

ENFORCEMENT OF FOREIGN COURT JUDGMENTS IN TAIWN

**John EASTWOOD
Eve CHEN**

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INTRODUCTION

With an increasing number of cases being brought against Taiwan companies, it's important to consider how to make that future judgment in a home state worth something in Taiwan. With Taiwan's relatively unique diplomatic isolation, it can be often helpful to get advice at a couple of key junctures: before getting into a contract with a Taiwan party and before commencing litigation against a Taiwan party.

JURISDICTION AND CHOICE OF LAW ISSUES

The usual textbook approach is to specify one's own courts and laws to handle any disputes that may later arise under a contract, the reasoning being that overseas courts may give an unfair "home court" advantage to the "home" company. While it may make sense to stay out of relatively undeveloped court systems that have a history of prejudice, the Taiwan system has generally not had these sorts of problems and, in fact, offers many advantages with regards to speed. In any contractual matter in which a dispute might need injunctive-type relief (particularly where significant trade secrets or other intellectual properties are involved), it will often be important to specify Taiwan's domestic courts to ensure that swift action can be taken within Taiwan.

Draft amendments to Taiwan's Code of Civil Procedure (CCP) may eventually allow enforcement in Taiwan of foreign court rulings (e.g., for injunctive-type relief) that have not yet progressed to being final, irrevocable judgments, but this method would likely still interfere with swift action because of the need to translate documents and to go through separate enforcement filings in Taiwan. In our view, it is best to keep open the option of local action directly through the Taiwan courts, even drafting such an option to only exist at the election of the foreign party or allowing for the use of Taiwan's courts to seek injunctive-type relief.

BEFORE COMMENCING OVERSEAS LITIGATION

The current version of the CCP allows for the enforcement of "irrevocable" foreign judgments (i.e., final judgments) and states that a judgment will not be valid if: 1) the foreign court has no jurisdiction under Taiwan law; 2) the Taiwan party has not "responded" to the action – except where service of process is accomplished in that foreign country or served via judicial assistance in Taiwan; 3) the judgment is incompatible with public order or

good morals; and 4) there is no reciprocal recognition from the foreign court for Taiwan judgments. Practically speaking, the Taiwan courts do not find many jurisdictional or public order/good morals problems – the lion's share of problems arise in evaluating service of process and reciprocity.

Service of process matters, particularly, if it is likely that a Taiwan party will not “respond” in the foreign court – once a Taiwan defendant has “responded” the foreign plaintiff is in good shape and can proceed without worrying about following the usual Taiwanese service method via the court system. However, “response” seems not to have yet been clarified by any Taiwan court opinions and only a couple of professors have ventured thoughts on paper briefly suggesting that this should be interpreted to include appearances even for the purpose of arguing jurisdictional issues.

As foreign parties cannot always count on a Taiwan company's representatives being available to accept service of process in the country where the litigation will be brought, we often recommend using a two-pronged method in which documents are served upon the company in Taiwan first, followed by service using the judicial assistance procedure if the party does not make an appearance in court. Some coordination and explanation of this may be necessary, as some foreign judges may be hesitant to stop proceedings already underway just to move forward with a judicial assistance request for service of process.

Reciprocity then becomes the next major hurdle. Before launching into overseas litigation against a Taiwan party, it may be a good idea to run some checks into whether that jurisdiction has a particularly favorable or unfavorable history. Some countries, such as the United States, have a long track record. However, even countries without history on their side can put together alternative documentation and/or expert opinions showing that their courts would have no problems with accepting and enforcing a valid Taiwan decision.

CONCLUSION

Before getting into a contract with a Taiwan-based company or commencing overseas litigation against a Taiwan-based party, it can be very helpful to consult with counsel experienced in handling and advising on these issues. If injunctive relief in Taiwan is important, it may be a good idea to be ready to take action locally. If legal action against a Taiwan party in an overseas jurisdiction is necessary, there are still many things that can be done to speed up service of process and to lay the groundwork for an enforceable foreign decision. Once overseas litigation is underway, there are also many ways by which counsel can help provide litigation support, including locating defendant assets, providing legal opinions, working with investigators, and even monitoring relevant Chinese-language media.

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