to produce such documents. The requesting party shall move the court to order the subsidiary or parent company to produce such documents.

Theoretically, if the court determines a litigant and its subsidiary or parent company are the same legal entity, it may 'pierce the corporate veil' and order the controlling litigant to produce documents owned and held by its subsidiary or parent company.

Likewise, a litigant needs to produce all documents held by its third-party advisers if all of these documents belong to the litigant and are held by the third-party advisers simply in the interest of the litigant, and the court grants a production order against the litigant upon the requesting party's motion.

On the other hand, if all of these documents to be produced belong to a litigant's third-party advisers, the litigant shall not be obliged to produce such documents. The requesting party shall move the court to order such third-party advisers to produce such documents held by them.

If the court considers the disputed fact material and the motion for document production just, it may order the third party to produce the documents after hearing the third party's view on this matter. If such third person disobeys an order to produce documents without a justifiable reason, the court may impose a fine not exceeding NT$30,000; when necessary, the court may also order a compulsory surrender of the documents.

Documents stored electronically are included in the provisions for the production of documents. A litigant shall review electronic records for the purpose of litigation when the electronic documents can be introduced as documentary evidence by a litigant or when

the electronic documents are responsive to the request of production of documents from the opposing party or the court.

Taiwan does not oblige a litigant to initiate a document retention process ('litigation hold') to locate and preserve data relating to the legal action prior to the initiation of the action. Taiwan does not require a litigant to reconstruct back-up tapes or other electronic media that are not readily accessible to retrieve documents for the purpose of litigation.

Only when the court considers that the disputed fact to be proved by the documents is material and that a party's motion is just, it shall order the opposing party or the third party subject to the request to produce the documents. As a result, if the party's motion is oppressive or disproportionate and does not meet the said requirements, the court would not grant an order to produce documents.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

The alternative dispute resolution proceedings recognised under Taiwan law are arbitration, mediation and settlement. Arbitration is most commonly used in disputes involving specialised area of law or professional knowledge. Many transactions concerning specialised area of law (such as construction, international trade and financial investments) have arbitration clauses that designate an arbitral association as the sole avenue for dispute resolution. Mediation may be conducted at the direction of the court or by private agreement.

Settlement may be reached in the course of litigation or by the parties privately. If the parties settle while litigation in ongoing, the settlement terms should be submitted to the court and duly recorded. The recorded settlement would then have the enforceability of a court judgment. If the parties settle without bringing the case to court, the agreement would only be binding as a private contract. When a party violates the settlement agreement, the injured party would have to litigate or seek other dispute resolution procedures to enforce its terms.

ii Arbitration

The Arbitration Law contains a set of general rules for arbitration proceedings. But, as the rules are not mandatory, the participants may agree to a separate set of rules that suit their needs. In practice, the Arbitration Association of the Republic of China ('AAROC') recommends that the parties adopt the rules established by the AAROC, and parties generally accept such recommendation despite any previous agreements.

The law may mandate that certain types of disputes must first be referred to arbitration. For example, the Securities and Exchange Act provides that disputes between securities traders or between a securities trader and the Taiwan Stock Exchange must be arbitrated. The four arbitration service providers established in accordance with Taiwan law are the AAROC, and three specialised associations: the Taiwan Construction Arbitration Association, the Chinese Construction Arbitration Association, and the Republic of China Labour and Management Arbitration Association. The AAROC accepts a wide range of cases, and is therefore the most widely utilised. Case examples include construction,

maritime, securities, insurance, international trade, intellectual property rights, and real estate. The AAROC also houses several expert committees on various arbitration issues.

According to statistics from the AAROC, it arbitrated a total of 176 cases in 2007, and 209 cases in 2008. The district courts adjudicated 300,000 civil disputes in 2007; therefore, arbitrations are comparatively seldom used.

Under the Arbitration Law, arbitration awards are binding on the parties as court judgments. There is no avenue for appeal within the arbitration system. However, the law provides that a party may petition the courts to set aside an award where there is defect in the scope or substance of the award or arbitration agreement, or there are circumstances affecting the fairness and validity of the award or proceedings. Note that in reviewing a petition to set aside an arbitral award, the court will only consider the form and procedure of the award, and not its substance.

A foreign arbitral award will be enforceable in Taiwan after an application for its recognition has been granted by a Taiwan court. In practice, the court will recognise the foreign award in principle unless the counterparty proves lack of reciprocity. Also, a foreign arbitral award would not be enforced if it is contrary to Taiwan's public policy or good morals, or if the dispute could not have been arbitrated under the laws of Taiwan. According to the Arbitration Law, courts are instructed to dismiss such applications. Additionally, courts may dismiss applications from jurisdictions that do not recognise arbitral awards from Taiwan.

Although Taiwan is not a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('the New York Convention'), Taiwan will recognise foreign arbitral awards unless there is evidence proving the foreign jurisdiction has specifically refused to recognise Taiwanese arbitral awards as a whole.

The government is currently heavily promoting and developing arbitration in Taiwan. In its '2009 Policies and Outlook Report', the Ministry of Justice (the governing authority in arbitration matters) strongly recommends using arbitration where possible. To improve the arbitration system the Judicial Yuan also requested that the arbitration associations:

a publish arbitral rulings with the parties' consent;
b establish an arbitrator evaluation mechanism;
c build an arbitrator database;
d implement and realise arbitrator ethics;
e build an arbitrator supervision scheme; and
f set up training programmes and seminars for arbitrations and association personnel.

iii Mediation

Mediation proceedings follow the relevant rules contained in the Code of Civil Procedure, the County and Municipal Rules on Mediation, and the Rules on Arbitration Association Organisation, Mediation Procedures and Fees. The government has established mediation committees under each county office and municipal office to mediate civil matters and those criminal matters indictable only upon complaint. Additionally, the Code of Civil Procedure lists types of cases requiring mandatory mediation through the court system. Such disputes mainly concern real property rights, property rentals, traffic accident, medical treatment,

employment issues, partnership disputes, property disputes between family members, and where the disputed property is valued under NT$100,000.

In practice, the courts can designate a mediation committee under a county or municipal office as the forum to mediate such cases. An agreement made through a mediation committee should be submitted to the court for approval within 10 days. court-approved agreements for civil matters are binding as court judgments, while for criminal matters jeopardy will attach.

In addition to the mediation committees, the AAROC also provides mediation services. In the October 2008 amendment to its Mediation Rules, the AAROC introduced ARB-MED and MED-ARB procedures to expand the mediation applications and to incorporate it into arbitration proceedings. Therefore, when the arbitrator and the parties feel the dispute is suitable for mediation, the arbitration proceedings may be transitioned into mediation. This enhances the flexibility and range of dispute resolution procedures available to the parties.

According to statistics released by the Judicial Yuan, in 2007 the District Court system processed 80,506 mediations, representing 2.86 per cent of the total complaints lodged with the district courts. The mediations had a 46.51 per cent success rate. In comparison, mediation committees throughout the country handled a total of 115,171 disputes in 2007, and were successful 74.6 per cent of the time.

2008 saw a concentrated effort to develop mediation in Taiwan. On the government level, the Judicial Yuan held twelve seminars in the latter half of 2008 on mediation practices. There are also plans to retain talent at mediation committees by providing group insurance and awarding performance bonuses.

iv Other forms of alternative dispute resolution

In internet domain name disputes, the Taiwan Network Information Center ('TWNIC', in charge of issuing and managing domain names with '.tw' as its ccLTD) directs all disputes be handled by expert committees at either the Science & Technology Law Center or the Taipei Bar Association. Under the TWNIC user terms, parties can choose which organisation they prefer.

However, since TWNIC and its users are only bound by private contract, the users are not barred from bringing a lawsuit. Yet in practice, domain name disputes are rarely litigated. As of October 2008, of the 100 cases handled by the Taipei Bar Association, only five went to litigation. Of these, only one received a contrary decision from the court. The TWNIC dispute resolution process is notable for its cost-effectiveness. Generally, the responsible expert committee must release its decision within 14 days, at a fee of roughly NT$40,000 to NT$100,000.

Other ADR measures available in Taiwan include those run by government agencies and by private associations. In the case of government agencies, the Public Construction Commission has formed the Complaint Review Board for Government Procurement to handle procurement and government contract disputes; the Consumer Protection Commission has complaint and mediation committees throughout Taiwan.

As for private associations, the Taiwan Insurance Institute, the Securities and Futures Investors Protection Centre and the Consumers Foundation each have mechanisms to handle complaints but do not have the authority to bind the parties. Additionally, the Bankers

Association has formed the Committee on Banking Consumer Disputes Resolution to resolve financial disputes (including structured debt disputes). The committee's decisions are binding on the member banks, but do not bind the consumers; its function is similar to the Financial Ombudsman Service in the UK.

VII OUTLOOK & CONCLUSIONS

One of the largest trans-national power companies and its former Taiwanese subsidiary currently face civil charges brought by more than 1,000 former employees. The plaintiffs allege that from 1970 to 1992, defendants' factories in northern Taiwan dumped the chemicals trichloroethylene and tetrachloroethylene on the ground or in wells, causing 1,300 incidences of cancer among its employees. Plaintiffs are suing for NT$2.4 billion. This lawsuit is expected to be very time-consuming, as the outstanding issues are complex, ranging from statute of limitations, scope of compensation, and conflicting appraisal reports and expert testimonies.

Taiwan's former two-term President Chen Shui-Bian is charged with embezzlement, accepting bribes, and money-laundering, and has been in custody since December 2008. His co-defendants include his wife, son and former government officials. The defendants are alleged to have: (1) embezzled public funds using fraudulent invoices; (2) aided certain corporations to lease government land at a lowered rate in exchange for bribes; (3) revealed to certain corporations the secret identities of committee members in charge of evaluating a government procurement bid, leading the corporations to bribe the committee members; and (4) transferred NT$790 million of illegal gains to overseas bank accounts to hide evidence of criminal activity. The case is currently on trial at Taipei District Court. Several defendants, including Chen's son and daughter-in-law, have pleaded guilty or given confessions. If Chen is found guilty on all counts, he would face up to 30 years in jail.

A significant recent development in Taiwan law is the modernisation of insolvency legislation. The 1934 Bankruptcy Law was aimed at providing fair compensation to creditors and did not fully consider the need for debtor rehabilitation. Also, as credit and cash card defaults became a social issue, the government promulgated the Consumer Debt Clearance Regulations ('CDCR'). Under the CDCR, if an individual is unable to repay debts, he or she can petition the court for rehabilitation or bankruptcy.

Moreover, the government is currently referencing the debt clearance laws and guidelines employed by foreign jurisdictions and international organisations to draft a comprehensive debt clearance law for Taiwan. The goal is to enact a law that serves as guideline for individual and corporate rehabilitation, reorganisation, and bankruptcy, and which conforms to current international trends.